



Meeting Date: Tuesday, 01 December, 2020

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

Time: 5.00pm

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

Please note: The proceedings of this meeting (including presentations, deputations and debate) will be webcast and may be recorded and broadcast under the provisions of the Code of Meeting Practice. Your attendance at this meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

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Nil



Development & Environment Committee

Delegation:

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

- i. The Committee cannot make a decision to make a local environmental plan to classify or reclassify public land under Division 1 of Part 2 of Chapter 6 of the LG Act;
- ii. The Committee cannot review a section 8.11 or section 8.9 EPA Act determination made by the Council or by the Committee itself;
- iii. The Committee cannot exercise any function delegated to the Council which by the terms of that delegation cannot be sub-delegated;
- iv. The Committee cannot exercise any function which s377(1) of the LG Act provides cannot be delegated by Council; and
- v. The Committee cannot exercise a function which is expressly required by the LG Act or any other Act to be exercised by resolution of the Council.

SCHEDULE

- a. All functions relating to the preparation, making, and review of local environmental plans (LEPs) and development control plans (DCPs) under Part 3 of the EPA Act.
- All functions relating to the preparation, making, and review of contributions plans and the preparation, entry into, and review of voluntary planning agreements under Part 7 of the EPA Act.
- c. The preparation, adoption, and review of policies and strategies of the Council in respect of town planning and environmental matters and the variation of such policies.
- d. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which seeks to vary a development standard by more than 10% and the application is accompanied by a request to vary the development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 or an objection to the application of the development standard under State Environmental Planning Policy No. 1 Development Standards.
- e. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the Chief Executive Officer requires to be determined by the Committee
- f. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
- g. Review of determinations of development applications under sections 8.11 and 8.9 of the EP&A Act that the Chief Executive Officer requires to be determined by the Committee.
- h. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.
- i. The preparation, adoption and review of policies and strategies of the Council in respect to sustainability matters related to climate change, biodiversity, waste, water, energy, transport, and sustainable purchasing.







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



MINUTES OF THE DEVELOPMENT & ENVIRONMENT COMMITTEE

Meeting Date: Tuesday, 3 November 2020

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

Time: 5.00pm

The following members were present:

Clr Mitchell Pakes - Chairperson

Clr Amanda Findley

Clr Joanna Gash

Clr John Wells

Clr Patricia White

Clr Kaye Gartner – (remotely)

Clr Nina Digiglio

Clr John Levett

Clr Andrew Guile – (remotely) arrived 5.04pm

Clr Greg Watson

Clr Mark Kitchener

Clr Bob Proudfoot

Mr Stephen Dunshea - Chief Executive Officer

Others present:

Phil Costello – Director, City Development Jane Lewis – Interim Director, City Lifestyles Kevin Voegt – Interim Director, City Performance Paul Keech – Director, City Services Gordon Clark – Manager, Strategic Planning Sara McMahon – Manager, Business Assurance & Risk

Apologies / Leave of Absence

An apology was received from Clr Alldrick.

Confirmation of the Minutes

RESOLVED (CIr White / CIr Wells)

MIN20.811

That the Minutes of the Development & Environment Committee held on Tuesday 06 October 2020 be confirmed.

CARRIED



Declarations of Interest

Nil

MAYORAL MINUTES

Nil

DEPUTATIONS AND PRESENTATIONS

The following Deputations were made available on Council's website:

DE20.124 - Exhibition Outcomes/Finalisation - Draft Chapters N20 & S1 - Jerberra & Verons Estates - Shoalhaven DCP 2014 (Amendment No.38)

Mary-Jean Lewis, Ardent Lawyers - Against

DE20.125 - DA20/1743 - 25 Lake Conjola Entrance Rd Yatte Yattah - Lot 84 DP 817514

Marilyn Schoonderwoerd - Against

NOTICES OF MOTION / QUESTIONS ON NOTICE

DE20.122 Notice of Motion - Land Classification - 132 Island Point Road, St Georges Basin

HPERM Ref: D20/469546

Recommendation

That Council, subject to community consultation, resolve to reclassify 132 Island Point Road, St Georges Basin (Lot 10 DP 1143842) from operational to community land.

MOTION (CIr Levett / CIr Findley)

That Council, subject to community consultation, resolve to reclassify 132 Island Point Road, St Georges Basin (Lot 10 DP 1143842) from operational to community land.

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

AGAINST: CIr Pakes, CIr Gash, CIr Wells, CIr White, CIr Guile, CIr Watson, CIr Kitchener, CIr

Proudfoot and Stephen Dunshea

LOST

RESOLVED (Clr White / Clr Proudfoot)

MIN20.812

That Council, with respect to 132 Island Point Road, St Georges Basin (Lot 10 DP 1143842):

- 1. Retain the current operational classification for the Village Green
- 2. Has no intent or plans to change the current use of the Village Green area as green space
- 3. In a future review of the broader St Georges Basin DCP, review the Village Green DCP including the requirement for car parking and other controlled service access and to further enhance the Village Green space.

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



AGAINST: Nil

CARRIED

REPORTS

DE20.123 Post Exhibition and Finalisation - Shoalhaven Local Environmental Plan (LEP) 2014 - 2019 Heritage Housekeeping Amendment (PP036)

HPERM Ref: D20/425840

Recommendation (Item to be determined under delegated authority)

That Council:

- 1. Adopt Shoalhaven LEP2014 2019 Heritage Housekeeping Amendment Planning Proposal (PP036) as exhibited, with the changes shown in Table 1 of the report, and forward to the NSW Department of Planning, Industry and Environment (DPIE) for finalisation, acknowledging that an objection from NSW Crown Lands remains unresolved regarding the listing of items at Chinaman's Island which will ultimately be considered by DPIE during finalisation.
- 2. Investigate the heritage significance of the following properties as part of a future housekeeping amendment Planning Proposal:
 - a. Lot 30 DP 1200000, Meroo Street, Bomaderry relating to Item No. 135: Bomaderry Railway Station and yard group.
 - b. Lot 111 DP 997750 and Lot 1 DP 152845, 1 Berry Street, Nowra relating to Item No. 325: Pressed metal clad industrial building (former Barnes Garage).
 - c. Lot 7 DP 1037100, 466 Kangaroo Valley Road Berry Mountain relating to Item No. 114: "Glenworth" two storey residence and grounds.
- 3. Advise key stakeholders, including relevant Community Consultative Bodies and those who made a submission, of the resolution and when the LEP Amendment will be made effective.

RESOLVED (Clr Watson / Clr Gash)

MIN20.813

That Council:

- 1. Adopt Shoalhaven LEP2014 2019 Heritage Housekeeping Amendment Planning Proposal (PP036) as exhibited, with the changes shown in Table 1 of the report, and forward to the NSW Department of Planning, Industry and Environment (DPIE) for finalisation, acknowledging that an objection from NSW Crown Lands remains unresolved regarding the listing of items at Chinaman's Island which will ultimately be considered by DPIE during finalisation.
- 2. Investigate the heritage significance of the following properties as part of a future housekeeping amendment Planning Proposal:
 - a. Lot 30 DP 1200000, Meroo Street, Bomaderry relating to Item No. 135: Bomaderry Railway Station and yard group.
 - b. Lot 111 DP 997750 and Lot 1 DP 152845, 1 Berry Street, Nowra relating to Item No. 325: Pressed metal clad industrial building (former Barnes Garage).
 - c. Lot 7 DP 1037100, 466 Kangaroo Valley Road Berry Mountain relating to Item No. 114: "Glenworth" two storey residence and grounds.
- 3. Advise key stakeholders, including relevant Community Consultative Bodies and those who made a submission, of the resolution and when the LEP Amendment will be made effective.



4. As soon as the opportunity arises, undertake reconsideration of the proposal to remove from the Heritage Register Lot 111 DP 997750 and Lot 1 DP 152845, 1 Berry Street, Nowra.

FOR: CIr Pakes, CIr Gash, CIr Wells, CIr White, CIr Gartner, CIr Digiglio, CIr Guile, CIr

Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: CIr Findley and CIr Levett

CARRIED

DE20.124 Exhibition Outcomes/Finalisation - Draft Chapters N20 & S1 - Jerberra & Verons Estates - Shoalhaven DCP 2014 (Amendment No.38)

HPERM Ref: D20/433881

Recommendation (Item to be determined under delegated authority)

That Council:

- 1. Adopt DCP Amendment 38 with the changes discussed in this report and shown in Attachments 1 and 2.
- 2. Formally request re-certification of the planning controls for each Estate as a 'relevant planning arrangement' under Clause 34A of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* from the Department of Planning Industry and Environment (DPIE).
- 3. Notify the adoption of the Amendment in accordance with the requirements of the *NSW Environmental Planning and Assessment Act 1979* and Regulations.
- 4. If necessary, delay commencement of Amendment 38, pending recertification of the planning controls for each Estate under Clause 34A, to avoid complications that could arise if recertification is delayed.

RESOLVED (Clr Findley / Clr Wells)

MIN20.814

That Council:

- 1. Adopt DCP Amendment 38 with the changes discussed in this report and shown in Attachments 1 and 2.
- 2. Formally request re-certification of the planning controls for each Estate as a 'relevant planning arrangement' under Clause 34A of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* from the Department of Planning Industry and Environment (DPIE).
- 3. Notify the adoption of the Amendment in accordance with the requirements of the *NSW Environmental Planning and Assessment Act 1979* and Regulations.
- 4. If necessary, delay commencement of Amendment 38, pending recertification of the planning controls for each Estate under Clause 34A, to avoid complications that could arise if recertification is delayed.

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

Against: Nil

CARRIED



DE20.125 DA20/1743 – 25 Lake Conjola Entrance Rd Yatte Yattah– Lot 84 DP 817514

HPERM Ref: D20/426814

Recommendation

That Council refuse the application for the completion of the subject 24m by14.5m by 7.93m high shed and use of the building as a Home Industry at 25 Lake Conjola Entrance Road and issue orders for the demolition of the structure for the following reasons:

- 1. The development is considered to exceed the maximum permitted 100m² area for a home industry permitted under Clause 7.18 SLEP given that the proposed design of the building incorporates no effective means to restrict the home industry use to a maximum of 100m² area and as such should not be supported in the present form.
- The development does not comply with the objectives of Clause 4.3 SLEP Height of Buildings
 as the unauthorised shed is not considered to be compatible with the height, bulk and scale of
 the existing and desired future character of a locality (adjoining rural dwelling) and presents a
 significant visual impact to the adjoining dwelling and community when viewed from public
 spaces..
- 3. The building is **4.31m** higher than the original shed height (**3.62m**) or **119%** above the original and is located on the ridge/skyline. The unauthorized shed is prominent within the landscape and is visible both from travellers along the Highway travelling south and Lake Conjola Entrance Road in both directions.
- 4. The shed has proportions more akin to an industrial building and as such is not compatible with the objectives of the RU2 zone or adjoining dwelling and the rural landscape character in which it sits. Industrial uses are not permitted in the RU2 zone.
- 5. Retention of the shed in such a prominent location would present a poor planning outcome as it would create a precedent for other unauthorised development on ridgelines to be formalised.
- 6. The height of the building is not considered to comply with the streetscape and character requirements of Chapter G19 of the SDCP2014.

Clr Findley raised a Point of Order against Clr Watson for bringing Council into disrepute and impugning character by implying Council's message to the applicant would be "we're going to get even with you", and asked that he withdraw the comment and apologise. Clr Watson withdrew the comment.

RESOLVED (Clr Watson / Clr Kitchener)

MIN20.815

That:

- Council approve DA20/1743 subject to the conditions of consent contained in attached letter of notification to the applicant.
- 2. It be noted that special circumstances apply in respect of this approval in that the property owner lost his home, farm machinery and previous work place during a major bushfire event.

FOR: CIr Pakes, CIr Gash, CIr Wells, CIr White, CIr Guile, CIr Watson, CIr Kitchener, CIr

Proudfoot and Stephen Dunshea

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

CARRIED



Procedural Motion - Matters of Urgency

MOTION (Clr White / Clr Wells)

That an additional item - Call in DA20/2056 – 275 Bong Bong Rd Broughton Vale - be introduced as a matter of urgency.

CARRIED

The Chairperson ruled the matter as urgent as it was in the public interest.

DE20.126 Call In DA20/2056 - 275 Bong Bong Road Broughton Vale

RESOLVED (CIr White / CIr Wells)

MIN20.816

That Council call in for determination DA20/2056 – 275 Bong Bong Rd Broughton Vale - Lot 102 DP 703530 - Parish BROUGHTON - Tourist & Visitor Accommodation (7 Cabins) and Dwelling Additions – 55283.

FOR: CIr Pakes, CIr Findley, CIr Gash, CIr Wells, CIr White, CIr Gartner, CIr Digiglio, CIr

Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 6.46pm.

Clr Pakes CHAIRPERSON



DE20.127 Question on Notice - Subdivision - Edendale Street, Woollamia

HPERM Ref: D20/517130

Submitted by: Clr John Levett

Attachments: 1. DLWC letter U

2. NPWS letter J

These questions are in relation to an approved development proposal/subdivision on the north side of Edendale St, Woollamia. The matter was drawn to my attention by a group of concerned residents.

The subject block was originally known as Lot 71 DP 9289 and in June 1994 the applicants instructed Alan Price & Associates to apply for a subdivision of Lot 70 and Lot 71 DP9289 on the corner of Woollamia Road and Edendale Street, Woollamia.

On 19 April, 1995 application SF7945 was approved for three Lots in Woollamia Road.

Question

1. In January 1995 when the application was lodged how many nearby property owners were notified or are likely to have been notified and does Council have evidence of this notification?

On 25 January 1996 a 13 Lot subdivision SF7946 was approved in Edendale St.

- 2. This DA should have expired on 25 January, 2001...why is it still active?...in what way was a substantial start made?
- 3. What planning law permits a DA approval to be acted upon 24 years after the original assessment and does that law permit reassessment by Council to bring the consent conditions up to contemporary standards?
 - In August 1997 Council apparently approved a "borrow pit" to excavate 6,500 cubic metres of soil to use on SF7945 to build 2 metre high mounds so that future structures might be out of flood reach. The clearing of bush and the excavation of the "borrow pit" began in May 2000. Local residents estimate that more than 100 trips were made per day for almost three weeks by 10 tonne dump trucks travelling to and from along Edendale St and Woollamia Rd, creating a dangerous situation for residents. Residents questioned the validity of the development as they were not aware of any substantial start occurring and they conveyed their concerns to Shoalhaven City Council, Department of Land & Water Conservation, NPWS and the Departments of Planning and Health.
- 4. Was the work on the "borrow pit" approved under SF7945 on 19 April 1995 and what community consultation took place in relation to the approval and the truck movements that would be involved?
 - If, as residents claim, work on the "Pit" began in May 2000 wouldn't such work be illegal due to the expiration of SF 7945 a month before ?
- 5. Were permits required from the Dept. of Land & Water Conservation before these earthworks could take place and if so why were they not applied for ?

The attached letter from the DL&WC and signed by Noel Kesby, Manager Resource Assessment & Planning, states that; "The Department has no record of any previous referral from Council in relation to seeking DL&WC comment on natural resource management issues for the subject lands at the subdivision application stage...and how Council addressed relevant State policies on natural resource management"

The DL&WC letter went on to say that Council would be aware that the proposed development; "is likely to be impacted on and impact flood behaviour...and should be considered in accordance with the NSW Government's Flood Prone Land Policy...to reduce the impact of flooding and flood liability on individual owners and occupiers, and to reduce the private and public losses resulting from flooding"

- 6. What flood plain management plans existed when this development was approved and what plan now exists to mitigate against the potential impacts of flooding in the area as a result of the development proceeding? Is there such a thing as a Currambene Creek Floodplain Management Plan (the creation of which was suggested by DL&WC back in 2000 before Council made any further development decisions in the area) and if so does it address the issue of flood free access and evacuation requirements, including hazards on access routes in the event of a major flood?
- 7. Is Council satisfied that it is protected under Section 733 of the Local Government Act 1993 in the event that litigation arises as a result of flooding at this site?
- 8. When this development was approved, did Council give appropriate consideration to relevant State Natural Resource Policies, can Council give evidence of doing so, and what conditions of consent were applied as a result of these considerations?
 - The issues that should have been addressed are detailed in the October 2000 DL&WC letter under the broad headings of; management of water quality, vegetation management, the existence of acid sulphate soils, and effluent disposal.
- 9. The riparian land on the site is defined in Council documentation as "drainage reserve". Is Council satisfied that this description is accurate and in the words of DL&WC, "appropriately reflects the total function as a riparian corridor and its connection to a State significant wetland system." What riparian protection or enhancement, including buffer zones, has Council built into approvals at this site by way of consent conditions?

DL&WC offered the view at the time of approval that the so called drainage reserve; "would in fact contain inherent conservation values and provide a significant environmental function that would warrant consideration of its definition (and zoning) that affords greater protection"

The Statement of Environmental Effects that accompanied the application offered the opinion that; "no protected or endangered fauna would visit the area". On 15th June, 2000 after the excavation of the "borrow pit" began and in response to representations from the public, two officers of the NSW National Parks & Wildlife Service inspected the Edendale site and in a letter to Development Manager, Tim Fletcher on 13th July, 2000, Michael Hood (Manager, Conservation Planning, NPWS south) described the property differently, as "a mature coastal forest" and added that; "such a community provides habitat for a number of fauna species which at the time were listed on the Endangered Fauna (Interim Protection) Act."

10. Did Council at any stage consider having the original Statement of Environmental Effects peer reviewed?

Of additional concern to Michael Hood was that there was no evidence of consideration of Aboriginal Heritage as part of the development application, notwithstanding the fact



that the location of the site, adjacent to Currambene Creek should have triggered an archaeological assessment.

- 11. Has an archaeological assessment of the site been requested by Council and has any consultation with the Jerrinja Local Aboriginal Land Council taken place?
 - The NPWS letter also drew attention to the impact of the "pit" excavation and the building of pads to elevate future dwellings, citing concerns about destruction of habitat and the impact on possible aboriginal sites.
- 12. Will Council allow more mining for fill at the "borrow pit" and permit further house construction on "pads" given the warnings from NPWS about the environmental sensitivity of the site.
- 13. Since the sale of the site some 12 months ago, has Council received an application to modify the DA in any way or a request for a "Certificate of Construction" to clear bushland on the site?

Response

A report responding to the Questions on Notice will be presented to a future Development & Environment Committee meeting.



14/11 '00 TUE 12:22 FAX 61 44 233011

DEPT LAND & WATER CONSER

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Our Ref. ERM00287 Your Ref. SF7946

The General Manager Shoalhaven City Council PO Box 42 NOWRA NSW 2541 11TH OCTOBER, 2000

MANAGER, RESOURCE ASSESSMENT & PLANNING. DEPT OF LAND & WAYER CONSERVATION SYDINE/SOUTH COAST REGION.

Attention:

Dear Sir

Re: Subdivision No. 7946 – Section 96 Amendment Application Part Lot 71 DP9289 Edendale Street Woollamia

Reference is made to your letter dated 9 August 2000 seeking comments from the Department of Land and Water Conservation (DLWC) in relation to the above mentioned subdivision.

*

In relation to the modification of development consent for the approved subdivision, the Department appreciates the opportunity to provide comment to Council. It is noted, however, that the Department has no record of any previous referral from Council in relation to seeking DLWC comment on natural resource management issues for the subject lands at the subdivision development application stage. DLWC has therefore prepared its comments in the absence of reviewing supporting documentation for the subdivision, and also, in the absence of understanding how Council addressed relevant State policies on natural resource management.



X

Involving DLWC into the process at such a late stage is an unfortunate outcome for the process of landuse planning and development assessment generally. This issue has been raised by DLWC at a meeting with Council's General Manager and relevant senior managers. There was agreement that future rezonings and development applications that affect (or are likely to affect) the functions and processes of environmentally sensitive lands will be referred to DLWC so that natural resource issues and outcomes can be flagged at the outset and taken into account as part of the determination process.

Whilst DLWC regrets the delay in responding, the following comments are provided for your consideration.

Floodplain Management:

Council would be aware that as the proposed development is likely to be impacted upon and impact on flood behaviour, the development in total including any subsequent amendments should be considered in accordance with the NSW Government's Flood Prone Land Policy as set out in the Floodplain Development Manual (1986) and draft Floodplain Management Manual (1999). The primary objective of the State Government's Flood Policy is to reduce



the impact of flooding and flood liability on individual owners and occupiers, and to reduce the private and public losses resulting from flooding.

In considering the proposed amendment to the existing development consent, consideration—should be made by Council to the impacts of flooding on the proposed development and the impact of the proposed development on flood behaviour (upstream and downstream), over the full range of potential floods. This should include events above the flood standard, up to the probable maximum flood (PMF). The proposal should also consider the issue of flood free access and evacuation requirements, including hazard on access routes, in the event of a major flood.

For this development, the Department is unaware of the historical considerations that led to this consent. The Department is also not familiar with the Floodplain Management Plan forming the basis of the subdivision approval, including flood planning levels and impacts on others and is therefore unable to comment on the adequacy of the planning levels and controls being proposed.

The Department notes that the letter from Allen Price and Associates dated 10 July 2000 infers that the area is a flood storage area and therefore there are no impacts on flooding. The Department is unsure of how this conclusion is drawn in the absence of a flood assessment. It is also noted that this development consultant is recommending that a flood awareness strategy be developed. The Department supports such a strategy on the basis that it is formulated as part of an appropriately developed overall floodplain management study and plan that addresses all the flood risk issues in the area consistent with the Flood Manual. Council should note that the Department does not generally provide financial assistance for the preparation of Floodplain Management Plans for new development as this responsibility remains with Council and the developer.

With regard to this referral, it appears that the fundamental problem with fill and development on the flood plain may rest with Council's Flood Policy which seems to stipulate the use of fill for flood proofing. In this regard the Department is unclear as to why the same fill requirement was not applied to "the recent development consent on the other side of Edendale Street" as noted in the letter from Allen Price and Associates. In the absence of a Floodplain Management Plan, the Department is unclear as to the procedure and assessment process that Council is utilising to establish flood proofing mechanisms and the consistency of this local flood policy with the Flood Manual. There are further potential concerns and liabilities that an ad hoc fill and development approval strategy may create for Council such as considerations of adverse impacts on others and the environment including channel stability, wetland integrity, flood hazard, risk to life and evacuation requirements.

Whilst the Department notes that Council's consent requires elevated floor levels for flood damage reduction, there does not appear to be any information regarding the flood hazard on the site or on evacuation routes. If flood depths on the site or on evacuation routes exceed 1 metre then the area is regarded as high hazard and the evacuation procedures should form an essential part of the decision making process for any residential development in this area.

Council has indicated that there is concern that there may be adverse impacts to others in times of flooding as a reason to amend the existing consent conditions. Council should therefore review the flood assessment for this proposal to ensure that the total development in its final form (including houses, fencing, etc) is not creating adverse flood impacts over the



full range of potential floods. This would normally be achieved by an assessment of the cumulative total hydraulic and hydrologic impacts. As it appears that Council's current Policy may be the fundamental cause of these problems, the Department recommends that Council review its local Flood Policy and the local Policy's consistency with the State's Flood Policy that is set out in the Flood Manual. It appears that in order to address this issue for this area, Council will need to progress a Currambene Creek Floodplain Management Plan with appropriate amendments to its local flood policy. Based on the above, the Department suggests that Council completes the Currambene Creek Floodplain Management Plan prior to making any further development decisions in this area, to ensure that future decisions are consistent with the Flood Manual.

Council should also note that if it has not considered the full range of flood related issues in a manner consistent with the Flood Manual and litigation later arises then section 733 of the Local Government Act may not apply. In this regard, the Department advises that Council seek its own legal advice in its current deliberations.

Other Matters for Consideration

The Department supports development decisions that are made having regard to relevant State natural resource policies such as the Flood Prone Land Policy, the Rivers and Estuaries Policy and Wetlands Management Policy. All councils have a shared responsibility for the implementation of such policies. As Shoalhaven City Council has already determined the subdivision it is important that appropriate consideration was given to the above policies in the granting of approval.

As noted, the Department is unaware of the adequacy of supporting documentation being the basis for the subdivision consent, and how Council has interpreted and applied relevant State policy to its approval decision. DLWC is also unaware of the range of conditions of consent that apply to the approved subdivision that would address any natural resource management issues.

In light of this position, the Department also wishes to advise Council on the matters set out below. It is suggested that Council ensure that such issues have been adequately addressed through the development assessment process so that short and long term adverse impacts are mitigated and/or managed.

Upon review of the Department's comments, Council will need to ensure that it has satisfactorily addressed those matters through the development approval process. Where Council feels it has not considered particular matters to an appropriate degree, then it should rectify the matter. In the unlikely situation that Council does not wish to rectify a particular matter then it should be prepared to accept full responsibility for any subsequent implications to riverine geomorphology, wetland integrity and overall catchment health (and any costs associated with mitigation or rehabilitation).

Water Quality

The Department notes that a SEPP14 Wetland (No.329) is located upstream of the subject land and is connected to Currambene Creek (and the downstream wetland areas) via an unnamed watercourse that traverses the site. From the information before DLWC, it is unclear how water quality is to be managed. Council should ensure that it has considered the



effect of stormwater and residential run-off arising from this subdivision and that it has introduced appropriate measures (including water pollution control structures and water sensitive urban design principles) in order to protect the sensitive receiving waters. Water quality performance should be benchmarked in line with the water quality objectives established in the Jervis Bay REP (understood to be water quality standards allowing 'primary contact').

Vegetation Management

The development site contains dense and mature vegetation including large trees, banksias and casuarina species. The location of the site on the Currambene Creek floodplain and the proximity of high conservation value areas such as a number of SEPP14 wetlands in the vicinity highlight the importance of vegetation retention and embellishment of vegetated corridors. The Department recommends that the development consent stipulates maximum retention of existing vegetation on the site and requires riparian vegetation enhancement using local native species.

Acid Sulfate Soils

The site has been mapped under DLWC's Acid Sulfate Soil Risk Maps (Edition 2) as having a low probability of acid sulfate soil materials occurring between 1 and 3 metres below the ground surface. The environment of deposition has generally not been suitable for the formation of acid sulfate soil material. Acid sulfate soil materials, if present, are sporadic and may be buried by alluvium or windblown sediments. An acid sulfate soil investigation should have been undertaken to determine whether acid sulfate soil material is present should any excavations to the above depths be proposed (eg swimming pools).

Effluent Disposal

In relation to the subdivided land, the Department notes that:

- 1) the groundwater table is shallow;
- 2) the groundwater system is in a SEPP14 wetland area;
- soils have high hydraulic conductivity;
- disposal will be in close proximity to receiving waters for which primary contact is defined as an environmental water quality objective in the Jervis Bay REP; and
- disposal of effluent will be in a flood prone landscape.

The use of on-site wastewater treatment or disposal via pump-out system is not known. The above factors will need to be considered in determining the most suitable effluent disposal system. Additionally, water budgets for on-site effluent disposal should be prepared and effluent disposal footprints indicated on each lot to ensure suitable land area is available (and wet weather storage capacities are known).

Riverine/Riparian Management



The site of the subdivision includes a watercourse and riparian area that has been termed a "Drainage Reserve". Council is reminded that the *Rivers and Foreshores Improvement Act* would apply to the subject lands in relation to certain activities that may be proposed on Lots



2 and 3 of the subdivision (and require a Part 3A permit under the Act if proposed within 40 metres of the watercourse).

The Department notes that this development predates the integrated development approval process. In addition, DLWC did not comment on the subdivision lot layout or the width of the 'Drainage Reserve' in regard to ripatian corridor provision and the Rivers and Foreshores Improvement Act.

As the riparian land on this site is defined as a "Drainage Reserve", Council should ensure that this definition appropriately reflects the total function as a riparian corridor and its connection to a State significant wetland system. In the absence of information supporting the referral, the Department would suggest that the riparian land or "Drainage Reserve" would in fact contain inherent conservation values and provide a significant environmental function that would warrant reconsideration of its definition (and zoning) that affords greater protection (particularly where riparian enhancement should have been required by Council through the consent process).

Council should also have ensured that the width of the 'Drainage Reserve' appropriately reflects the total function as a riparian corridor. In this regard, the Department will adhere to the objectives of relevant policies and legislation in considering any applications for future works that may require approval under the Rivers and Foreshores Improvement Act.

Based on a site inspection, and considering upstream and downstream areas, the Department recommends that a riparian buffer/corridor with appropriate management controls of at least 20m wide either side of the stream as measured from the top of bank should have been established. It is considered that this minimum width for the riparian corridor would serve to protect the integrity and diversity of the riparian vegetation, geomorphology and the ecological value of this watercourse and the upstream SEPP14 wetland for which it is the sole connection with Currambene Creek.

Council are advised that DAs for any future development involving excavation in, or within 40 metres of, the watercourse should be regarded as integrated development.

DLWC's permit role will require that, at a minimum, a riparian buffer zone of 20 metres from the watercourse be established with the actual width determined following the completion of relevant ecological and hydraulic-geomorphic assessments. Other development or activities between 20 metres and 40 metres from the watercourse may be restricted or occur only with certain permit requirements. Council should ensure this aspect is addressed through the determination (eg conditions of consent, building setbacks on the land title, etc) and considers the implications of this on Lots 2 and 3 (and any possible need to reconfigure the final subdivision layout).

Conclusion

In the absence of any record of previous involvement in the assessment of the subdivision, the Department has raised a number of natural resource management issues that Council should ensure have been adequately dealt with in its determination. Council, as the consent authority responsible for the approved subdivision, may need to reconsider the situation in light of the above issues to ensure no future adverse implications arise. Where any of the above issues have not been satisfactorily taken into account through the determination, the







Department accepts no responsibility for any subsequent adverse impact where Council takes no action to rectify the outcome.

With regard to flood risk considerations on the proposed amendment to the existing consent, it appears that an informed decision cannot be made in the absence of further analysis and/or a Floodplain Management Plan. It also appears that Council's local Flood Policy may not be providing development outcomes that are consistent within the area or consistent with the Flood Manual. Hence, a review of Council's local Flood Policy is recommended as a matter of priority.

The Department generally looks forward to improved consultation on future rezonings and development proposals so that appropriate environmental outcomes are achieved early on in the process.

Any queries relating to matter raised above should be directed to the Environmental Review Coordinator in Wollongong office ph: 4226 8476.

Yours sincerely

Manager, Resource Assessment and Planning Sydney/South Coast Region 11 October 2000



Development & Environment Committee - Tuesday 01 December 2020 Page 16

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NEWS STH ZONE



NSW NATIONAL PARKS AND WILDLIFE SERVICE

13 July, 2000

The General Manager Shoalhaven City Council PO Box 42 NOWRA NSW 2541

Our reference: ZF/0018 Your reference:

Dear Sir,

Re: Subdivision, Edendale St Woollamia

As you may be aware, both our office and the office of the Minister for the Environment have received representations regarding a current 3 lot concessional allotment subdivision and soon to be developed 13 lot subdivision at Edendale St Woollamia. On 15 June 2000, Les Mitchell from our South Coast Office and I inspected the sitc in the company of Peter Price, of Allen Price and Associates. The inspection raised several issues which I wish to highlight to you.

Of significant concern is that the inspection showed the site to be very different from that described in the Statement of Environmental Effects (SOEE) prepared for the proposal. The SOEE included comments such as "The site is covered with hurnt coastal scrub and eucalypt regrowth", and "The site is immediately adjacent to an existing urban area. It is somewhat degraded and has been burnt in recent times. It is not expected therefore that neither protected nor endangered fauna would visit the site

The site inspection revealed a mature coastal forest, which, while it had clearly been burnt at some time in the past, has a number of large bangalay, and blackbutt trees with hollows, swamp mahogany and larger Allocasuarina littoralis, all of which would have been present in 1994. Such a community provides habitat for a number of fauna species which at the time were listed on the Endangered Fauna (Interim Protection) Act, namely Yellow-bellied Glider, Squirrel Glider, Glossy-black Cockatoo, Swift Parrot and Regent Honeyeater. The assessment should have considered the impact on these species, and it is hoped Council didso in its review, however John Blom, when I discussed this matter with him, was unable to tell me if this was the case.

What this case demonstrates is the need for assessors and Council staff who review development applications to understand the dynamic nature of sclerophyllous vegetation in be ab-eastern Australia and the way it, and the species it supports, have adapted to periodic burning. Whilst a cursory glance at a site post-burn may suggest a degraded area unlikely to support many species, clearly this is often not the case. Instead, assessors should look for

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the elements of the site and of threatened species habitat present and likely to survive in the medium to long term, for example large trees with hollows. Additionally, other elements of habitat may return some period later – for example, the Eastern Bristlebird will recolonise sites a couple of years post-burn, when the appropriate vegetation cover has regenerated.

Of additional concern is the fact that there is no evidence of consideration of Aboriginal heritage as part of the development application. The site of the development is immediately adjacent to Currambene Creek, and has high potential for sites to occur. An archaeological assessment should have been undertaken at the subdivision stage – there is now a possibility that individual dwellings could be affected by the Aboriginal site provisions of the National Parks and Wildlife Act.

One aspect of the approval which has greatly magnified the impact of the development is the requirement to construct pads for each of the house sites, in order to address the flooding issue. This has resulted in the excavation of a very large hole, causing destruction of flora and fauna habitat, possible Aboriginal sites, and impacting on the water table — again the level of assessment undertaken by Council is not known. It also greatly reduces the opportunity for conservation of vegetation on individual lots, with the pads being much larger than an individual house site — and resulting in the complete removal of vegetation over their full extent. Whilst the three concessional allotments have already been completed, NPWS considers Council should review the need for the pads on the thirteen lot subdivision along Edendale St. Given that houses are currently being constructed on the other side of Edendale St using an elevated construction method, it is strongly recommended that Council permit such an approach in the new subdivision. The outcome would be an increased opportunity for vegetation and habitat conservation on individual lots, and elimination of the requirement for a much larger excavation than that already undertaken.

Yours sincerely,

Manager, Conservation Planning NPWS Southern Directorate

CC: Peter Price - Allen Price and Associates



DE20.128 Nebraska & Jerberra Estates - Options for Future Management of E2 Environmental Conservation Land

HPERM Ref: D20/434779

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Nebraska Estate - Draft LP145.1 - Conceptual Subdivision and

Development with SCC Owned Land J.

2. Jerberra Estate - DCP 2014 Amendment No 38 - Development &

Conservation Areas with SCC Owned Land J.

Reason for Report

"In principle" support is sought to prepare a policy which would enable the voluntary acquisition and future management of residual/undevelopable E2 Environmental Conservation zoned land in Jerberra Estate and also ultimately Nebraska Estate (if/when the land is rezoned) using the net profits from the sale of developable Council land in the Estates.

A biodiversity savings order (clause 34A certification) is also critical to the feasibility of the Planning Proposal (PP) for Nebraska Estate. Indications are that clause 34A certification for Nebraska will hinge on Council making a commitment to proactively acquire and manage the "residual" E2 zoned properties that will not otherwise be resolved through development consents.

Further, the NSW Department of Planning, Industry & Environment (DPIE) wrote to Council on 1 October 2020 about five "legacy" planning proposals. DPIE advised that:

"A review of current proposals identified a number that have been delayed or, are yet to be finalised after more than four years. To address these, the Department is commencing a focused program to work with councils to finalise these proposals by 31 December 2020.

Nebraska Estate is one of the "legacy" PPs identified by DPIE for finalisation.

Recommendation (Item to be determined under delegated authority)

That the Development & Environment Committee:

- 1. Receive the update on the Nebraska Estate Planning Proposal (LP145.1) for information.
- 2. Agree "in principle" to the development of a new policy for the voluntary acquisition of "residual" E2 Environmental Conservation land in the Nebraska & Jerberra Estates, to be funded by any profits from the sale of developable Council land in each Estate.
- 3. Agree to the preparation of a draft policy for Council's consideration based on the following:
 - a. the cost-neutral voluntary acquisition of undevelopable E2 land in each Estate, to the extent possible, funded by the net profit from the sale of Council-owned land with development potential;
 - if offers to sell E2 land are received before any developable Council-owned land has been sold, general funds be used to purchase E2 properties in each Estate limited to the anticipated net profits from the future sale of the Council-owned land;



- c. land in Nebraska Estate is not purchased until the Planning Proposal has been finalised and the land zoning has been resolved;
- d. the policy be limited to the acquisition of E2 properties that are not able to form part of a development parcel;
- e. the cost of removing any unauthorised structures from the land be deducted from the acquisition price;
- f. any land acquired by Council under the new policy be managed for conservation purposes consistent with clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation using any available surplus funds and/or external funding programs and subject to resourcing;
- g. receiving further advice from the NSW Government on the likelihood of receiving clause 34A certification for Nebraska on the basis of parts 2 and 3 above; and
- h. consultation with the landowners in each Estate, in particular to gauge the interest of the E2 land in Jerberra Estate and proposed E2 land in Nebraska Estate.
- 4. Agree an independent valuation advice be obtained in order for management to provide detailed estimates of the following for consideration before a draft policy is presented to Council:
 - a. the potential net profit from the sale of Council land in each Estate;
 - total unimproved land value of the undevelopable E2 land (existing and proposed);
 and
 - c. the annual cost of maintaining land to the Council.

Options

1. As recommended

<u>Implications</u>: DPIE's Biodiversity & Conservation Division (former Office of Environment and Heritage - OEH) will be informed of Council's "in principle" agreement to develop a policy that seeks to acquire and manage the E2 land in both Nebraska and Jerberra Estates. Ongoing discussions with them on possible clause 34A Certification for the future Nebraska planning controls will depend heavily on being able to secure long term environmental outcomes for the environmentally sensitive land. Although this sensitive land will be zoned E2 Environmental Conservation, the future tenure and management of most of the proposed E2 land will remain unresolved.

While Council's current policy allows land in "paper subdivisions" to be acquired in lieu of unpaid rates if requested by the owner, this does not provide sufficient certainty to qualify for clause 34A certification. Furthermore, this current policy was developed for a different purpose and not intended to be a proactive acquisition policy. The fact that Council owns developable land in Jerberra Estate and potentially developable land in Nebraska Estate, provides an opportunity to use the net profits from the sale of this land to take a more proactive role in resolving the future tenure and management of the undevelopable land.

The Nebraska PP and Draft DCP Amendment can also be updated to reflect that the planning controls will be certified as "relevant planning arrangements".

Adopting the recommendation could also assist in the up-coming discussions with DPIE regarding finalisation of the PP.



2. Resolve to develop policy for the acquisition of E2 land in Nebraska but exclude the Jerberra Estate.

<u>Implications</u>: The outcome for Nebraska Estate would remain as per Option 1. However, adoption of a policy position to acquire E2 land in Nebraska Estate would create a precedent. Landowners of E2 land in Jerberra Estate may expect similar consideration.

3. Not agree to develop a policy to proactively acquire E2 properties in either Estate.

Implications: The NSW Government has been reluctant to support clause 34A certification for Nebraska Estate without a Council commitment for management of the E2 land into the future. If Council is required to complete the PP without certification, landowners will be required to undertake a Biodiversity Assessment Methodology (BAM) Assessment and prepare a Biodiversity Development Assessment Report (BDAR) to support development applications (DAs) for dwelling approval. This would be an additional financial (and time) cost to be added to the expected high costs for the provision of roads, water and sewer infrastructure. The additional costs and delays could be blamed on Council, even though the situation is a result of the NSW biodiversity law reforms.

Background

Current status - Nebraska Estate PP

A report on the Nebraska Estate PP and the outcomes of a landowner survey was last considered by the former Development Committee on 5 April 2016. It was resolved (MIN16.230) that Council:

- a) Adopt revised version 2 of Option 1 Lower Density Residential Development outlined in this report and provided in Attachment D, as the preferred option to move forward with, and the Planning Proposal be amended accordingly.
- b) Prepare the required water cycle assessment.
- c) On completion of a) and b) publicly exhibit the Planning Proposal.

Water Cycle Assessment

An Integrated Water Cycle Assessment was subsequently undertaken by "Footprint Sustainable Engineering" (FSE) and completed in March 2017.

The Assessment report demonstrates that the PP can achieve a "neutral or beneficial" effect (NorBE) on water quality, water quantity and the receiving environment subject to implementation of the recommended controls and performance standards recommended in the report. These controls and performance standards can be incorporated into the DCP intended to support the PP.

Strategic Bushfire Assessment

In response to changes to the NSW Rural Fire Service's (RFS) "Planning for Bushfire Protection" Guidelines (including a new section on strategic planning), a strategic bushfire assessment was commissioned in late 2018. The final report was received in October 2019. The report recommended several bushfire mitigation measures, including establishment of a fire trail in the Nebraska Road reserve between Grange Road and Waterpark Road. These measures can be incorporated into the supporting DCP.



NSW Biodiversity Conservation Act 2016 (BC Act) – Implications for Nebraska Estate

Exhibition of the PP was stalled by the commencement of the BC Act and supporting Regulations on 25 August 2017.

The BC Act introduced a new Biodiversity Assessment Methodology (BAM) and a new Biodiversity Offsets Scheme (BOS). In recognition of the previous biodiversity assessments completed as part of the rezoning processes, the resolved planning controls for both Jerberra and Verons Estates were certified as "relevant planning arrangements" by the NSW government in 2019. This means that development applications (DA) in these Estates can be assessed under the legislation that applied before the BC Act commenced; the BOS is not triggered and a Biodiversity Development Assessment Report (BDAR) is not required to support a DA.

A BAM must be prepared if:

- 1. the area of clearing/disturbance exceeds the applicable area threshold (ranges from 0.25 ha to 2 ha depending on the minimum lot size in the LEP), or
- 2. the site is mapped as high biodiversity value on the Biodiversity Values map (prepared by OEH), or
- 3. a "test of significance" assessment indicates that there will be a significant impact. (If the above thresholds are not triggered, a test of significance (5-part test) must be applied.)

An initial assessment of the PP against the above criteria suggests that the BAM would need to be applied to <u>all</u> 23 individual proposed dwellings, each of which would require its own BDAR to determine the offsetting requirement for each development, noting that the legislation does not allow an overall BDAR to be completed. The cost of offsetting the impacts (i.e. purchasing credits from the market or paying into the fund) would also be borne by each applicant.

Council staff have been in ongoing discussions with NSW Government officers since the BC Act commenced to try to find a workable solution to this issue in respect of Nebraska Estate.

Clause 34A Certification is considered the most likely solution. Clause 34A (4) sets out the following eligibility criteria for "relevant planning arrangements":

- (a) that the proposed development the subject of a development application is part of a relevant planning arrangement and the biodiversity impacts of the proposed development were satisfactorily assessed before the commencement of the Act as part of the relevant planning arrangement, and
- (b) that conservation measures have been secured into the future (by a planning agreement, a land reservation or otherwise) to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts.

In respect of part (a) Council staff are of the opinion that the biodiversity impacts were satisfactorily assessed prior to commencement of the BC Act. This was confirmed in a joint NSW State Agency letter received in December 2011, although it did raise some concerns about the proposed north east sector (which is adjacent to large cluster of threatened orchids). The policy proposed in this report may ultimately help to satisfy part (b) and provide the certainty needed to refine and publicly exhibit the Nebraska Estate planning controls (PP and supporting DCP chapter).

In principle support for clause 34A certification was sought on 31 May 2018 from the then NSW Office of Environmental Heritage (OEH) for the proposed planning controls for Nebraska Estate. However, OEH was reluctant to commit to cl 34A certification, partly due to uncertainty around the future of the residual E2 land that potentially makes up a significant



proportion of the land. It was also unclear at that time whether the planning controls for Jerberra and Verons Estates would be certified under clause 34A because the legislation was new. The planning controls for these Estates were ultimately certified in 2019 after a lengthy delay.

The proposal in this report has been prepared following further discussions with the Regional Office of the Biodiversity & Conservation Division (BCD) of DPIE on potential use of clause 34A for Nebraska Estate.

Jerberra Estate - Current Position

Amendment No 38 to Shoalhaven DCP 2014 was adopted by Council on 3 November 2020 to reflect the clause 34A certification for Jerberra & Verons Estates. Acquisition of undevelopable residual E2 zoned land in the Jerberra & Verons Estates was not necessary to secure clause 34A certification because a significant proportion of the environmentally sensitive land will be secured in perpetuity through legally binding development consents.

In Nebraska Estate, however, most of the proposed E2 land will not be resolved through development consents because there are three discrete areas of developable land surrounded by relatively large areas of constrained land, which is in fragmented ownership, including the main cluster of threatened orchids in the north eastern corner of the Estate.

E2 Land Management Options

The following is a summary of the current status of available external funding programs that could potentially be available to support management options for the E2 land:

- Saving Our Species (SOS) the current program ends in June 2021 and all money is currently allocated. There will be no more rounds of funding in the current program model. Subject to the NSW State Budget in November, there may be a second iteration of this program after June 2021.
- NSW Biodiversity Conservation Trust (BCT) there are no relevant grants.
- BCT Stewardship/Conservation Agreements generally only offered for properties 10 ha+ (maximum holding in Nebraska Estate is currently 1.65 ha).
- Other the BCD may have up to \$10,000 available this financial year for conservation work in Nebraska provided any proposed work is consistent with adopted conservation strategies. Nebraska is listed as a priority management site for the critically endangered orchid *Pterostylis ventricosa*.

Community Engagement

Landowners in Nebraska Estate were alerted to the "sweeping changes" made to the NSW biodiversity laws on 23 October 2017 and advised that Council would work closely with officers of the former OEH to explore the implications and options for finalising the PP.

Landowners in the Nebraska and Jerberra Estates and relevant government agencies have been advised that this report has been prepared for consideration on 3 November 2020. Should Council adopt the recommendations, feedback will be sought from the landowners before the matter is considered further by Council.

Further consultation with the relevant stakeholders will be undertaken as the Nebraska Estate PP progresses.



Policy Implications

The implications of the proposed policy direction are discussed throughout this report.

Existing policies

Council has two existing policies relevant to the acquisition of land in lieu of unpaid rates:

Small Lot Rural Subdivisions - Dealing with Unpaid Rates and Charges

This Policy applies to land in small lot rural subdivisions categorised or formerly categorised as "Residential, Non-Urban" for rating purposes and includes land in the Jerberra and Verons Estates zoned for development and rated "Residential". It provides for Council to accept the transfer of land in full satisfaction of unpaid rates. The Policy also establishes a framework for classification of transferred land under the NSW Local Government Act. The full Policy is accessible at the above link. Council has acquired land in both the Nebraska Estate and Jerberra Estates under this Policy. The policy has a review date of 1 December 2020.

This Policy can continue to stand alone and be supported by a separate (new) policy for the voluntary acquisition of undevelopable environmental land using the net profits from the sale of the developable land in the same Estate.

Sale of Land to Recover Unpaid Rates and Charges (POL18/76)

This Policy applies to all land in Shoalhaven. The Policy supports Section 713 of the NSW Local Government Act which enables Council to sell land to recover unpaid rates and charges. The Policy objective is to recover unpaid rates and charges outstanding for legislated periods of time and any ancillary costs incurred in the sale of the land, but not to profit from the sale. The process involves the land being put to auction. If Council has an interest in acquiring the land a bid may be placed. Bids are capped at cost-recovery. The policy also has a review date of 1 December 2020.

Council has not acquired land in either Nebraska or Jerberra Estates under this Policy at this point. Land has, however, been purchased for drainage and other purposes.

This Policy can also continue to stand alone and be supported by the separate (new) policy for voluntary land acquisition.

Proposed New Policy – Acquisition of E2 land in Nebraska and Jerberra Estates

As detailed in the report it is proposed that Council continue with the existing policies and not amend them.

The proposed new policy would set out a process that allows undevelopable E2 land to be voluntarily purchased (willing seller/willing buyer) in both Estates at the unimproved land value (UV) to be independently assessed.

Currently, valuations for Nebraska provided by the Valuer General (VG) for rating purposes are approximately \$5,000 per lot. This is consistent with the Voluntary Heritage Estates Land Purchase project that was run externally. The undevelopable properties in Jerberra Estate are generally larger than in both Nebraska and Heritage Estates. This appears to be reflected in the VG's valuations. The UVs for both Estates would need to be independently assessed by a qualified Valuer before a draft policy is prepared for Council's consideration.

In the medium-longer term it is proposed that purchases would be funded from the profit on the sale of Council's developable land in each Estate. These profits (sale price less development/infrastructure/legal costs) would be ringfenced for the voluntary purchase of the E2 land in the relevant Estate. The aim is to create a circular fund.

Once purchased, land would be generally classified as community land (natural area) and opportunities for parcel consolidation could be pursued as they arise. Further details are provided below under "Financial Implications".



Nebraska Estate

Council-owned land is highlighted with stipple [brown (operational) and green (community)] on **Attachment 1**.

There are five (5) Council-owned properties that are currently proposed to be rezoned for residential development via the PP, one of which will require consolidation with other privately owned properties.

Jerberra Estate

Council-owned land is highlighted with stipple [brown (operational) and green (community)] on the map at **Attachment 2**.

There are currently four (4) Council-owned properties with direct development potential. Note: Council has not disposed of any lots with a dwelling entitlement even though the land was rezoned in 2014. Lot 140 was however recently sold to the owner of Lot 141 for \$165,000, who has since consolidated it.

It is suggested that funds could be temporarily allocated to purchase E2 properties given that the timing of the sale of Council's remaining land is unknown.

The policy proposal has been discussed internally with Property and Finance staff and is supported "in principle", subject to establishing the cost and implementation details, and formal adoption by Council.

Advantages

Advantages of the proposed policy for the acquisition of E2 land are:

- Redirection of profits from sales to secure conservation objectives into the future would help to satisfy the eligibility criteria for "relevant planning arrangements" as required for clause 34A certification.
- Landowners with development potential (post rezoning) in the Nebraska Estate would enjoy the same benefits arising from clause
- 34A certification as landowners in the Jerberra and Verons Estates.
- Council will not be seen to be profiting from a rezoning process which will provide no financial return or benefit to some landowners.
- Opportunities for parcel consolidation should arise.
- This may, in turn, generate grant funding opportunities for conservation projects on larger parcels, thereby enhancing environmental values.
- Excess funds, if any, generated by adoption and implementation of the policy could be re-directed to conservation land management.
- Possibility for collaboration with landowners with an existing Voluntary Conservation Agreement.
- Implementation and administration of the policy should not be onerous due to the relatively small number of properties.
- There is no precedent for Heritage Estates because no land was rezoned to enable residential development.
- There is no precedent for Verons Estate because there is no Council-owned land in the Estate.



Disadvantages

- Ringfencing profits would result in loss of income to the broader rates base. However, the advantages generally outweigh this minor disadvantage.
- The management responsibilities within the Estates will increase. However, Council may be able to secure external funding to manage the residual E2 land and the outcome is key to resolving the future of both Estates, especially Nebraska Estate.
- An acquisition policy would not be a "quick fix" and will take several years to implement. It is however a solution to a problem that is not likely to go away.
- The policy is unlikely to result in 100% acquisition of the E2 properties. As an example, in the case of the Heritage Estates, approximately 50% of properties were acquired.

Financial Implication

The following information is presented for Council's <u>initial consideration</u>. Should Council support considering the recommended approach, the overall financial implications will be further investigated and presented to Council before the proposed policy is finalised.

As discussed above, it is proposed to engage a qualified Valuer to determine both realistic unimproved values for E2 Conservation land and estimated sale price/return for Council-owned land with development potential. Council would have to meet the infrastructure costs associated with any acquired land.

If Council were approached to purchase properties prior to the sale of any Council-owned developable land, this would need to be financed from general funds in the interim.

It is understood that the land would be sold debt-free as infrastructure costs would be met upfront.

Nebraska Estate

A preliminary rough estimate of the infrastructure costs in 2014 was \$175,000 per dwelling. Residential land in St Georges Basin is currently listed for sale between \$299,000 and \$470,000 depending on views and aspect.

There are thirty-three (33) proposed E2 lots that would potentially be available for voluntary acquisition if the PP is finalised.

Jerberra

There are fourteen (14) residual E2 lots (not part of a proposed development parcel) potentially available for voluntary acquisition. Currently, the UVs are between \$20,000 and \$32,000 and all lots attract special rates for road construction which Council would need to meet, as required. Vacant developable land in Jerberra is currently listed for between \$389,000 and \$410,000. Special Rates on properties with "dwelling-entitlements" in the Estate are typically \$3,000 to \$4,000 per annum. The special rates will generally cease after the 2024/2025 financial year.

Risk Implications

The general risks are:

- Landowners may have unrealistic expectations about the value of their land.
- A low level of landowner interest in selling may result in a difficult and expensive maintenance burden arising from ownership of a scattering of properties that must be managed for conservation.

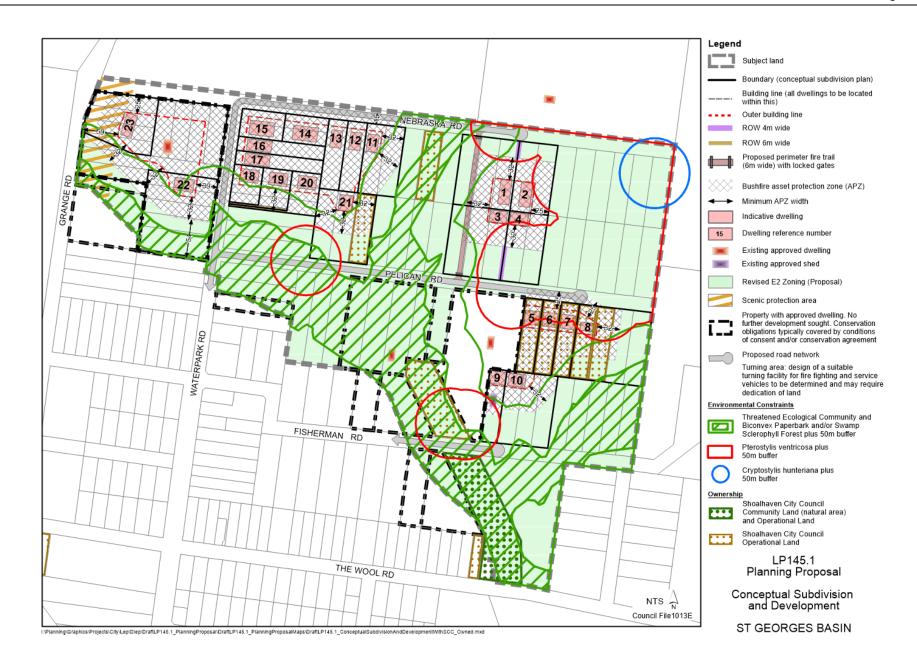


- There is no guarantee that Council would be able to secure sufficient funding to cover the maintenance costs.
- The total value of land that the landowners want to sell could be greater than the net profit.

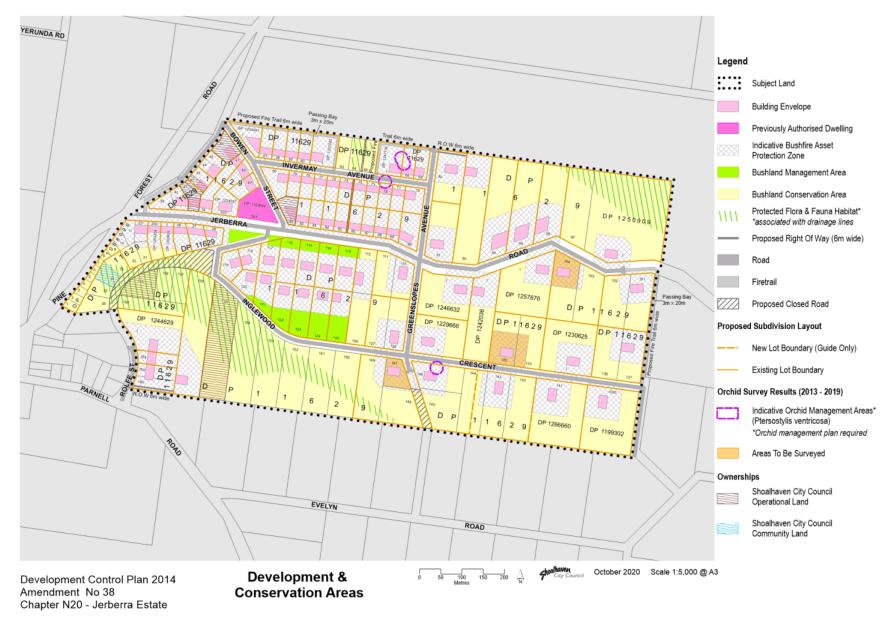
Specific risks for Nebraska are:

- uncertainty around the cost of providing the infrastructure and net profit, and
- the risk that clause 34A certification is ultimately not obtained (hence the recommendation in this report to seek further advice from BCD).











DE20.129 Exhibition Outcomes and Proposed Finalisation

- Planning Proposal and Draft DCP Amendment

- Urban Release Areas Small Lots Clause

HPERM Ref: D20/472861

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Reason for Report

 Report the outcomes of the public exhibition of Planning Proposal (PP055) to amend Clause 4.1H of Shoalhaven Local Environmental Plan (LEP) 2014 and supporting draft Amendment No. 47 to Shoalhaven Development Control Plan (DCP) 2014.

• Enable the LEP and DCP amendments to proceed to finalisation.

Note: This LEP clause currently enables small lots to be considered on certain land in the Moss Vale Road South Urban Release Area (URA). It however requires adjustment to enable it to operate as intended/expected.

Recommendation (Item to be determined under delegated authority)

That Council

- 1. Adopt and finalise Planning Proposal (PP055) as exhibited.
- 2. Forward PP055 to the NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven LEP 2014.
- 3. Make the resulting amendment to Shoalhaven LEP 2014 using Council's delegation.
- 4. Adopt and finalise the amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South Urban Release Area as exhibited and give the required public notice advising of its commencement date.
- Advise all affected and adjoining landowners, the Cambewarra Residents and Ratepayers Association and development industry representatives of this decision, and when the LEP and DCP amendments will be made effective.

Options

1. As recommended.

<u>Implications</u>: This is the preferred option as it will enable the amendments to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 to be finalised.

This will see the current LEP Clause 4.1H amended so that it can be applied more flexibly to the Moss Vale Road South URA, in cases where a development proposes minor, reasonable variations from Council's Indicative Layout Plan (ILP) for a proposed subdivision. The proposed amendments will also enable Clause 4.1H to be applied more easily to other URAs, where appropriate, and will remove resultant redundant provisions from the LEP such as the Development Area Map. The consequential proposed amendment to the DCP will reflect the amended LEP clause.



2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes to the recommendation and as a result is not desirable. It may require an alteration to the Gateway determination and re-exhibition of the PP and/or draft DCP amendment. The recommended option will enable the finalisation of the amendment which will provide an appropriate degree of flexibility where small lots can be provided under Clause 4.1H while simplifying the LEP provisions.

3. Not adopt the recommendation.

<u>Implications</u>: This is not a preferred option as the existing Clause 4.1H provisions are not flexible and do not always enable small lots to be provided in high amenity locations when a development seeks minor, reasonable variations from the ILP in a proposed subdivision. It also means Council would need to insert additional, duplicate clauses in the LEP if it wished to enable small lots in other urban release areas, which is not desirable.

Background

At its Development & Environment Committee Meeting 20 July 2020 Council considered a report (DE20.71) on a proposed Planning Proposal (PP) to amend Clause 4.1H of Shoalhaven LEP 2014.

The existing clause was first inserted into the LEP in 2018 to enable small lots below the mapped minimum lots size (lots from 300m² to 500m² in size) to be considered in certain locations in Moss Vale Road South (MVRS) Urban Release Area (URA). The report highlighted several issues which had become apparent in the consideration of subsequent development applications in URA which indicates that the current clause was not operating as originally intended as a result of its wording and the interpretation of it.

As such, Council resolved (MIN20.473) to prepare a PP to amend Clause 4.1H to ensure it could be applied flexibly as intended, so that small lots can be considered in cases where a development proposes minor variations from the Indicative Layout Plan (ILP) for the URA. The PP also proposes to make the wording of the Clause more broadly applicable so that it can be applied to other URAs in the future, where appropriate and as needed.

As part of the resolution, Council also resolved to prepare an amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South Urban Release Area, to reflect the revised clause.

The full resolution of Council is provided below:

That Council:

- 1. Endorse the preparation of a draft Planning Proposal to amend Clause 4.1H of Shoalhaven LEP 2014 as detailed in this report.
- 2. Forward the Planning Proposal to the NSW Department of Planning, Industry and Environment for an initial Gateway determination.
- 3. Subject to a favourable Gateway determination, proceed to publicly exhibit the Planning Proposal for community comment in accordance with the determination.
- 4. Receive a subsequent report on the outcome of the public exhibition and to enable the Planning Proposal to be finalised.
- 5. Prepare a draft amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South URA to update the relevant sections in accordance with the amended Clause 4.1H provisions and exhibit the draft amendment with the Planning Proposal.



6. Advise all affected and adjoining landowners, the Cambewarra Residents and Ratepayers Association and development industry representatives of this resolution.

The Planning Proposal

The PP proposes to amend Shoalhaven LEP 2014 by:

1. Replacing the current Clause 4.1H with the draft proposed version below. The ultimate clause wording may be subject to change during the legal drafting process.

Current C	Clause	Draft Proposed Clause	
su oc on	cceptions to minimum ubdivision lot sizes for dual ccupancies and dwelling houses a certain land in Moss Vale Road	4.1H Exceptions to minimum subdivision lot sizes for dwelling houses on certain land in urban release areas	
(1) This	outh urban release area s clause applies to land identified as	(1) This clause applies to land identified as "Clause 4.1H" on the Lot Size Map.	
(2) Des consub- sub- app lots	spite clause 4.1(3), development sent may be granted for the division of land to which this clause lies into 2 or more lots (the resulting) if each resulting lot meets the owing requirements— the lot adjoins land identified as "Public open space" on the Development Area Map, or is separated from that land only by a public road, or adjoins land identified as "Tree-lined boulevard" on that Map, the lot has a primary street frontage, if the size of the lot is less than 400 square metres—the lot is accessed by vehicle using a rear lane or shared driveway, if a dual occupancy is proposed to be erected on the lot—the size of the lot is at least 500 square metres, if a dwelling house is proposed to be erected on the lot—the size of the lot is at least 300 square metres.	subdivision of land to which this clause applies into 2 or more lots (the resulting lots) if each resulting lot meets the following requirements— (a) the lot comprises only land to which this clause applies, (b) the lot has a primary street frontage, (c) if the size of the lot is less than 400 square metres—the lot is accessed by vehicle using a real lane or shared driveway, (d) the size of the lot is at least 300 square metres.	



2. Repealing the Development Area Map from the LEP (extract shown in **Figure 1** below) as the revised Clause 4.1H will make the map redundant.

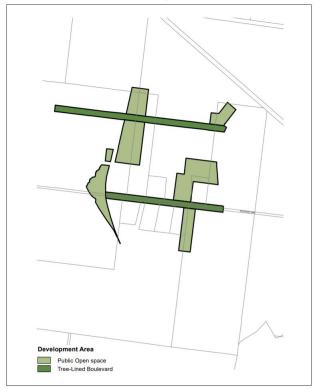


Figure 1: Development Area Map

3. Amending the LEP Lot Size Map to adjust the land to which the clause applies in Moss Vale Road South URA, as shown in **Figure 2**:

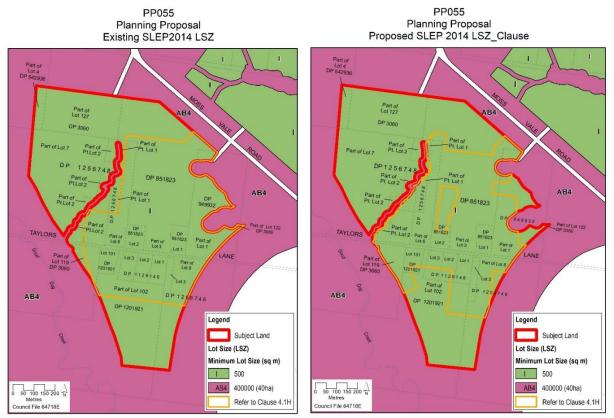


Figure 2: Current and Proposed Lot Size Maps

The proposed changes will enable small lots to be considered and provided on land identified as 'small lot residential' on the ILP and higher amenity land in close proximity to intended public open spaces and tree lined boulevards, even if minor acceptable or agreed variations are proposed in the locations of these spaces in a proposed development.

<u>Note</u>: Council also resolved during June 2020 to review the planning and proposed traffic provisions in the Moss Vale Road South URA with the intent of retaining the trees along Taylors Lane. This review is underway however at the time of writing there were no outcomes or recommendations to consider. When the review is completed, any resulting changes to the Clause 4.1H area and other planning controls that are endorsed by Council may need to be undertaken via a separate PP and/or DCP amendment.

DCP Amendment

A resulting DCP amendment is also required to reflect the amended Clause proposed in the PP, consisting of deletion of the following bullet point from Subsection 7.3.2 (6) in Section 7.3 Subdivision Design of Chapter NB3: Moss Vale Road South Urban Release Area:

- "6) Subdivision of small lots in accordance with Shoalhaven LEP 2014 must:
 - Have a primary street frontage;
 - Adjoin land reserved for public open space (either directly or separated by a road) or be located along a tree-lined boulevard; and
 - Access is provided via a rear laneway or shared driveway arrangement, except for lots equal to or greater than 400m²."

Gateway Determination and Public Exhibition

The PP was submitted to the Department of Planning, Industry and Environment (DPIE) on 31 July 2020, and a favourable Gateway determination was received on 2 September 2020 which authorised the PP to proceed. Council was given delegated authority to make the LEP amendment. The Gateway did not require consultation with any public authorities.

Community Engagement

The PP and draft DCP amendment were subsequently publicly exhibited from Wednesday 30 September to Friday 30 October 2020 inclusive (31 days) on Council's website. The exhibition included a copy of the PP, draft DCP amendment, explanatory statement, Gateway determination and a public notice of the exhibition.

Letters advising of the public exhibition were sent to all affected and adjoining landowners at Moss Vale Road South URA, as well as development industry representatives and the Cambewarra Residents and Ratepayers Association.

No submissions were received in response to the exhibited PP and draft DCP amendment.

Policy Implications

Should the recommendation be adopted, the PP will result in an amendment to Clause 4.1H of Shoalhaven LEP 2014 that will enable greater flexibility in the provision of 'small lots' in URAs, particularly where a development application proposes a minor variation to the relevant Indicative Layout Plan (ILP). The proposed LEP amendment will enable the Clause to be more easily applied to other URAs as desired, via a separate PP to identify the additional area/s on the Lot Size Map. It will also remove redundant provisions from Shoalhaven LEP 2014 such as the Development Area Map, simplifying the overall provisions of the LEP.



The proposed amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South URA will align the small lots criteria with the amended Clause 4.1H provisions.

Financial Implications

There are no immediate financial implications for Council. The amendment is being resourced by Council's existing Strategic Planning budget.



DE20.130 'Legacy' Planning Proposals - Timing and Progression - NSW Government Direction

HPERM Ref: D20/488125

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. DPIE letter 1/10/20 - Legacy PPs &

2. Council letter 28/8/20 - Outcomes of Culburra groundwater monitoring

study J

3. DPIE letter 6/11/20 - Culburra groundwater monitoring study &

4. APS letter 16/11/20 - response to DPIE letters 1/10/20 5/11/20 Halloran Culburra PP005 J

Reason for Report

Confirm Council's direction on the timing/progression of the five (5) 'legacy' Planning Proposals (PP's) detailed in the report to enable a response to be provided to the NSW Department of Planning, Industry and Environment (DPIE) following their letter to Council advising that the PP's which are 4+ years old are to be 'finalised' by 31 December 2020.

Recommendation (Item to be determined under delegated authority)

That Council

- 1. Receive the updates on each of the 'legacy' Planning Proposals (PP's) for information.
- 2. In respect of each PP covered in the report, take the following steps:
 - a. Warrah Road, Bangalee (PP005): continue toward finalising this PP under a new Gateway determination.
 - b. Halloran Trust Land, Culburra (PP006): withdraw the current PP and seek a new Gateway determination, subject to further discussions with the proponent and the NSW Department of Planning, Industry & Environment (DPIE) in an attempt to resolve a development footprint.
 - c. Nebraska Estate, St Georges Basin (LP145.1): withdraw the current PP and seek a new Gateway determination while continuing efforts to secure certification for the new planning controls under Clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017.
 - d. Badgee Lagoon Deferred Areas, Sussex Inlet (LP407): withdraw the current PP on the basis that it will be added to and covered by a new PP and accompanying Biodiversity Certification Assessment Report (BCAR) that is being prepared by the proponent.
 - e. Inyadda Drive, Manyana (PP007): withdraw the current PP and seek a new Gateway determination once the outcome of the proponent's upcoming referral under the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (EPBC Act) is known.
- Prepare a future report on revising/updating Council's Planning Proposal Guidelines once DPIE has updated it is relevant guidelines and the revised Planning Proposal process is clearer.



Options

In respect of the PP's in question the 'general' options for each are briefly outlined below.

1. Withdraw the PP and seek a new Gateway determination.

<u>Implications</u>: Of the options presented to Council by DPIE, this is the only option for progressing the PP, albeit under a new Gateway determination. DPIE will critically review any conditions before issuing a new Gateway determination, to improve the prospects of completing the PP within the allowable timeframe (generally one year, two years maximum).

However, in relation to the Badgee Lagoon Deferred Areas (LP4097) PP, the proponent is preparing to lodge a new PP over the area around golf course and they are also preparing a Biodiversity Certification Assessment Report (BCAR) that will cover the new PP plus the 'deferred' areas. It would be logical to incorporate the 'deferred' areas PP into the new PP.

2. Withdraw the PP.

<u>Implications</u>: This option would only be appropriate if, for some reason, Council no longer supports or wants to progress a PP and this has not been indicated to date. Substantial work has been invested in all the PP's in question, and as such this option is not recommended.

3. Resolve to 'do nothing'.

<u>Implications</u>: While the existing Gateway determinations for three of the five PP's do not lapse until 2021, DPIE is able to terminate the PP at any time (by altering the Gateway). DPIE has indicated that it will <u>not allow</u> the legacy PP's to continue under the current Gateway determinations beyond 31 December 2020. As such this approach is not recommended.

Background

Council received a letter from DPIE dated 1 October 2020 (see **Attachment 1**), regarding five (5) long standing PP's that 'have been delayed or, are yet to be finalised after more than four years'. In short, the letter states that these 'legacy' PP's are to be finalised by the end of the year (2020).

The letter states that the focus on these legacy PP's is part of a broader set of 'planning system acceleration' reforms which seek to 'streamline and simplify the planning system, will unlock productivity, keep people in jobs and support sustained economic recovery from the Covid-19 pandemic'. The key issues raised in the letter are summarised below.

- The Minister is seeking to cut the time taken to finalise rezoning decisions by 33%. This will provide greater clarity to local government and the community, and more certainty to proponents and investors
- ...planning proposals should generally take 1 year and no more than 2 years to complete. This has been shown to be achievable in many cases where applications are supported by enough evidence to justify strategic and site-specific merit, and when proposals are aligned to a strong strategic planning framework
- To ensure the new system achieves these outcomes we must first clear the backlog of planning proposals that have remained under consideration for an extended period
- Department is commencing a focused program to work with councils to finalise proposals that are 4+ years old by 31 December 2020



- DPIE will then...start to address those that are between two four years old.
- Sarah Lees, Director Southern Region, will contact you in the coming days to establish a project plan and timeframe for finalising the above proposals.

The five (5) legacy PP's in question are:

- LP407 Badgee 'Deferred' Areas, Sussex Inlet (Proponent: Allen Price & Scarratts for Lucas Property Group & Sheargold Group)
- PP006 Halloran Trust, Culburra Beach (Proponent: Allen Price & Scarratts for Halloran Trust)
- LP145.1 Nebraska Estate, St Georges Basin (Proponent: Council on behalf of landowners)
- PP007 Inyadda Drive, Manyana (Proponent: JWD Projects)
- PP005 Warrah Road, Bangalee (Proponent: Peter Taranto, Warrah Property Developments P/L)

The status of these PP's is outlined later in this report. It is noted that all these PP's are specifically supported by an adopted/endorsed strategy, except for the Inyadda Drive (PP007) which seeks to reduce the extent of an existing zoned residential area and increase the area of environmental zoned land.

Meetings with DPIE and the PP proponents

Following receipt of the letter Council staff discussed each of the PP's with DPIE and the proponents. Meetings were held with DPIE and the proponents on 21 October in relation to the Badgee 'Deferred' Areas and the Inyadda Drive PP's; and on 4 November in relation to Culburra Beach, Warrah Road and Nebraska Estate PP's. The proponent did not attend the Warrah Road meeting because public exhibition of that PP is imminent.

At each of the meetings, DPIE's Executive Director – Rural & Regional Planning, Monica Gibson, outlined the following general options:

- Accelerate finalisation of the PP/LEP amendment. This option would only be considered if the PP had been publicly exhibited. Not relevant to the PP's in question.
- DPIE terminates the PP by issuing an amended Gateway determination.
- Council withdraws the PP.
- DPIE issues a fresh Gateway determination for PP's that have strategic and site specific merit. There would need to be a high level of certainty that the PP could be finalised within one year, or two years at the most. DPIE would critically review the existing Gateway conditions, including consideration of any issues that could be adequately addressed at a later stage.

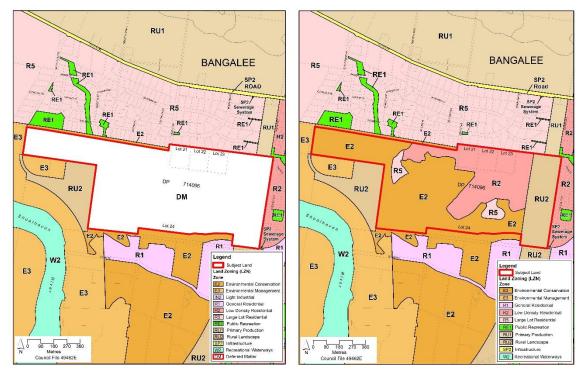
Note: Except for Urban Release Areas (URAs) how this would be achieved is uncertain as the current Standard Instrument LEP format does not allow the use of local clauses to 'defer' specific matters to the development application stage.

Legacy PP's: Status & Next Steps

Warrah Road, Bangalee (PP005)

 Strategic Basis - Part of the Crams Road Urban Release Area identified in the Nowra Bomaderry Structure Plan, with the zoning 'deferred' from LEP 2014.





Above: PP005, Warrah Road, Bangalee - current (left) and proposed (right) zoning

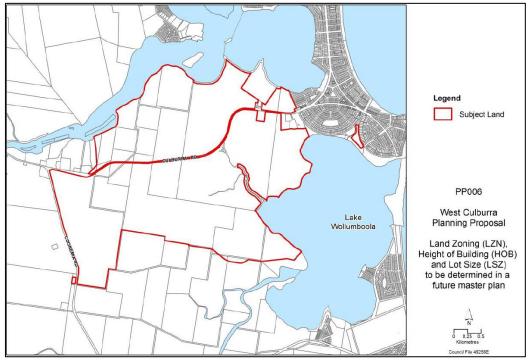
- Key issues: biodiversity, unauthorised clearing / remediation order, traffic, bushfire
- PP supporting studies complete.
- Currently finalising pre-exhibition Government Agency consultation requirements. Aiming exhibit this year, but will not be finalised by the end of the year.
- Current Gateway time frame expired in July 2020. DPIE declined to issue any further extensions, advising that Council should seek to finalise the PP as soon as possible.

<u>Next Steps - Recommendation:</u> Based on advice from DPIE that the PP will not be allowed to continue beyond 31 December 2020 relying on the current Gateway determination. At the time of preparing this report, a new Gateway request is being prepared for submission to DPIE to enable this PP to proceed to exhibition as intended and then be finalised during 2021

Halloran Trust Land, Culburra Beach (PP006)

- Strategic Basis Part of the Jervis Bay Settlement Strategy.
- Most of the land is deferred from LEP 2014

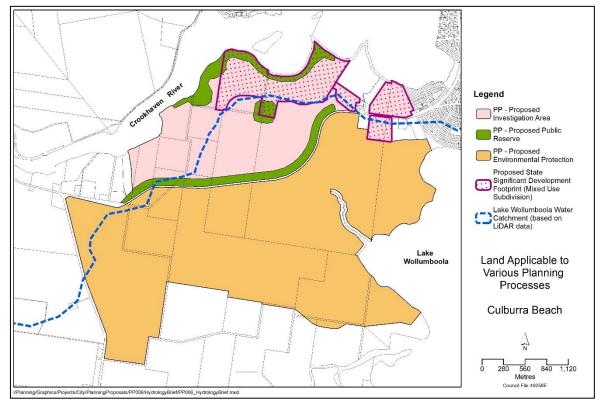




Above: PP006 - subject land, Halloran Trust land, Culburra

- Key issues: impacts on Lake Wollumboola & Crookhaven River, buffers, uncertainty about groundwater behaviour, water quality management (neutral or beneficial effect - NorBE) biodiversity, Aboriginal cultural heritage etc.
- 'Part 3A' major project / State Significant Development (SSD) for the West Culburra subdivision application was refused. Proponent's Land and Environment Court (LEC) appeal is ongoing. The map below shows the relationship between the PP area and the SSD area.
- Extensive suite of studies required by Gateway determination, reflecting the range of issues and constraints. These studies need to be undertaken in a logical sequence.
- The original PP was split in two due to longer timeframe for Culburra Beach component.
 The Callala / Kinghorne Point component is now in a separate PP that is less than 4 years old.
- Biodiversity certification application submitted to NSW Government under the transitional arrangements for the NSW Biodiversity Conservation Act.
- Project Control Group (PCG) with DPIE and relevant NSW Government Agencies.
- The two-year groundwater monitoring study was recently completed. This is discussed further below.





Above: Map showing the PP investigation area in relation to the SSD subdivision area

West Culburra Groundwater Assessment Report – Summary & Implications

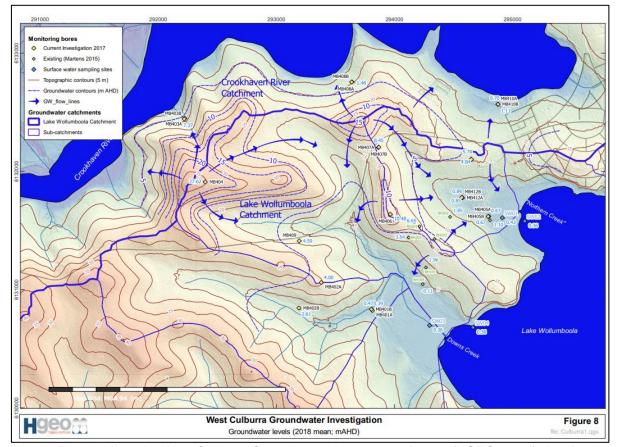
The West Culburra Groundwater Assessment Study was undertaken by consulting firm, HGEO to address a key initial condition of the Gateway determination. The key objective of the study was to delineate the groundwater catchment for Lake Wollumboola and groundwater flow directions within the area.

The study involved real-time water level monitoring in a network of 28 bores (21 new and 7 existing) between Lake Wollumboola and the Crookhaven River over a two-year period. The two-year baseline monitoring period was dominated by drought conditions, with several large rainfall events, including in early February 2020.

The key findings of the report are summarised below:

- The groundwater catchment is considered to align with surface water catchment (refer to Figure 8 from the report which is reproduced below).
- Groundwater seepage is unlikely to have a measurable influence on overall salinity levels within Lake Wollumboola, but may influence near shore environments, particularly when the lake is closed and its level is low.
- The siltstone bedrock that underlies the study area has low permeability but is locally elevated due to fracturing and faulting. These faulted and fractured zones within the siltstone have high permeability (0.5 15 m/day).
- The degree of connection between fractured zones cannot be determined from the existing bore network.
- There is potential for migration of contaminants to the lake edge environment via fracture zones if contamination reaches the water table.
- Land use planning should avoid or mitigate potential for contamination of groundwater within the Lake Wollumboola catchment.





Above: Figure 8 from the West Culburra Groundwater Assessment Report (HGEO, 2020) showing the catchment divide, bore locations and groundwater flow direction

The report was provided to the proponent and the PCG and has also been made publicly available via this link from Council's Get Involved page for the Halloran-Culburra PP.

Advice and direction were sought in writing from DPIE on 28 August 2020 to enable the PP to be progressed in light of the groundwater assessment report. Council's letter to DPIE is provided as **Attachment 2**. DPIE's response, dated 6 November 2020, is provided as **Attachment 3** and an excerpt is provided below.

- The Department notes the outcomes of the Culburra Groundwater Assessment Report, particularly the findings and recommendations that:
- The divide between the Lake Wollumboola and Crookhaven River groundwater catchments should be considered coincident with the surface water catchment defined by topography.
- While the degree of connection between fractured zones cannot be determined from the
 existing bore network, there is potential for migration of contaminants to the lake edge
 environment via fracture zones if contamination reaches the water table. Land use
 planning should avoid or mitigate potential for contamination of groundwater within the
 Lake Wollumboola catchment.
- Areas between the main ridgeline north of Culburra Road and the mid-slope areas in both catchments are dominated by rainfall recharge. It is recommended that land use within the recharge-dominated areas of Lake Wollumboola Catchment (mid-slope to ridge-top) includes significant open and unpaved areas in those important recharge areas.

Based on the Report's recommendations, as well as recommendations of the 2013 "Environmental Sensitivity of Lake Wollumboola" report prepared by Peter Scanes, the



Department considers urban development in the area between Culburra Road and the catchment divide would not be appropriate due to the risk of contamination of the Lake. There may, however, be some potential for limited low-scale development in this area such as appropriate private or public recreation, ecotourism or environmental stewardship. Any development would need to be sited and designed to direct surface stormwater (and any appropriately treated wastewater) to the Crookhaven catchment or, if unavoidable and justified, demonstrate a very high standard of environmental management to protect the water quality of the Lake.

The Department considers that the findings and recommendations of the Groundwater Assessment Report and Flora and Fauna Offset Strategy should enable determination of an indicative development footprint for the planning proposal and progression of the remaining studies required under the Gateway determination.

DPIE's response was provided to the proponent on 10 November to enable their feedback to be included in this report if needed. Allen Price & Scarratt's (APS) response that also covers the DPIE 'legacy' PP letter is provided as **Attachment 4**. APS's key points are quoted/summarised below.

Comments - DPIE's 'legacy PP letter'

- The proponent supports efforts to streamline the planning system but does not agree with issuing a new Gateway unless there are significant efficiency gains.
- The PP site has a very long history dating back to the 1980s.
- The landowner is very concerned having "... progressed with as much haste has been possible with the required studies, and it now appears there is potential for the gateway determination to be either withdrawn prematurely or modified"
- "We note in our meeting with DPIE representatives on 4 November 2020, it was indicated verbally to us that DPIE would most likely terminate the West Culburra PP by 31 December 2020, and then issue a new gateway determination at some stage in the future. We strongly object to DPIE 's position on this matter and requests Council resist this outcome in the strongest possible way in recognition of the substantial progress made to date under the current Gateway determination."
- However, "...there would be no objection if DPIE was to re-issue the same gateway determination (with a new commencement date for administrative purposes) or a revised Gateway determination with a reduced quantum of studies required for the rezoning controls to be finalised."
- "We note from our 4 November 2020 meeting with DPIE that we were supposed to have a follow up meeting, but at the time of writing, this meeting had not been scheduled. We request this matter be urgently pursued with DPIE representatives." <u>Council Staff Comment</u>: There was insufficient time to arrange a second meeting with DPIE and the proponent prior to preparing this report.

Comments - DPIE's letter 6 November 2020 (re Groundwater Assessment)

- Believe DPIE's letter is at odds with HGEO's Groundwater Assessment report.
- The only conclusions that can and should be drawn from the HGEO report is that in order to minimise the risk to Lake contamination, groundwater pollution should be avoided as part of any land-use planning decisions. Treating stormwater generated by a development to a level equivalent to or better than existing groundwater quality, would ensure that any risk to the Lake water quality would be 'mitigated'. Stormwater management controls are thus both form of land-use controls and mitigation measures.



- The Scanes Report (*Note: Earlier NSW Government scientist report on the issue*) draws no conclusions that prohibits urban development within the Lake Catchment.
- Contrary to the Scanes Report, the HGEO report concludes that groundwater seepage is a minor contributor to total inflows to the Lake.
- DPIE's attitude to development in the catchment of Lake Wollumboola is not based on sound science and is overly conservative.

<u>Next Steps - Recommendation</u>: There is still a need to resolve the zoning and tenure future of the area. Given that, to date, a significant amount of money and resources has been invested in the studies, Council staff and the proponent are in strong agreement that Council should seek a new Gateway determination to enable this matter to proceed to a resolution, subject to further discussions with DPIE and the proponent on the outcomes of the groundwater assessment and a development footprint.

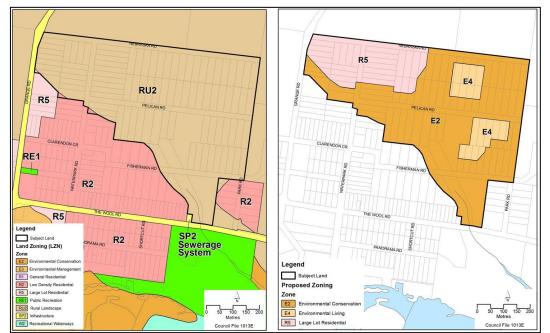
Concluding this PP within the likely one to two years under any new Gateway determination will however be challenging unless the potential development footprint is more settled. The proponent's strongly disagree with DPIE's position on the fundamental groundwater aspect of the proposal. It is therefore recommended that further discussions be held with DPIE and the proponent to try and reach agreement on this before seeking a new Gateway determination.

If the hydrodynamic advection-dispersion modelling and/or other modelling/assessments are required to resolve a footprint and address the potential impacts on the downstream ecosystems, the probability of completing the PP within two years will be substantially reduced.

Nebraska Estate, St Georges Basin (LP145.1)

- Strategic Basis Part of the Jervis Bay Settlement Strategy. Last unresolved 'paper' subdivision in the Jervis Bay area.
- Council effectively acting as the proponent, with the rezoning investigations being funded by the landowners through special rates.
- Large proportion is highly constrained (biodiversity, bushfire, acid sulfate soils, flooding, Aboriginal cultural heritage)





Above: LP145.1, Nebraska Estate Planning Proposal - Current (left) and proposed (right) zoning

- Other issues: fragmented land ownership, cost of providing/upgrading subdivision infrastructure.
- LEP Amendment will need to be supported by site-specific DCP controls. A special rate and Special Rate Variation (SRV) would be required to enable the required infrastructure upgrades (consistent with Jerberra & Verons Estates).
- Progression of the PP has been impacted by:

New biodiversity legislation - The PP was almost ready for public exhibition before the new NSW Biodiversity Conservation Act commenced. This led to ongoing discussions regarding the potential use of Clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation (as for Jerberra and Verons Estates). If Clause 34A cannot be used, most, if not, all future development applications in the Estate would need to be supported by a Biodiversity Development Assessment Report (BDAR) and the NSW Biodiversity Offset Scheme would apply.

Resourcing - an additional part time staff resource has been added to assist in this regard.

New Planning for Bushfire Protection Guidelines – bushfire assessment completed in 2019 to address the new Guidelines.

• The required studies to support the PP have been completed.

<u>Next Steps – Recommendation:</u> To assist with the progression/resolution of this matter, a separate report has been prepared for Council's consideration regarding future tenure and management for residual E2 Environmental Conservation zoned land in the Jerberra and Nebraska Estates. The option presented in that report may help secure the use of Clause 34A for the proposed Nebraska Estate planning controls. If Council resolves to progress with that option, and Clause 34A certification is able to be achieved, the PP and draft DCP would be updated and reported to Council for endorsement to exhibit.

Given the long history of this matter and the amount of work already invested in resolving the planning status of this 'paper' subdivision, it is recommended that a new Gateway determination be sought.



- Strategic Basis Part of the Sussex Inlet Settlement Strategy.
- This PP covers the two separate areas, shown on the following map, that are 'deferred' from LEP2014 adjacent to Badgee Lagoon, Sussex Inlet.



Above: LP407, Badgee Lagoon Deferred Areas - subject land overlaid onto aerial photograph

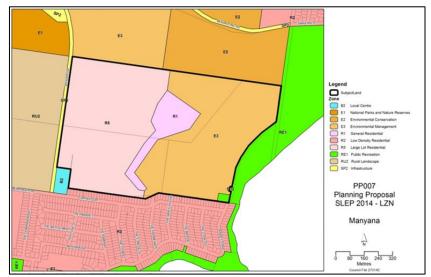
- The progress of this PP has been delayed by factors outside of Council's control, including delays in receiving funding from the proponent for the Biodiversity review, and lack of definitive information from them on the final proposed layout of the golf course.
- The proponent advised in October 2018 that they intend to retain most of the northern 'deferred' area as conservation land and may include this in a Biodiversity Stewardship site.
- Most of the required assessments have been managed by the proponent whose main initial focus has been on obtaining consent for, and implementing, the approved subdivision of the Badgee Urban Release Area (URA). However, a joint venture was established between the original landowner/developer, Lucas Property Group and the Sheargold Group. The proponent has expressed a commitment to resolving the zoning of both the northern and southern 'deferred' areas.
- The proponent is working on a new PP to adjust and amend the zoning around the golf course and residential area. They are also completing a draft Biodiversity Certification Assessment Report (BCAR) for the new PP, which will also cover the 'deferred' land.
- Council Staff have had discussions with the proponents and DPIE about incorporating the 'deferred' areas PP into the new PP. The proponent is generally supportive provided additional studies are not required and the new Gateway determination is not more onerous. Feedback from DPIE suggests this is unlikely.

<u>Next Steps - Recommendation</u> - It is recommended that Council withdraw this PP and incorporate the 'deferred' areas into a new overall PP that is being prepared by the proponent, subject to assurance from DPIE that a new Gateway determination will be issued, and that it will not be more onerous than the one for the existing PP.



Inyadda Drive, Manyana (PP007)

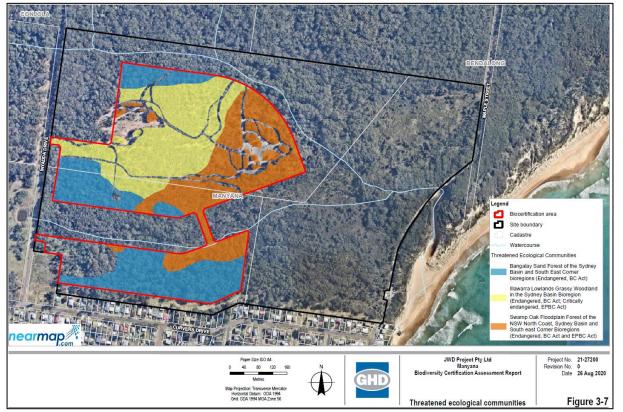
- This PP was originally initiated by previous owner (Kylor P/L).
- Strategic Basis The subject land is already zoned a mix of R5 Large Lot Residential, R1 - General Residential, E3 – Environmental Management and RE1 – Public Recreation as shown on the following map.



Above: PP007, Inyadda Drive, Manyana - subject land and current zoning

- The PP seeks to reduce the overall development footprint, but enable smaller lots (i.e. 600 m2) than allowed in the current R5 area (which has a lot size of 2,000 m2)
- A key requirement of the existing Gateway determination is the preparation of a biodiversity offset strategy (among other studies).
- The proponent submitted a Biodiversity Certification Assessment Report (BCAR) to Council for review on 6 November 2020. Council has 42 days to provide comments. The proponent will then submit it to the NSW Government for approval to publicly exhibit.
- The proponent then intends to submit a referral under the Commonwealth's Environment Protection and Biodiversity Conservation Act (EPBC Act) – a significant proportion of the proposed development area is affected vegetation communities listed under the Act: Illawarra Lowlands Grassy Woodland and Swamp Oak Floodplain Forest (shown in the map below coloured yellow and brown/orange, respectively.





Above: Excerpt from the BCAR prepared by GHD on behalf of the proponent

- Securing offset site(s) for Illawarra Lowlands Grassy Woodland (shown above in yellow) may be problematic, as the distribution of this community is very limited.
- It is understood that if Illawarra Lowlands Grassy Woodland offset site(s) cannot be located/secured, the development could not be approved under the EPBC Act based on the Commonwealth's 'like for like' offset trading rule.
- The proponent has indicated that they will be proactively investigating the availability of potential Illawarra Lowlands Grassy Woodland offset sites.
- An Aboriginal Cultural Heritage Assessment (ACHA) needs to be prepared to address the relevant Ministerial Direction under Section 9.1 of the NSW Environmental Planning and Assessment Act.
- An ACHA consultant was selected in January 2020, but the study has not commenced because the proponent has not provided the required funding to Council. The proponent has indicated that they will pay for the ACHA when the biodiversity offsetting / EPBC issue has been resolved. This timeframe is outside of Council's control. The ACHA will take approximately 5 months to complete. There may also be a need to obtain new consultancy quotations.
- The proponent has prepared a range of other studies, some of which will need to be updated and/or amended at the appropriate point to respond to Council feedback.
- A water cycle management study will also need to be prepared after the above issues have been resolved.
- Supporting documents will also be needed: Draft DCP; Contributions Plan amendment and/or Voluntary Planning Agreement.



<u>Next Steps - Recommendation</u> - Whilst there as some risk with this approach, it is recommended that Council request a new Gateway determination once the biodiversity offsetting / EPBC issue has been resolved.

Planning Proposals - The Current 'Gateway' process

The current 'gateway process' was established to allow PP's to be considered based on preliminary information <u>before</u> having to outlay costs on more expensive and time-consuming studies. This approach is set out in the Department's <u>Planning Proposal Guidelines</u> which include the following statements about the level of detail required in a planning proposal:

The preparation of a planning proposal is the first step in preparing a LEP. Throughout the course of preparing the proposed LEP, the planning proposal itself may evolve. This is particularly the case for complex proposals.

The planning proposal may change over time from when it is initially prepared to the point where a definite proposal has been developed...

The planning proposal should contain enough information to identify relevant environmental, social, economic and other site-specific considerations. The scope for investigating any key issues should be identified in the initial planning proposal that is submitted for a Gateway determination. This would include listing what additional studies the PPA considers necessary to justify the suitability of the proposed LEP amendment. The actual information/investigation may be undertaken after a Gateway determination has been issued...

Historically as a result, DPIE has allowed PP's to proceed based on a minimal level of information relevant to the matter/site/issue, consistent with the above Guidelines setting out any studies and consultation requirements that must be completed prior to public exhibition in the Gateway determination.

If DPIE now intends to change the PP process as indicated in their letter, the current PP guidelines need to be reviewed and revised as a priority. This will also potentially mean that more comprehensive supporting documentation may be required prior to Councils initial consideration of whether to support a PP request proceeding further.

General comments - Time taken to rezone land

PP's depending on their nature can vary greatly in scale and scope. Some are inherently complex and require a longer more iterative process. Many factors can delay the process and these are often outside of Council's control. For more complex PP's it is often necessary to stage the studies. For example, environmental and land capability assessments may need to be completed first to enable the overall development footprint to be defined, before secondary assessments (e.g. traffic, servicing and infrastructure assessment) can be undertaken. Biodiversity assessments can often take 12 months or more to complete, especially if a range of seasonal targeted surveys are required (and this is not uncommon). Water quality assessments cannot be undertaken without a conceptual subdivision. In the case of the Halloran Trust PP at Culburra Beach, a two-year groundwater monitoring study was required among several other detailed studies.

In contrast to the current Gateway process as explained in the current Guidelines, DPIE's letter states that going forward '... our intention is that planning proposals should generally take 1 year and no more than 2 years to complete.' The only way this can be achieved for more complex proposals is to require far more detail and certainty upfront (prior to the Gateway) or to defer studies/assessments to a later stage, such as the development application (if this is the case the current Standard LEP Instrument approach may need to be adjusted to enable or ensure this).



Community Engagement

There has been insufficient time to consult with the broader community in respect of the options presented to Council by DPIE on these 'legacy' PP's. It is reasonable to expect that the community would have an expectation that the efforts to resolve the planning status of these areas will be continue to a reasonable conclusion. Should the recommendations of this report be adopted, and Council's proposed approach be supported by DPIE, the community will be engaged as part of the subsequent formal exhibition process for each PP.

Policy Implications

DPIE's insistence that PP's will have to be finalised within one to two years maximum, means that further information will or may now need to be provided before Council seeks a Gateway determination. Council's current Planning Proposal Guidelines will need to be revised once DPIE's guidelines are updated.

Financial Implications

Four of the five PP's are proponent-initiated PP's which are funded by the proponent in accordance with Council's Planning Proposal Guidelines and the applicable fees and charges. The 'Major PP' fee which applies to these PP's, covers up to 80 hours of staff time. If new Gateways are requested, this fee structure will be carried over.

Council took out a \$200,000 loan in 2006 to fund the Nebraska Estate rezoning investigations, was paid off by the landowners over 10 years through a special rate. There is currently \$65,240 in the Nebraska Estate special rate budget. Any funds remaining at the conclusion of the PP/DCP process would then be carried over to any infrastructure upgrade projects.

Risk Implications

As noted earlier, four of the five PP's are specifically identified in an adopted/endorsed strategy. The other PP (Inyadda Drive, Manyana) site is already zoned for development, and is justified by the fact that the PP is seeking to reduce the overall development footprint, provide a better environmental outcome. Nevertheless, should Council resolve to withdraw the PP's in question and seek new Gateway determinations, it is possible that DPIE will not issue new, comparable Gateway determinations. This concern has been raised in discussions with DPIE by Council staff and also the proponents. DPIE indicated that they cannot completely guarantee the outcome. However, in the circumstance there appears to be no other choice than to proceed as recommended.





IRF20/4503

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1 October 2020

Email: phil.costello@shoalhaven.nsw.gov.au

Dear Sir / Madam,

On 15 July 2020 the Premier announced the Planning System Acceleration Program to reform the NSW planning system. The reforms, which streamline and simplify the planning system, will unlock productivity, keep people in jobs and support sustained economic recovery from the Covid-19 pandemic.

A key part of the reform program involves delivering improved processes for determining and finalising planning proposals more efficiently to cut the time taken to finalise rezoning decisions by 33%. This will provide greater clarity to local government and the community, and more certainty to proponents and investors.

Going forward our intention is that planning proposals should generally take 1 year and no more than 2 years to complete. This has been shown to be achievable in many cases where applications are supported by enough evidence to justify strategic and site-specific merit, and when proposals are aligned to a strong strategic planning framework.

Further information about changes and improvements to existing processes such as online lodgement via the NSW Planning Portal will be provided to councils as part of ongoing communication about the planning reform program.

To ensure the new system achieves these outcomes we must first clear the backlog of planning proposals that have remained under consideration for an extended period.

A review of current proposals identified a number that have been delayed or, are yet to be finalised after more than four years. To address these, the Department is commencing a focused program to work with councils to finalise these proposals by 31 December 2020. Following the initial focus on proposals lodged more than four years ago the program will start to address those that are between two – four years old.

I am aware that many councils are working to improve planning assessment timeframes. This includes eligible councils with long standing proposals applying to the Public Spaces Legacy Program. The Department will work with all councils to help finalise the long standing proposals.





Shoalhaven City Council has the following planning proposals that we will initially be working with you to finalise by 31 December 2020:

- PP_2014_SHOAL_001_03
- PP_2014_SHOAL_004_01
- PP_2015_SHOAL_002_03
- PP_2015_SHOAL_003_03
- PP_2016_SHOAL_002_03

Sarah Lees, Director Southern Region, will contact you in the coming days to establish a project plan and timeframe for finalising the above proposals.

Should Council have any immediate questions regarding the finalisation program please discuss these with Sarah Lees during this initial discussion.

Alternatively, you can contact Sarah Lees on 02 4247 1810 or sarah.lees@planning.nsw.gov.au

We look forward to working with Council to deliver this program as a major step towards improving and streamlining the plan making process.

Yours sincerely

Marin Ray

Marcus Ray Group Deputy Secretary Planning and Assessment





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 🖪 💿 📾 🛥 💆

Council Reference: 49256E (D20/386282)

28/08/2020

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Sarah Lees Director Southern Region NSW Department of Planning, Industry & Environment - Southern Region PO Box 5475 WOLLONGONG NSW 2500

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

Dear Sarah

Halloran Trust Planning Proposal PP006 – Culburra Ground Water Assessment Report

I am writing to seek the Department's response to the Groundwater Assessment Report prepared by HGEO for the Halloran Trust Planning Proposal at Culburra (PP006). The Groundwater Assessment Report was emailed to Graham Towers and George Curtis on 21 August 2020 and can also be viewed via this link.

Background

The Gateway determination for the Halloran Trust Planning Proposal (PP006) was originally issued on 16 November 2015. The Department's letter that accompanied the Gateway determination on 16 November 2015, included the following statement:

While the proposed residential investigation area north of Culburra Road is generally supported, the catchment boundaries of Lake Wollumboola, both in terms of groundwater and surface runoff, need to be defined to ensure there are no impacts on the Lake. Council is required to undertake the studies necessary to define this catchment boundary. The catchment boundary must be taken into consideration when identifying suitable zones for this land. Land within the surface or groundwater catchment of the Lake should also be zoned for environmental protection unless the water quality management strategy identifies that an alternate zoning can achieve a neutral of beneficial effect on the lake.

The Gateway determination included conditions requiring the completion of several studies, including a study that:

- defines the catchment boundaries of the Lake Wollumboola and Crookhaven River catchments based on a hydro-geomorphic study, that considers groundwater issues;
- ii. investigates proposed buffers to coastal/riparian areas in order to preserve the water quality of coastal water bodies, fisheries and aquaculture resources;
- iii. considers the findings and recommendations of the 'Estuarine Management Study: Proposed Mixed Use Subdivision – West Culburra, NSW, Peer Review, dated 7 November 2014 and 'West Culburra Cycle Management Review', dated 6 March 2014, undertaken by



- BMT WBM on behalf of the Department of Planning and Environment, concerning water quality impacts on the Crookhaven and Lake Wollumboola catchments; and
- iv. includes a water quality management strategy to achieve a neutral or beneficial effect on water quality of coastal water bodies.

In recognition of the complexity and importance of this matter, a project control group (the PCG) comprising representatives from Council and DPIE was formed to provide high level oversight and advice on the PP process. This assistance is greatly appreciated given the highly specialised and technical nature of the surface and groundwater issues.

The brief for the groundwater study was prepared with input from the PCG and associated officers with expertise in groundwater and coastal catchment issues. HGEO was commissioned to undertake the assessment in 2017. After an initial desktop investigation, a teleconference was held with HGEO, Council and OEH staff to discuss the monitoring regime. It was concluded that 2 years of monitoring would be needed to adequately address the requirements of the Gateway determination.

Groundwater Assessment

The draft Groundwater Assessment report was circulated to the PCG and the proponent in May 2020 for review. Stuart Brown of HGEO presented the draft findings to the PCG on 3 June (via Teams). A letter incorporating the consolidated comments from all stakeholders was sent to HGEO on 21 July and the final report was received on 20 August.

The Report concludes that:

- The divide between the Lake Wollumboola and Crookhaven River groundwater catchments should be considered coincident with the surface water catchment defined by topography.
- Groundwater seepage is estimated to be a minor contribution at ~36 ML/year (0.4% of surface water inflow). Therefore, groundwater seepage is unlikely to have a measurable influence on overall lake salinity levels, but may influence near shore environments, particularly when the lake is closed and the lake level is low.
- Testing carried out in this study indicates that the permeability of the siltstone is low but is
 locally elevated due to fracturing and faulting. While the degree of connection between
 fractured zones cannot be determined from the existing bore network, there is potential for
 migration of contaminants to the lake edge environment via fracture zones if contamination
 reaches the water table. Land use planning should avoid or mitigate potential for
 contamination of groundwater within the Lake Wollumboola catchment.

Council is now seeking the Department's advice and direction to enable the PP to be progressed. As the PCG is aware, we are concerned that no amount of further technical studies will conclusively show to the satisfaction of all stakeholders that development between Culburra Road and the main ridgeline will not have a detrimental impact on the Lake. Hence, your advice is sought to enable this PP to advanced further and be completed in a timely and efficient manner.

Please don't hesitate to contact me if you would like to discuss this important matter. If you require any further information regarding this matter, please contact Eric Hollinger, City Futures on (02) 4429 3320. Please quote Council's reference 49256E (D20/386282)..

Yours faithfully

Gordon Clark Strategic Planning Manager

Jordon Clark.





Your ref: 49256E (D20/386282) Our ref: PP_2014_SHOAL_004_01 (IRF20/4543)

Mr Gordon Clark Manager Strategic Planning Shoalhaven City Council

By Email: council@shoalhaven.nsw.gov.au

Attention: Eric Hollinger, Coordinator Special Projects

Halloran Trust Planning Proposal - Culburra Groundwater Assessment Report

Dear Gordon

Thank you for your correspondence seeking the Department's advice and direction on the outcomes of the Culburra Groundwater Assessment Report (HGEO, August 2020) to enable the planning proposal to be progressed.

I would like to commend Council on the extensive work undertaken to define the Lake Wollumboola catchment which has included a two-year groundwater monitoring program. The Department considers that the report fulfils the requirements of condition 2(b)(I) of the 16 November 2015 Gateway determination to prepare a study that defines the catchment boundaries of the Lake Wollumboola and Crookhaven River Catchments based on a hydrogeomorphic study, that considers groundwater issues.

The Department notes the outcomes of the Culburra Groundwater Assessment Report, particularly the findings and recommendations that:

- The divide between the Lake Wollumboola and Crookhaven River groundwater catchments should be considered coincident with the surface water catchment defined by topography.
- While the degree of connection between fractured zones cannot be determined from
 the existing bore network, there is potential for migration of contaminants to the lake
 edge environment via fracture zones if contamination reaches the water table. Land
 use planning should avoid or mitigate potential for contamination of groundwater
 within the Lake Wollumboola catchment.
- Areas between the main ridgeline north of Culburra Road and the mid-slope areas in both catchments are dominated by rainfall recharge. It is recommended that land use within the recharge-dominated areas of Lake Wollumboola Catchment (mid-slope to ridge-top) includes significant open and unpaved areas in those important recharge areas.

Based on the Report's recommendations, as well as recommendations of the 2013 "Environmental Sensitivity of Lake Wollumboola" report prepared by Peter Scanes, the Department considers urban development in the area between Culburra Road and the catchment divide would not be appropriate due to the risk of contamination of the Lake. There may, however, be some potential for limited low-scale development in this area such as appropriate private or public recreation, ecotourism or environmental stewardship. Any development would need to be sited and designed to direct surface stormwater (and any appropriately treated wastewater) to the Crookhaven catchment or, if unavoidable and justified,



demonstrate a very high standard of environmental management to protect the water quality of the Lake.

The Department considers that the findings and recommendations of the Groundwater Assessment Report and Flora and Fauna Offset Strategy should enable determination of an indicative development footprint for the planning proposal and progression of the remaining studies required under the Gateway determination.

As you are aware, in July 2020 the NSW Government launched major structural reform of the Planning system to unlock productivity, keep people in jobs and the economy moving towards recovery during the COVID-19 pandemic. To ensure the new system can achieve these outcomes we must first clear the backlog of long-standing planning proposals that are currently under consideration. We look forward to continuing the conversation with Council as to how we can work closely to actively case manage and resolve issues that delay finalisation of this planning proposal.

If you have any queries concerning this matter please contact George Curtis, Senior Planner, Southern Region on 4247 1824.

Yours sincerely

6 November 2020

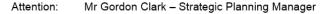
Sarah Lees Director, Southern Region Local and Regional Planning





16 November 2020 Our Ref: N25993MJP

The General Manager Shoalhaven City Council PO Box 42 NOWRA NSW 2541



Dear Gordon.

FUTURE OF THE WEST CULBURRA PLANNING PROPOSAL FOR SEALARK PTY LIMITED (PP_2014_SHOAL_004_01)

As you are aware, APS acts on behalf of Sealark Pty Limited, the owner of 1,682Ha of land situated around Lake Wollumboola, which is being investigated in the Halloran Planning Proposal.

This letter is our response to letters issued by DPIE to SCC dated 1 October 2020 and 6 November 2020 which have significant implications for the Planning Proposal that is being progressed on land to the west of the township of Culburra Beach.

Firstly, we wish to confirm our strong support for the NSW Government initiative to streamline the planning system. We are only too aware of the costs that result from significant delays and inefficiencies in the planning system.

We do not agree, however, that re-assessing a gateway determination and issuing a new one is the correct approach for the West Culburra PP, unless there are significant efficiencies that can be realised.

The land which formed the original Halloran Planning Proposal includes three separate sections of land comprising:

- West Culburra 22 allotments totalling approximately 1,117 ha;
- Callala Bay 693 allotments, totalling approximately 365ha;
- · Kinghorne 730 allotments totalling approximately 200 ha.

The purpose of the original Halloran Planning Proposal was to resolve the long-term land-use and tenure issues for the subject land, which is a critical strategic planning issue that has dogged DPIE, Shoalhaven City Council and the landowner for many years.

As you are aware, there is substantial historical background to the Halloran Planning Proposal which must be thoroughly understood by all stakeholders before significant decisions are made on the way forward. I have summarised the main items in this historical background below:

In the early 1980s, prior to the gazettal of the Shoalhaven Local Environmental Plan 1985, Council
pursued the rezoning of a large expanse of Halloran owned land surrounding Culburra Beach
from rural to urban;



Liability limited by a scheme approved under Professional Standards Legislation





- The residential land at Culburra Beach was ultimately gazetted on 28 August 1992, as SLEP85 Amendment No 41;
- In 1993, immediately following the rezoning, a Development Application was lodged on the newly zoned residential land for an 837-lot residential subdivision at Long Bow Point;
- 4. The DA remained undetermined in 1995 and following a Labour victory in the NSW State Election, the new Minister for Urban Affairs and Planning, Andrew Refshauge, used powers under Section 101 of the Environmental Planning & Assessment Act 1979 to "call in" the DA and to become the consent authority;
- The Minister then directed a Commission of Inquiry be held into the proposed development in August 1996;
- The initial inquiry was held in October 1996 with an adjournment to allow the proponent to prepare
 a fauna impact statement. The Commission of Inquiry reconvened in September 1999 after the
 fauna impact statement was completed;
- The recommendation of the Commission of Inquiry was to refuse the application for the subdivision, which was soon followed by the Minister decision to refuse the application;
- In 2009, a Major Project application was lodged with the Department of Planning & Environment for a 600-lot Concept Plan over part of the 2(c) residential zone in the Crookhaven River catchment in the West Culburra expansion area.
- 9. This DA was refused in October 2018 by the IPC. This decision has been appealed and is currently before the Land and Environment Court;
- In 2011, a DA for a golf course on Long Bow Point was lodged and was eventually refused by the Independent Planning Commission (IPC) in October 2018. This decision was not appealed;
- 11. In November 2012, a meeting with the then Minster for Planning and Infrastructure, Mr Brad Hazzard, was held to discuss a holistic masterplan for the long-term land use and tenure of the Halloran landholdings;
- During 2013, numerous meetings were held with Department of Planning and Council staff regarding the development of a suitable masterplan;
- 13. On 17 July 2013, Shoalhaven City Council formally adopted the following resolution: "Defer the zoning of all the Halloran landholdings within the Shoalhaven until a master plan or overall approach for Halloran land has been prepared and considered";
- 14. On 25 February 2014, the then Minister for Planning and Infrastructure, Mr Brad Hazzard, agreed to Council's deferral request on the basis that a Planning Proposal was submitted by 29 August 2014;
- 15. The SLEP2014 (excluding the Halloran lands) was gazetted on 22 April 2014;
- 16. The Halloran Planning Proposal was lodged with Shoalhaven City Council on 4 August 2014;
- 17. Council submitted the Planning Proposal to DPIE for a gateway determination on 30 October 2014:
- A Gateway Determination was issued by DPIE on 16 November 2015, more than 12 months after the application was submitted to DPIE;
- 19. Detailed investigations commenced immediately including:
 - a significant groundwater monitoring study which required a 2-year period of field data capture;
 - a significant Stage 1 aboriginal heritage impact assessment;
 - a significant and detailed biodiversity assessment including an application for Biodiversity Certification for the proposed "impact areas" across all the lands comprising the Planning Proposal;





- 20. In March 2018, and principally because of the delays at West Culburra caused by the need for the 2-year groundwater study, it was decided by DPIE to split the Halloran Planning Proposal into two separate PP's comprising:
 - a) the West Culburra area; and
 - b) the Callala Bay and Kinghorne area (which were not affected by the groundwater studies);
- 21. Following this "administrative" split in the Planning Proposal, planning works have continued in earnest on both PP's;
- 22. In February 2019, whilst the above planning works were being undertaken by Shoalhaven City Council, Sealark entered into a Biobanking Agreement (BA364) with the Minister for the Environment to preserve 1082Ha of the land included in the Halloran Planning Proposal which is principally in the catchment of Lake Wollumboola for long-term biodiversity purposes in accordance with the proposed outcomes of the Halloran Planning Proposal as originally submitted;

A detailed understanding of the above history and the steps that we have taken, in good faith, to realise the intent of the original Planning Proposal, is fundamental in understanding our serious concerns with DPIE's proposal with respect to the Halloran Planning Proposal.

It is noted in its letter to Shoalhaven City Council dated 1 October, DPIE advises that it would finalise any planning proposals that are older than 4 years by 31 December 2020 and then would focus its attention on those proposals that are 2-4 years old. In other words, the entire Halloran Planning Proposal will be re-assessed in the short-to medium term - West Culburra first and then Callala Bay/Kinghorne second.

This re-assessment makes the directors of Sealark very concerned. We have progressed with as much haste has been possible with the required studies, and it now appears there is potential for the gateway determination to be either withdrawn prematurely or modified. This would appear to be highly prejudicial to the overall planning outcomes foreshadowed in the original planning proposal application which was fully supported by Shoalhaven City Council.

We note in our meeting with DPIE representatives on 4 November 2020, it was indicated verbally to us that DPIE would most likely terminate the West Culburra PP by 31 December 2020, and then issue a new gateway determination at some stage in the future. We strongly object to DPIE 's position on this matter and requests Council resist this outcome in the strongest possible way in recognition of the substantial progress made to date under the current gateway determination.

It was the intention of the Halloran Planning Proposal that it would tease out, to a suitable level of detail, the overall land-use framework for Culburra Beach for the foreseeable future and that land-use planning decisions would be based on sound scientific analysis and strategic planning justification.

Despite the concerns outlined above, there would be no objection if DPIE was to re-issue the same gateway determination (with a new commencement date for administrative purposes) or a revised gateway determination with a reduced quantum of studies required for the rezoning controls to be finalised.

We note from our 4 November 2020 meeting with DPIE that we were supposed to have a follow up meeting, but at the time of writing, this meeting had not been scheduled. We request this matter be urgently pursued with DPIE representatives.





Outcomes of the Groundwater Study

The 5 November 2020 letter from DPIE in response to the conclusion of the groundwater study is extremely concerning to us. It was expected that the process that would be followed for the Halloran Planning Proposal would be based on a detailed scientific analysis of the risks and potential mitigation strategies for Lake Wollumboola.

DPIE has correctly summarised some of the findings of the groundwater study, however, it has then drawn a significant and unsupported conclusion that urban development cannot occur in the catchment of Lake Wollumboola. Nowhere in the groundwater study is this conclusion supported.

The groundwater study states whilst the underlying rock is relatively impermeable, the presence of fractured zones in the rock are relatively permeable. Further, it states that the degree to which the fractured zones are connected cannot be determined from the relatively sparse network of monitoring bores so there is "potential for migration of contaminants to the Lake edge via connected fracture zones".

The groundwater study provides guidance on how urban development could potentially occur in the catchment of Lake Wollumboola on the basis that specific issues around groundwater are addressed, including:

- a recommendation that land-use within the recharge-dominated areas of Lake Wollumboola
 Catchment (mid-slope to ridge-top) includes significant open and unpaved areas in those important
 recharge areas;
- a recommended that avoiding or mitigating potential for contamination of groundwater within the Lake Wollumboola catchment is essential
- a recommendation that monitoring of groundwater and sampling of water from Lake Wollumboola be continued to better understand baseline conditions;

The HGEO report implies that if a proposed land-use does not impact on groundwater quantity or quality then there is no potential for contaminants to reach the Lake edge.

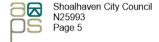
It is our strong view that the DPIE letter is at odds with the HGEO report recommendations. The HGEO report does not quantify the risk posed by any specific development type to Lake Wollumboola. DPIE's conclusions that urban development would not be appropriate due to the risk of contamination of the Lake is therefore completely unsubstantiated. The only conclusions that can and should be drawn from the HGEO report is that in order to minimise the risk to Lake contamination, groundwater pollution should be avoided as part of any land-use planning decisions. Treating stormwater generated by a development to a level equivalent to or better than existing groundwater quality, would ensure that any risk to the Lake water quality would be 'mitigated'. Stormwater management controls are thus both form of land-use controls and mitigation measures.

Further, DPIE also quotes the Scanes report as a sound basis for prohibiting urban development within the catchment. Again, the Scanes report draws no conclusions that prohibits urban development within the Lake Catchment.

Some of the relevant conclusions from the Scanes report are repeated below:

A precautionary approach to assessing development near the lake be adopted as a high priority;





- Any future development in the vicinity of Lake Wollumboola should be placed as far from the lake as possible to minimise risk of contamination of groundwater aquifers which may be directly linked to the lake;
- It is essential that any future assessment of potential impacts is based on a sound conceptual and empirical understanding of lake ecology and processes; and
- Pollution of groundwater by nutrients is a major risk that needs to be properly assessed. Any
 models used must be calibrated and verified.

In short, the final outcome of all the Scanes report is to base decisions on sound science not hypothesis.

It should also be pointed out that the Scanes report made the following statement: "groundwater is most probably a major component of freshwater inputs to the lake." However, the detailed assessment by HGEO concludes that groundwater seepage accounts for only 0.4% of the surface water inflows as follows:

"Surface water runoff estimated to be the largest component of the lake water budget (excluding tidal inflow when the lake is open) at approximately 8.3 GL/year. Groundwater seepage is estimated to be a minor contribution at ~36 ML/year (0.4% of surface water inflow)."

Conclusion

It is our view that DPIE's attitude to development in the catchment of Lake Wollumboola is not based on sound science and is overly conservative. It is based on an underlying assumption that stormwater and groundwater runoff cannot be controlled and urban development will lead to pollution of Lake Wollumboola.

We, along with our client Sealark, are committed to providing an optimal land-use planning outcome for the growth of Culburra Beach that is based on good science and solid strategic planning.

We look forward to continuing to consult with Council and DPIE on this matter.

Yours faithfully, ALLEN PRICE & SCARRATTS PTY LTD

Matt Philpott

Cc: The Hon. Shelley Hancock MP - Member for South Coast



DE20.131 DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138

DA. No: DA20/1494/4

HPERM Ref: D20/259112

Section: Development Services

Approver: Phil Costello, Director - City Development

Attachments: 1. 4.15 Assessment - 25 Sunnymede Lane, Berry - Lot 3 DP 713138

(under separate cover) ⇒

2. Booking.com Listing - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 &

3. Stop Use Order - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 $\underline{\mathbb{J}}$

4. Show Cause Letter - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 &

5. Approved Floor Plans (DA16/2488) - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 $\mbox{\$}$

6. Plans - Floor Plans - Lot 3 DP 713138 - 25 Sunnymede Lane Berry &

7. Determination - Approval - DA16/2488 - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 (under separate cover) ⇒

8. Applicants Justification - DA16/2488 - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 $\ensuremath{\mathbb{J}}$

9. Response to Objections - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 $\underline{\mathbb{J}}$

Draft - Determination - Approval - 25 Sunnymede Lane, Berry - Lot 3
 DP 713138 (under separate cover)

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

Owner: Philip Richard Scarr and Melissa Bevelyanna Scarr.

Applicant: PDC Planners.

Notification Dates: 10 June 2020 – 25 June 2020.

No. of Submissions: 10 submissions received.

Purpose / Reason for consideration by Council:

At its Ordinary Meeting on 23 June 2020, Council resolved to call in DA20/1495 - 25 Sunnymede Lane, Berry, Lot 3 DP 713138 due to public interest (MIN20.423). This application is for the change of use of an existing ancillary structure (Shed) to detached habitable rooms.

Recommendation (Item to be determined under delegated authority)

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



Options

1. Approve the Development Application as recommended

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

2. Refuse the Development Application.

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

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

3. Alternative recommendation.

<u>Implications</u>: Council will need to specify an alternative recommendation and advise staff accordingly.

Subject Site & Surrounding Area:

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

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

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

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



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

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



The proposed development

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

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

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

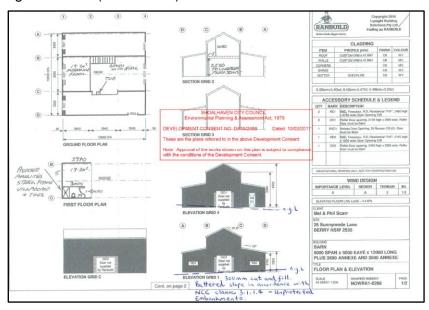


Figure 2 – Approved Plans (DA16/2488)

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

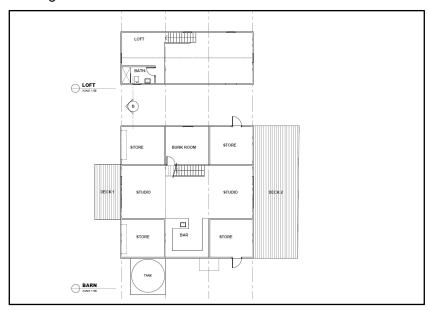


Figure 3 – Proposed Floor Plan (DA20/1494)



Background and History:

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

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

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

"The shed is separated into 3 different sections as each section will be used for a different purpose. One of the side sections will be used to store machinery, quad bikes, garden equipment, bikes, surfboards and things that are used more regularly than the other side section will be used for more long term storage such as boxes, furniture and the like. The middle section will be used as an art studio/workshop.

The mezzanine level will be used for storage of art supplies and a toilet. As you need to be able to stand up on the mezzanine level and also allowing for plenty of headroom if you are standing under the mezzanine floor this affects the overall height of the shed.

In terms of floor area, we have a lot of things to store and we will not have a garage attached to the main house. Down the track, with renovations, the existing small garage will become part of the house and a carport built instead. Hence the need for external storage".

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

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

- (a) Fitting the shed with internal cladding.
- (b) Installing kitchen cabinetry.
- Erection of additional internal walls.
- (d) Erection of decks at the front and rear of the building.
- Modification of roller doors to sliding doors.
- (f) Installation of seven new windows on the upper floor.

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

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











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

Issues

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

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

Detached Habitable Room:

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

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

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

(iv) <u>Be separated from the main dwelling</u>:- There is no definition of 'separated' or 'detached' in the *Shoalhaven Local Environmental Plan 2014*, the Development Control Plan 2014, or the *Environmental Planning and Assessment Act 1979*.

- It is reasonable to conclude the building is 'separated' or 'detached' from the principal dwelling. The building satisfies this requirement.
- (b) <u>Afford an all-weather connection with the main dwelling</u>:- Clause 6.2.3 of SDCP-2014 includes a note that all-weather connection "must include a continuously roofed/covered deck or hard stand pathway between the principal dwelling and the detached habitable room/studio".
 - The plans show an all-weather connection between the dwelling and the detached habitable room.
- I <u>Be used by members of the principal dwelling</u>:- The building has been used for holiday rental accommodation. The building is no longer listed on Airbnb but it is listed on Booking.com.
 - Conditions of consent will require that the detached habitable room only be used by members of the same household.
- (d) Not contain the prohibited facilities referenced in the DCP:- As noted on the submitted floor plans, the building proposes to contain a bar area which includes a countertop preparation area and a sink. Recommended conditions of consent will require that the detached habitable room must rely on the main dwelling and the buildings must function as a single dwelling/domicile. Conditions of consent will require that the detached habitable room must not be fitted with any cooking facilities or any clothes washing facilities. Accordingly, the building not considered a separate dwelling and it satisfies the SDCP-2014 requirements for detached habitable rooms.

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

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

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

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

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

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

In terms of complementing the appearance of the existing dwelling, this would have been considered under the original DA and no changes are proposed. The building does not



exacerbate any severe or devastating effects on privacy or solar access of the neighbouring properties.

Compliance with Shoalhaven Development Control Plan 2014

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

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

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

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

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

Chapter G7 - Waste Minimisation and Management Controls.

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

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

Comment: The proposed development will comply with this chapter.

Planning Assessment:

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

Consultation and Community Engagement

The proposed development was notified to affected neighbours in accordance with Council's Community Consultation Policy. Council has received 10 submissions and the issues are summarised as follows:

Issue	Comment
(a) The applicants have carried out unlawful works.	This is agreed and compliance action has been instigated by Council.
	The applicants have lodged a Building Information Certificate application in respect of the unlawful works and these are being held in abeyance pending determination of this development application.
(b) The use of the building currently contravenes conditions of development consent imposed by Council.	This is agreed and compliance action has been instigated by Council.
	The applicants have lodged a Development Application seeking to legalise the use of the building as a detached habitable building. Condition 3 of DA16/2488 stipulates the building cannot be used for habitable purposes.
	If Council is of the mind to approve this application, recommended conditions of consent would have the effect of modifying condition 3 of DA16/2488 and



	would require the person benefiting from the consent to give notice of modification as required by clause 97 of the <i>Environmental Planning and Assessment Regulation 2000</i> .
(c) The capacity of the effluent treatment system.	This is agreed.
	The applicant has provided additional information from a geotechnical consultant indicating the existing system is capable of supporting the expected load.
(d) The applicants are required to comply with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.	The applicant has submitted a BASIX certificate. Compliance with the BASIX certificate is a condition on the consent.
(e) Use of the proposed development negatively impacts on adjoining neighbours' amenity through noise emissions.	Conditions of consent will require the detached habitable room be used only by members of the same household. The use of the building for habitable residential purposes is not considered to give rise to unacceptable amenity impacts.
(f) The proposed development is not permissible in the land use zone RU1.	It is agreed that a separate dual occupancy or secondary dwelling is prohibited in this RU1 zone.
	The application is for detached habitable rooms and these are permissible.

The applicants have prepared a response to the received submissions and these are summarised as follows (Refer attachment 9):

- (a) The previous use of the site was subject to a stop-use notice which has been complied with.
 - <u>Comment</u>:- The application is for detached habitable rooms and these are permissible. The building cannot be used as a separate dwelling.
- (b) Any potential future use is entirely speculative.
 - <u>Comment</u>:- This is agreed. The use of the site contrary to an approval would be subject to compliance action from Council.
- (c) Detached habitable rooms are permissible within the RU1 zone.
 - *Comment:* This is agreed.
- (d) The noise and traffic impacts should be no greater than that associated with a single dwelling.
 - <u>Comment:</u> As the detached habitable rooms are in conjunction with the principal dwelling, this is agreed. Noise and traffic impacts could be dealt with separately via Council's Compliance Team.
- (e) Separation distances between the proposed building and neighbouring properties would limit light spill. The applicants could potentially provide landscaping to further limit these impacts.
 - <u>Comment:</u>- The applicants have submitted an amended landscape plan and this indicates additional screening. This matter has been addressed.



- (f) The building will be required to comply with the BCA under the submitted Building Information Certificate application and Council will not issue any consent approval for either the DA or the BC until this matter has been satisfied.
 - <u>Comment:</u>- If the development application is approved, then there will be a condition to comply with the requirements of the National Construction Code. The BIC will also require the building to be upgraded prior to use. This matter will be rectified separately to the development approval.
- (g) The shed was approved with sinks and a bathroom connected to the existing effluent system. No change to the existing connections is proposed.
 - <u>Comment:</u>- The applicant has supplied a report from a geotechnical engineer supporting the existing effluent system. This matter is satisfied.
- (h) As the cost of works is below \$50,000, the development can be considered BASIX Optional Development.
 - <u>Comment:</u>- The applicant has supplied a BASIX Certificate and this will be complied with as part of the development.
- (i) The structure meets the definition of a detached habitable room, is not fully selfcontained and does not have laundry facilities. The kitchen area is not fully functional. An all-weather connection is provided between the principal dwelling and the detached habitable rooms.
 - <u>Comment</u>:- The amended plans indicate an all-weather connection will be provided between the buildings. This will comply.

Financial Implications

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

Legal Implications

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

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

Summary and Conclusion

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

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



Holiday home Beachwood - best of coast and country, Berry, Australia - Booking.com Page 1 of 5





Holiday home Beachwood - best of coast and country, Berry, Australia - Booking.com Page 2 of 5







+18 photos Close ×

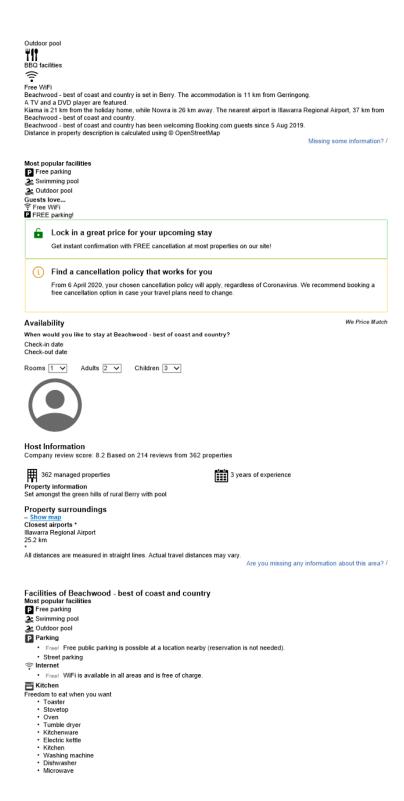


Holiday home Beachwood - best of coast and country, Berry, Australia - Booking.com Page 3 of 5



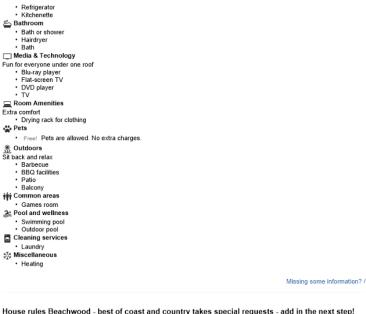


Holiday home Beachwood - best of coast and country, Berry, Australia - Booking.com Page 4 of 5





Holiday home Beachwood - best of coast and country, Berry, Australia - Booking.com Page 5 of 5



House rules Beachwood - best of coast and country takes special requests - add in the next step! Check-in You'll need to let the property know in advance what time you'll arrive 0000000000011:00 Check-out Cancellation and prepayment policies vary according to accommodation type. Please enter the dates of your stay and check the conditions of your required room. Cancellation/ prepayment Child policies M Children and beds
Children of any age are welcome.
To see correct prices and occupancy information, please add the number of children in your group and their ages to your search. Cot and extra bed policies There is no capacity for cots at this property.
There is no capacity for extra beds at this property.

There is no age requirement for check-in Cards accepted at this property

Beachwood - best of coast and country accepts these cards and reserves the right to temporarily hold an amount prior to arrival. Parties/events are not allowed Parties Guests must be quiet between 22:00 and 08:00. Quiet hours Free! Pets are allowed. No extra charges Pets

The fine print

Please note that there is a 1.94% charge when you pay with a credit card. Please note that this property does not have any policies, procedures or resources in place to accommodate the unique needs of school graduates during the annual "Schoolies Week' period. It does not have adequate resources to engage qualified security personnel to guarantee the safety, comfort and convenience of school graduate guests during this period. Please note that this property has a "No Party Policy."

Please inform Beachwood - best of coast and country in advance of your expected arrival time. You can use the Special Requests box when booking, or contact the property directly with the contact details provided in your confirmation.

This property will not accommodate hen, stag or similar parties.

A security deposit of AUD 500 is required upon arrival for incidentals. This deposit is fully refundable upon check-out and subject to a damage inspection of the accommodation.

×



Council Reference: ON2018/6413 (D18/413297)
Council Contact: Chris Dwyer

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P R & M B Scarr 51/1 Betty Cuthbert Ave SYDNEY OLYMPIC PARK NSW 2127

Dear Sir/Madam.

Unauthorised Use Of Detached Shed (DA16/2488) 25 Sunnymede Lane BERRY

An investigation by Council officers regarding the property at 25 Sunnymede Lane BERRY – Lot 3 DP 713138 (Subject Premises) has revealed that unauthorised development activities including (but not limited to) the use of the detached shed as a habitable building is occurring without the consent of Council in circumstances where Development Consent is required.

The subject property known as 25 Sunnymede Lane, Lot 3 DP 713138 is zoned RU1 – PRIMARY PRODUCTION under Clause 2.1 of the Shoalhaven Local Environmental Plan 2014) (SLEP).

Accordingly, the conversion of the detached shed into a habitable space meets the definition of "dwelling" under the SLEP 2014. (See below)

"Dwelling" means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

The unauthorised development activities are occurring upon the subject property without the consent of Council in circumstances where Development Consent is required. Council is of the view that sufficient reason exists for the giving of an Emergency Development Control Stop Use Order (1) of the Table to Part 1 Schedule 5 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).



If you need further information about this matter, please contact Chris Dwyer, Planning Environment & Development Group on (02) 4429 3677 or email council@shoalhaven.nsw.gov.au. Please quote Council's reference ON2018/6413 (D18/413297).

Yours faithfully

Chris Dwyer Compliance Officer 27/11/2018



Council Reference: ON2018/6413 (D18/413297) Council Contact: Chris Dwyer

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P R & M B Scarr 51/1 Betty Cuthbert Ave SYDNEY OLYMPIC PARK NSW 2127

Dear Sir/Madam,

EMERGENCY DEVELOPMENT CONTROL ORDER ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 SCHEDULE 5, PART 1, (1) STOP USE ORDER

Issue: Unauthorised use of Detached Shed

Premises: 25 Sunnymede Lane BERRY – Lot 3 DP 713138.

The Council of the City of Shoalhaven has determined to issue you, being the owner of 25 Sunnymede Lane BERRY – Lot 3 DP 713138 (Subject Premises) with an Emergency Development Control Order, Stop Use Order (ON2018/6413) under item (1) of the Table for General Orders, Part 1 of Schedule 5, of the *Environmental Planning and Assessment Act 1979*.

Circumstances in which a Stop Use Order can be given:

Stop Use Order:

Premises are being used:

- · for a prohibited purpose, or
- for a purpose for which a planning approval is required but has not been obtained, or
- in contravention of a planning approval.

Premises that is the subject of the Order:

25 Sunnymede Lane BERRY - Lot 3 DP 713138.

REQUIRED ACTION AND COMPLIANCE PERIOD

Stop Use Order

Complete and comply with item 1 of The Specified Works IMMEDIATELY.



THE SPECIFIED WORKS

 Cease permitting the Detached Shed to be occupied/lived in or otherwise used as a habitable space/area/building or structure located at Lot 3 DP 713138 25 Sunnymede Lane BERRY.

REASONS FOR GIVING THE ORDER

Pursuant to Part 4 (5) of the *Environmental Planning and Assessment Act 1979*, this Order was given for the following reasons:

- The approved detached shed has been converted to a habitable dwelling without prior development consent of the consent authority in a case where prior development consent is required.
- 2. There is insufficient evidence available to ascertain if the construction of the dwelling meet the deemed to be provisions of the Building Code of Australia as to construction methods.
- 3. There is insufficient evidence available to ascertain if the "electrical works" undertaken as part of the construction of the dwelling were carried out by a licenced electrician and meet the deemed to be provisions of the Building Code of Australia and relevant Australian Standards.
- 4. There is insufficient evidence available to ascertain if the "plumbing works" undertaken as part of the construction of the dwelling were carried out by a licenced plumber and meet the deemed to be provisions of the Building Code of Australia and relevant Australian Standards.
- 5. Due to the unauthorised work, the Council or PCA have not had an opportunity to assess the structural adequacy of the premises following the work(s).
- A Development Application for the change of use has not been lodged with Shoalhaven City Council.

RELEVANT AUTHORITY

The relevant legislative provision is SCHEDULE 5 of the *Environmental Planning and Assessment Act*, 1979.

MODIFICATION OF ORDERS

The terms of this Order can only be modified by Council in writing, and only if the person to whom the Order was given agrees to that modification. In no circumstances can the terms of the Order be amended orally.

Any application to Council seeking an amendment of this Order must be made in writing, clearly setting out:

the term(s) to be modified,



- the reasons for the modification of the term(s) and
- any substitute term(s) to be added to the Order (if applicable).

IMPORTANT NOTES

You are advised that the provisions of the Environmental Planning and Assessment Act, 1979 and Regulations made under the Act are not being complied with.

APPEAL

If you wish to appeal against this Order or a specified part of this Order, YOU MUST APPEAL TO THE LAND AND ENVIRONMENT COURT, LEVEL 4, 225 MACQUARIE STREET, SYDNEY WITHIN 28 DAYS OF THE SERVICE OF THIS ORDER UPON YOU.

PENALTY

It should be noted that failure to comply with this Order has a maximum monetary penalty of a Tier 1 offence under part 9 Division 9.37 of the EP&A Act. Under section 9.52 a Tier 1 offence has a maximum monetary penalty, in the case of a corporation of \$5 million, and for a continuing offence—a further \$50,000 for each day the offence continues, or in the case of an individual: \$1 million and for a continuing offence—a further \$10,000 for each day the offence continues. In addition, if the Order is not complied with, Council may give effect to the Order and recover the costs of doing so from you.

COMPLIANCE COST NOTICE

As a result of the issue of this Order, Council may also issue you with a Compliance Cost Notice under Schedule 5 part 12 of the Act. Where such a notice is issued it will require you to pay a specified amount, being Council's reasonable costs and expenses incurred in monitoring works and ensuring compliance with the Order. This may include the time spent by Council staff; including time spent undertaking inspections, as well as any other expenses incurred in taking steps to ensure that the Order is complied with. Where Council issues you with a Compliance Cost Notice you will have a right of appeal to the Local Court or, where you are also appealing against this Order, the Land and Environment Court in accordance with Division 8.6 Section 8.24 of the Act.

Please be advised that, in line with s281C of the Environmental Planning and Assessment Regulation 2000, the maximum compliance cost charges, in relation to an investigation that requires the serving of a notice of intention to serve an order under this Act, is \$500. Please also be advised that, in line with s281C of the Regulation, the maximum compliance cost charges, in relation to an additional investigation into this matter that results in the serving of a formal order under this Act, is \$1000.



CONTACT DETAILS

If you need any further information about this matter, please contact Chris Dwyer 4429 3677 between the hours of 9.00am to 10.30am weekdays or email council@shoalhaven.nsw.gov.au. Please quote Council's reference ON2018/6413 (D18/413297).

Dated: 27/11/2018

Ordered by and on behalf of Shoalhaven City Council.

Shaun Clay

for and on behalf of Council by virtue of authority delegated to me pursuant to Section 378 of the Local Government Act, 1993 by the General Manager's authority dated **15 May 2018**



Council Reference: ON2018/6413 (D18/412783)
Council Contact: Chris Dwyer

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P R & M B Scarr 51/1 Betty Cuthbert Ave SYDNEY OLYMPIC PARK NSW 2127

Dear Sir/Madam

Show Cause – Development without Development Consent 25 Sunnymede Lane BERRY - Lot 3 DP 713138

Council records indicate that you are the owners of 25 Sunnymede Lane BERRY – Lot 3 DP 713138 (referred to below as the 'subject property') within the Shoalhaven Local Government area.

It has come to Council's attention that unauthorised development activities (including but not limited to the use of the approved Detached Shed for habitable purposes, unauthorised alterations to detached shed) has taken place upon the Subject Property (refer to Annexure A).

You are advised, it is a legal requirement under the *Environmental Planning and Assessment Act 1979* (EP&A Act) that all development and building works be in accordance with the *State Environmental Planning Policy* (Exempt and Complying Development Codes) 2008 OR have prior Development Consent approval issued by Council.

A search of Council records indicates that no Development Application has been received, nor has Development Consent been issued relating to this type of work.

In accordance with the *Shoalhaven Local Environmental Plan 2014* (SLEP) the subject premises is zoned RU1 – Primary Production. Therefore, Development Consent is required to carry out these activities. Development undertaken without approval is an Offence under the EP&A Act. Penalties apply.

Council requires all unauthorised use of the detached shed to cease immediately.

Below is a list of the Offence/s that have been committed to date, together with the Penalty Notice amount that could apply equally to all owners of the subject property and/or person/s involved in this matter:



- Section 4.2(1)(a) of the EP&A Act Development without development consent class 1a or 10b building Individual (\$1500).
- Section 4.2(1)(a) of the EP&A Act Development without development consent any other case – Individual (\$3000)

Council also has the option to take this matter to the Local Court or the Land and Environment Court where the penalties may be much higher. In Council's consideration of this matter, you are hereby afforded an opportunity to Show Cause in writing by **4pm Tuesday 11th December 2018** as to why Council should not instigate further Regulatory Action for the Offence/s committed. In your submission, you may wish to include your intended cooperation and intentions to comply with the Development Consent conditions for DA16/2488.

If you need further information about this matter, please contact Chris Dwyer, Planning Environment & Development Group on (02) 4429 3677. Please quote Council's reference ON2018/6413 (D18/412783).

Yours faithfully

Chris Dwyer Compliance Officer 27/11/2018



ANNEXURE A















Beachwood House & Barn - best of coast and country

Holiday Rental Specialists

HOME HIGHLIGHTS

 $\mbox{\bf Great}$ check-in experience \cdot 90% of recent guests gave this home's check-in process a 5-star rating.

Helpful 🖒 - Not helpful

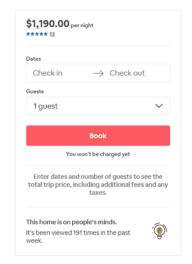
 $\textbf{Great location} \cdot 100\%$ of recent guests gave this home's location a 5-star rating.

Helpful 🖒 · Not helpful

 $\textbf{Pool}\cdot \textbf{This}$ is one of few homes in this area that has this feature.

Helpful 🖒 - Not helpful

Set amongst the green hills of rural Berry, Beachwood is only 3km from Seven Mile Beach and 5km to the historic village of Berry. With swimming pool, half basketball court, firepit, trampoline, media lounges, screened indoor/outdoor patio and beautiful barn conversion, there is something for everyone at this stylishly decorated property.



 $\begin{picture}(100,0) \put(0,0){\line(0,0){100}} \put(0,0){\line(0,0){10$

Help Sign up





ENTIRE HOUSE

Beachwood House & Barn - best of coast and country



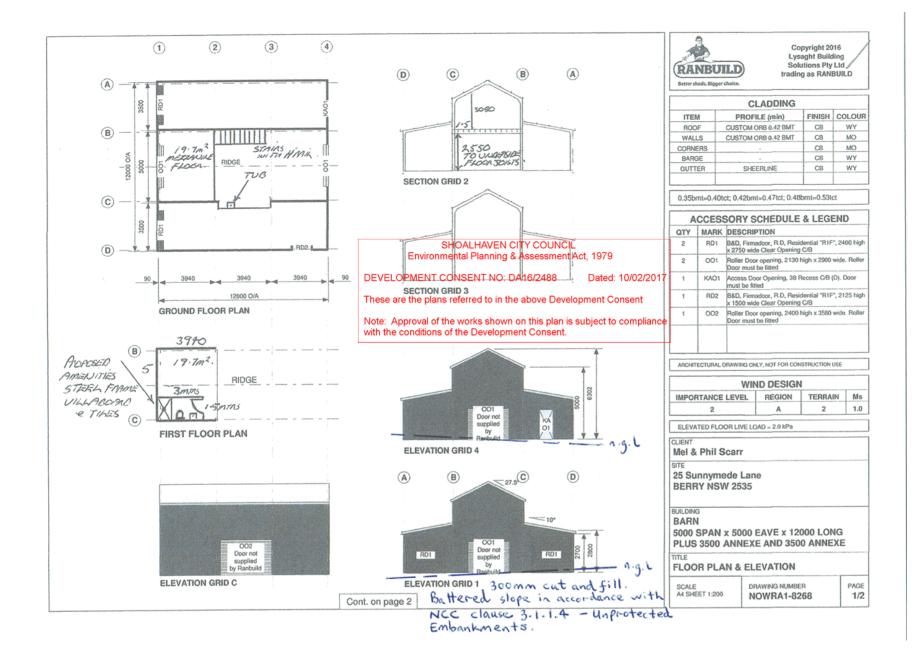




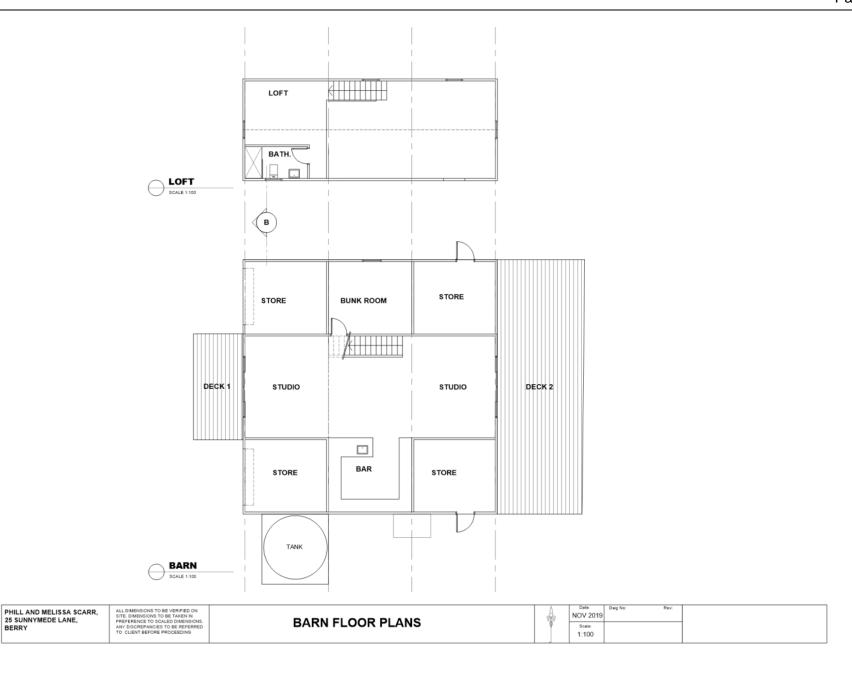
rry

👪 16+ guests 👔 6 bedrooms 🙇 6 beds 🕒 4 baths











Detached Shed at 25 Sunnymede Lane Berry

Chapter G12 of DCP No 2014.

Clause 5.2.3 – Setback and Building Lines

As per Table 2 the prescribed setbacks in rural areas for properties over 10,000m² is a:

- 10 metre side boundary setback and
- · 7.5 metre side boundary setback.

The proposed shed complies with the prescribed setbacks.

Clause 5.3.8 - Ancillary Structures

There is <u>no</u> prescribed maximum floor area for sheds where the land area is over 10,000m². There are also <u>no</u> prescribed maximum wall heights.

The proposed ground floor area of the shed is 144m² plus a 20m² mezzanine. The proposed shed is an American Barn type structure with 2.7 metre ground floor wall heights.

The owner has provided the following reasons for the proposed shed size and height:

The shed is separated into 3 different sections as each section will be used for a different purpose. One of the side sections will be used to store machinery, quad bikes, garden equipment, bikes, surfboards and things that are used more regularly and the other side section will be used for more long term storage such as boxes, furniture and the like. The middle section will be used as an art studio/ workshop.

The mezzanine level will be used for storage of art supplies and a toilet. As you need to be able to stand up on the mezzanine level and also allowing for plenty of headroom if you are standing under the mezzanine floor this affects the overall height of the shed.

In terms of floor area, we have a lot of things to store and we won't have a garage attached to the main house. Down the track, with renovations, the existing small garage will become part of the house and a carport built instead. Hence the need for external storage.

The proposed colours of the shed are Windspray roof and Monument walls.





22 July 2020

The General Manager Shoalhaven City Council P.O. Box 42 Nowra NSW 2541

ATTN: Harley Lockhart

Dear Mr Lockhart,

RESPONSE TO COMMUNITY OBJECTIONS RELATING TO DA20/1494 - CHANGE OF USE TO DETACHED HABITABLE ROOMS 25 SUNNYMEDE LANE, BERRY

We would like to take this opportunity to respond to the objections received in relation to the change of use application submitted for an existing shed at 25 Sunnymede Lane Berry (DA20/1494). Thirteen objections have been uploaded onto Council's DA tracking webpage, however a few of these have been uploaded more than once. A total of 10 unique objections were received, four of which were from neighbouring properties.

The objections generally raised the same concerns, namely:

- Previous unapproved use/works
- · Noise, traffic and amenity impacts
- Light spill
- · Potential unapproved use(s) in the future

Two objections also raised the following concerns:

- Compliance with BCA/structural suitability
 - · Effluent disposal calculations
 - · Need for BASIX Certificate
 - Compliance with definition of detached habitable rooms
 - Compliance with DCP controls for tourist and visitor accommodation

The first list of issues, raised in all submitted objections related to either past, or possible future unauthorised uses of the site, namely as tourist and visitor accommodation and/or a function centre.

As noted in the objections, and the development application itself, the previous use of the site was subject to a stop-use notice, which we are instructed has been complied with. Any potential future unapproved use is entirely speculative. While it is possible that unapproved uses could be undertaken in the future, this would be true of any development/site. If consent were granted, any use other than 'detached habitable rooms' be in contravention of the consent and subject to compliance actions from Council.

The owners have indicated that they would like to retain the habitable use of the structure and have therefore prepared an application for a proposed change of use to detached habitable rooms, which is

Planning Development Commercial Level 2, Suite 1, 144 Junction St Nowra NSW 2541 Level 2, 73 Church Street, Wollongong NSW 2500

Mailing Address: PO Box 214 Wollongong NSW 2520 T: (02) 4288 0150 W: www.pdcplanners.com.au E: mail@pdcplanners.com.au ABN 64 612 774 848





permissible in the zone. Detached habitable rooms, by definition, are used *in association* with the residential dwelling. The noise and traffic impacts arising from this use should therefore be no greater than that associated with the use of the residential dwelling to which they are related.

The image below shows the setbacks from the nearest residential receivers and the location of existing vegetation. It would appear that light spill from the basketball court would be limited given the separation distances, however to address this concern additional landscaping could be provided on the northern and southern boundaries in the vicinity of where the measurement lines are shown in the image below.



Figure 1: Site image (nearmaps aerial photo) showing setback from basketball court to nearest residential properties

The second list of concerns raise unique issues that are not speculative (potential future use) or related to previous uses that have since ceased. I have addressed each of these concerns below.

Compliance with BCA/structural suitability

The Building Certificate Application submitted to Council 22/05/2020 (BC20/1034) will be required to demonstrate compliance with the relevant sections of the Building Code. It is recognised that Council will not issue any consent/approval for either the Building Certificate or the Change of Use until this matter has been satisfied.





Effluent disposal calculations

The shed was approved with sinks and bathroom facilities connected to the existing effluent disposal system. As detached habitable rooms used in association with the existing dwelling no change to the existing connections/system are proposed.

Need for BASIX Certificate

As the cost of works is below \$50,000 we believe the development can be considered Basix Optional.

Compliance with definition of detached habitable rooms

The submitted Statement of Environmental Effects addresses how the proposal meets the definition of detached habitable rooms.

To address the specific concerns raised in the objection we note that the structure is not fully self-contained as it does not have laundry facilities. One objection claimed that the existing 'kitchen' area in the proposed detached habitable rooms is fully functional, however this is not accurate. This area contains only the approved sink, cabinetry and a fridge.

The detached habitable rooms are therefore not capable of independent occupation and relies on the main dwelling for both kitchen and laundry functions. In addition to sharing these two essential functions the buildings are separated by less than 16m and share a driveway, parking areas and recreational amenities (pool, basketball court).

The link between the main dwelling and detached habitable rooms is unroofed, however it is all weather and the structures share common facilities, including essential functions as outlined.

Compliance with DCP controls for tourist and visitor accommodation

These controls have not been considered in the application as tourist and visitor accommodation is not proposed.

Should Council require any additional information regarding this application, please contact us to discuss this matter further.

Sincerely
Kristin Holt
Town Planner



DE20.132 DA20/1579 – 42 Naval Parade, Erowal Bay – Lot 45 DP 1052512

DA. No: DA20/1579/4

HPERM Ref: D20/478805

Section: Development Services

Approver: Phil Costello, Director - City Development

Attachments: 1. Planning Report - 42 Naval Pde EROWAL BAY - Lot 45 DP 1052512

(under separate cover) ⇒

2. Apartment Design Guide Compliance - 42 Naval Pde EROWAL BAY -

Lot 45 DP 1052512 (under separate cover) ⇒

3. Draft - Reasons - non support - 42 Naval Pde EROWAL BAY - Lot 45

DP 1052512 J

Description of Development: Demolition of Existing Structures and Construction of Shop

Top Housing Comprising Two (2) Commercial Premises and

17 Dwellings

Owner: LG & MA Mascaro

Applicant: Michael Mascaro C/o Hotondo South Coast Pty Ltd & SET Consultants

Notification Dates: 15-29 July 2020

No. of Submissions: 177 in objection

One (1) in support

Purpose / Reason for consideration by Council

Council resolved on 7 April 2020 that staff are not to refuse applications, instead the refusal of a Development Application (DA) must only be by Council / Committee resolution (MIN20.240).

In the case of this application however, an appeal has been filed with the Land and Environment Court of NSW.

Whilst this report does not recommend support, the actual decision concerning the application will now be made by the Court, in lieu of Council. Accordingly, this report is seeking endorsement of the staff recommendation and not support the application for the reasons outlined in Attachment 3.

Whilst this matter could be reported 'confidentially' on the basis that information could potentially prejudice court proceedings, the issues are largely apparent and in the interest of transparency noting the significant level of public interest in this application, there is benefit in putting the matter within the public domain and keeping the community informed.

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/1579 to demolish existing structures and construct shop top housing at Lot 45 DP 1052512, 42 Naval Parade, Erowal Bay not be supported by Council having regard to the reasons contained in Attachment 3 of this report.



Options

 Not support the development application (DA) in accordance with the recommendation of this report.

<u>Implications</u>: The matter is now before the Court for a decision. Council is obliged to respond to the appeal. This will require the engagement of accredited environmental lawyers, *potentially* counsel and experts. This will be at cost to Council.

The reasons for non support will assist in informing the Statement of Facts and Contentions which are the 'starting point' for proceedings.

2. Resolve to support the application.

<u>Implications</u>: Council would need to determine the grounds on which the application is approved, having regard to section 4.15(1) considerations. A position to support the application would be made known to the applicant. The applicant could choose to file a notice of discontinuance or continue through the Court process which may include mediation and negotiations concerning conditions of consent.

3. Alternative recommendation.

<u>Implications</u>: Council will need to specify an alternative recommendation and advise staff accordingly.



Figure 1 - Location Map

Background

Proposed Development

The DA seeks approval for the demolition of existing structures and construction of shop top housing, comprising two (2) commercial premises (being a total of 403sqm in gross floor area) and 17 dwellings:

- 15 x 2-bedroom dwellings and 2 x 3-bedroom dwellings;
- 40 car spaces and one (1) motorbike space provided onsite; and
- vehicular access from King George Street.



Figure 2 – Site Plan

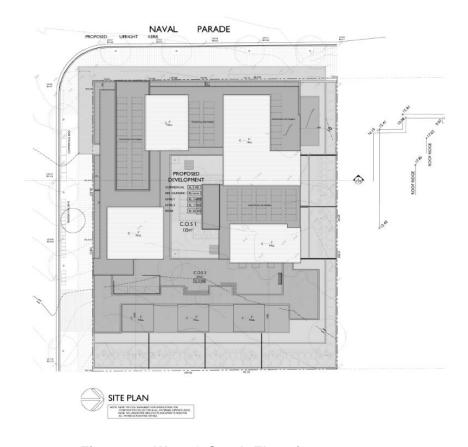


Figure 3 - West & South Elevations



WEST ELEVATION NAVAL PARADE ASPECT



SOUTH ELEVATION KING GEORGE STREET ASPECT



Figure 4 – East & North Elevations



EAST ELEVATION



NORTH ELEVATION

Figure 5 – Photomontages







Figure 6 - Landscape Plan (Ground Floor)

Subject Land

The development site comprises Lot 45 DP 1052512 (42 Naval Parade, Erowal Bay). Refer to Figure 1.

Site & Context

The development site:

- Currently contains a commercial building used as a general store and fuel station along with other ancillary structures and planted landscaping.
- Is zoned B2 Local Centre and 1,925sqm in area.
- Is identified as being potentially contaminated land, being PCL197. Council records indicate that this is due to use of the site as a service station.
- Is located at the corner of Naval Parade and King George Street with existing access available to both.
- Adjoins land zoned B2 Local Centre (to the north) and R2 Low Density Residential.





Figure 7 – Zoning Extract

<u>History</u>

The following provides details on pre-lodgement discussions, post-lodgement actions and general site history for context:

The proposed development was discussed with the applicant at a pre-lodgement meeting on 16 October 2019. Council responded to a number of questions/points for discussion including the height variation, street frontage, at grade car parking, residential interface and the retention of a loading area and drop off/in parking spaces within the road reserve. It is particularly noted that Council requested the development be designed in accordance with State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and the Apartment Design Guide (ADG).

Note: This Policy (SEPP) and the ADGs requires an applicant to consider design in detail including specific design principles including context and neighbourhood character (contained in Part 1, of the ADG).

- The DA was lodged on 15 June 2020.
- As a result of detailed assessment of the DA, additional information was requested from the applicant on three (3) occasions – 19 June 2020, 13 July 2020 and 12 August 2020. In relation to Council's request for additional information dated 12 August 2020, Council advised:

"Council has assessed the design quality of the currently proposed development particularly in relation to the design quality principles under Schedule 1, State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, and the Apartment Design Guide, and considers the current design does not respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

There needs to be further consideration of the local context (and the overall locality) given the subject site is in an established area, not currently undergoing significant



change or identified for change. Erowal Bay is a small coastal village. The site is also located within a small business zone surrounded by a low-density residential environment, comprising single to two-storey detached dwellings.

The proposed scale, bulk and height is not appropriate to the existing or desired future character of the street and surrounding buildings. The density is not appropriate to the site's context and not consistent with the area's existing or projected population. The design does not positively influence external amenity for neighbours.

It is requested that you consider the submissions received from the exhibition period in a re-design of this development to ensure it is compatible with the character of the local area."

- On 25 August 2020, the applicant confirmed that the use of the commercial space will be subject to future development applications for their use and fit outs.
- On 8 October 2020 and 12 October 2020, the applicant advised that they would not be submitting any further additional information or changes to the development in response to Council's request dated 12 August 2020, and requested the application be determined based on the currently submitted information.
- A Resident Briefing Meeting was held via a webinar on 18 November 2020. The issues raised included (but were not limited to) the proposed building design and incompatibility with the character of the surrounding area, incorrect characterisation, the lack of infrastructure and impact of increased traffic. There were also a number of questions raised in relation to the Court process.

Residents are not party to the Court proceedings. The matter is between the applicant and respondent (Council). However, it was noted that the current Court rules allow for residents to address the Court in a coordinated manner with up to six (6) objectors addressing the Court, with submissions to be provided in writing and addressing different issues.

Issues

<u>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</u>

Clause 4 of the SEPP outlines the development types for which this Policy applies, which includes development for the purposes of a residential flat building, shop top housing or mixed-use development with a residential accommodation component.

The proposed development is considered to be best defined as shop top housing as it consists of three (3) storeys with retail premises located on the ground floor and contains four (4) or more dwellings. In accordance with sub-clause 1(b) & (c) this Policy applies to the proposed development.

Design Quality Principles (Schedule 1) and the Apartment Design Guide

ADM Architects have designed the development with regard to the criteria within the SEPP and Apartment Design Guidelines (ADG). Council has however considered the design quality of the development in accordance with clause 28(2)(b) and (c) and an assessment has been completed (refer to Attachment 2).

In accordance with the provisions of clause 30(2) and (3) of the SEPP, development consent cannot be granted as the currently proposed development does not demonstrate that adequate regard has been given to the design quality principles and the objectives specified



in the ADG, being 3A-1 in relation to site analysis and 4M-1 and 2 in relation to the building facades.

Objective 3A-1 requests "site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context".

The supporting design guidance, that provides advice on how the objective can be achieved through appropriate design response, suggests that each element in the Site Analysis Checklist (under Appendix 1 of the ADG) should be addressed.

In this regard, the applicant requested Council refer to the architectural submissions and supporting Statement of Environmental Effects. However, it is considered that the submitted documentation has only addressed this in part. The site analysis has not adequately synthesised and interpreted the context and streetscape into opportunities and constraints that generate design parameters, particularly the relationship to and interface with adjacent properties. Accordingly, it does not satisfy the relevant objective.

Objectives 4M-1 and 2 request "building facades provide visual interest along the street while respecting the character of the local area" and "building functions are expressed by the facade".

The applicant addressed the relevant design guidance as follows:

"The façade includes a composition of varied building elements forming a base, middle and top (roof) of the building. All building services and rainwater pipes will be concealed within the structure."

It is considered that the proposed building does not reference the coastal character of the local area. Further, the design suggests a commercial ground floor use but the visual interest is limited, with the west elevation being relatively homogenous. See Figure 3. There is concern with the submitted design, therefore the objectives again, are not satisfied.

As detailed earlier in this report, Council requested additional information from the applicant to address this. However, the applicant advised that they would not be submitting any further additional information or changes to the development in response to Council's request and asked that the application be determined based on the currently submitted information.

Clause 4.3 of Shoalhaven Local Environmental Plan 2014 and clause 4.6 variation

The subject site is not mapped as having a maximum building height, accordingly the building height is not to exceed the default maximum permissible 11m height as per subclause (2A).

The proposed building exceeds the height by a maximum extent of approximately 0.4m (being 3.6%) as a result of architectural roof elements designed to allow solar access to the proposed dwellings.

Other parts of the roof of the building encroach to a lesser extent.





Figure 8 – Extract from SEE Attachment (2) by SET

Figure 2: Height Blanket showing the 11m Maximum Height of Building encroachments

The applicant has requested the provisions of clause 4.6 be applied. However, the applicant's request has not adequately addressed subclause 3 which requires consideration to be given to whether or not compliance with the development standard is unreasonable or necessary and that there are sufficient environmental planning grounds to justify the contravention of the standard.

The applicant considers the height suitable on the basis that the areas of height exceedance do not impact on the surrounding streetscapes, there are no additional solar access or privacy impacts, the height articulates the design, the variation is minor amongst other things. Whilst these comments may be correct and there is an 11m height maximum permitted, these design parameters must be taken into context having regard to a site analysis and assessment of neighbourhood character as foreshadowed in the SEPP and ADGs

Further, the proposal is considered inconsistent with the objectives of the relevant (height) standard in that the proposed development is not compatible with the height, bulk and scale of the existing development and character of the locality which is a modest high amenity coastal village.

Clause 4.3 (1) Height of buildings in the SLEP states:

The objectives of this clause are as follows—

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

As detailed earlier in this report, Council requested additional information from the applicant to address this, however, this has not been provided. The applicant in addressing this provision of the LEP relies on zoning permissibility, compliance with the FSR and that the non-compliant heights are setback from the street frontages and side setbacks. Whilst this may be the case, the bulk and scale of development having regard to the contextual setting is considered disproportionate.

Planning Assessment

The DA has been assessed under s4.15(1) of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 1.



Consultation and Community Engagement:

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 200m buffer of the site, during the period 15 to 29 July 2020.

178 public submissions were received in relation to Council's notification of the development, including a petition with 583 signatures.

177 were objections to the development.

Key issues raised as a result of the notification include but were not limited to matters listed below.

- Permissibility and incorrect characterisation;
- Non-compliance with the majority of Design Quality Principles under SEPP 65;
- Incompatibility with the character of the surrounding area height, bulk and scale;
- Impact of additional traffic and lack of car parking availability;
- Existing problems with Intersection of King George Street and Naval Parade;
- Lack of infrastructure to accommodate this development;
- Stormwater drainage impacts;
- Overlooking;
- Loss of views; and
- Lack of neighbour notification.

The assessment of the application considered the matters raised in the submissions (as prescribed by s4.15(d) and concluded on balance having regard to all the heads of consideration (s4.15 Evaluation), that the application should be refused. A detailed analysis can be found in the attached s4.15 assessment report.

Summary of Key Issues

Permissibility and incorrect characterisation

The proposal is best characterised as *shop top housing* under the Shoalhaven Local Environmental Plan (SLEP) 2014. The proposal is permitted within the zone with the consent of Council.

Having regard to Hrsto v Canterbury City Council (No 2) [2014] NSWLEC 121, it is noted that to qualify as shop top housing the relevant part of the proposed building must be "above" the relevant retail or commercial component. It is also worth noting the following in relation to the proposed dwellings:

"...dwellings do not need to be directly or immediately above ground floor retail premises or business premises in order to be characterised as "shop top housing". If it was intended that "shop top housing" be limited to dwellings that are directly or immediately above ground floor retail premises or business premises it is expected that those words would have been included in the definition of the term 'shop top housing'."

Further to this:

"...dwellings need only be at a floor level that is higher than the top of the ground floor retail or business premises and do not need to be contained in an envelope on the higher floor level that would be intersected by a line drawn vertically from within the envelope of the ground floor retail or business premises."

Having regard to Arco Iris Trading Pty Ltd v North Sydney Council [2015] NSWLEC 1113 in relation to the above, it is noted that that there does not need to be a true directly vertical correlation between the shop top housing component and the qualifying premises at the lower level.



Non-compliance with the majority of Design Quality Principles under SEPP 65

In accordance with the provisions of clause 30(2) and (3), SEPP 65, development consent cannot be granted as the currently proposed development does not demonstrate that adequate regard has been given to the design quality principles.

As detailed earlier in this report, Council requested additional information from the applicant to address this, however, this has not been provided.

Incompatibility with the character of the surrounding area - height, bulk and scale

The currently proposed development is considered <u>incompatible</u> with the low-key coastal character and ambience of the Erowal Bay locality.

It is noted that "compatible" does not encourage "sameness" in built form, but rather requires a development to fit comfortably within its urban context. It is considered that the design of the development does not currently achieve this having regard to the Land and Environment Court principle – "Surrounding development" found in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191.

With regard to considering what is a suitable height and bulk some guidance can be taken from the Land & Environment Court's principle, found in Veloshin v Randwick Council [2007] NSWLEC 428. In this regard, having considered the question / test if the area has a predominant existing character and does the proposal fit into that character, the response is that the building is in response to the planning controls, largely what is permissible in the zone, however as mentioned earlier, there is no strategic analysis of the locality and site which should inform the design by providing context. Having further regard to the question / test if the proposal looks appropriate, the response is that it will 'stand out' in contrast to the character of the area. The fact that the building is also seeking a height variation pursuant to clause 4.6 of the SLEP 2014, poses further doubt about the scale of the development and compatibility with the locality.

Impact of additional traffic and lack of car parking availability

The development is compliant with the onsite car parking requirements of SDCP 2014.

40 car spaces and one (1) motorbike space are proposed onsite.

The DCP requires a minimum 38 car spaces to be provided onsite.

In terms of the residential component as 'shop top housing', the DCP requires 28 onsite car parking spaces (rounded up from 27.5), being one (1) space per dwelling containing no more than 2 bedrooms (or rooms capable of use as a bedroom), two (2) spaces per dwelling containing 3 or more bedrooms (or again rooms capable of use as a bedroom), and for developments with three (3) or more dwellings, 0.5 car parking spaces per dwelling for visitors.

Regarding the proposed commercial premises at the ground floor, the DCP requires 10 onsite car parking spaces (rounded down from 10.075), being one (1) onsite car parking space per 40sqm of gross floor area as the land is not zoned B3 Commercial Core.

Council's Development Engineer raised no objections to this development in this regard, nor with the capacity of the existing road network and location of the site at the intersection of King George Street and Naval Parade, subject to recommended conditions of consent (if approved). On review, Council is satisfied with the conclusion/outcomes of the submitted traffic and parking impact assessment report. There is also no concern with the retention of the existing loading bay and operations along the Naval Parade frontage, although it is noted that whilst the report indicates that this is to be maintained, the submitted plans do not reflect this.



Financial Implications:

There are cost implications for Council as it will be required to respond to the appeal.

Legal Implications

A Class 1 application was filed with the Land and Environment with Council receiving the following notice:

This is an automatically generated email. Please do not reply.

Case number: 202000313821

Case title: Michael Mascaro v Shoalhaven City Council

Sitting date: 07/12/2020, 10:15AM

Online Court has been activated

At the time of writing this report, no other documentation was received.

The appeal is for a deemed refusal, which means that the application is considered to be refused as it was not determined by Council within the statutory processing time.

A directions hearing will set a timetable for the matter to be heard. This is usually by telephone between the Court and Council's legal representative (in the process of being engaged at the time of writing this report).

Summary and Conclusion

The proposed development does not satisfy the relevant provisions of SEPP 65 and SLEP 2014. Accordingly, Council is not satisfied that the development will sit comfortably in the coastal village setting.

The application is not considered capable of support, based on the current design, which has been assessed and found incompatible with the character of the surrounding area of Erowal Bay. Accordingly, a negative conclusion has been reached and recommendation made.

Attachment 3 contains the reasons not to support the application, for the endorsement of Council.





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

Address all correspondence to

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

shoalhaven.nsw.gov.au 🖪 🛛 📾 🕶 💆

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

Environmental Planning and Assessment Act, 1979 DA20/1579

TO:

Michael Mascaro C/- Hotondo South Coast PO Box 1057

being the applicant(s) for DA20/1579 relating to:

42 Naval Pde, EROWAL BAY - Lot 45 DP 1052512

REFUSED USE AND/OR DEVELOPMENT:

Demolition of Existing Structures and Construction of Shop Top Housing Comprising Two (2) Commercial Premises and 17 Dwellings

DETERMINATION DATE:

REFUSAL DATE:

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



Determination Notice by way of Refusal - Page 2 of 3 - DA20/1579

PART A

- 1. The development does not demonstrate that adequate regard has been given to the design quality principles and the objectives specified in the ADG, being 3A-1 in relation to site analysis and 4M-1 and 2 in relation to the building facades, in accordance with clause 30(2) of State Environmental Planning Policy 65 Design Quality of Residential Flat Development. The proposed scale, bulk and height is not appropriate to the existing or desired future character of the street and surrounding buildings. The density is not appropriate to the site's context and not consistent with the area's existing or projected population. The design does not positively influence external amenity for neighbours. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979.)
- The development is inconsistent with the provisions of clause 4.3 of Shoalhaven Local Environmental Plan 2014. The height, bulk and scale of the proposed development will not be compatible with the existing and desired future character of the locality. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979.)
- 3. The development application has not adequately demonstrated that the proposal will not have adverse environmental impacts on the built environment and social impacts on the locality. (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979.)
- The information submitted with the development application does not satisfactorily demonstrate that
 the site is suitable for the proposed use. (Section 4.15(1)(c) of Environmental Planning and
 Assessment Act, 1979.)
- Having regard to the design of the development and resultant issues of compatibility, character, residential amenity and issues raised in submissions, the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979.)

RIGHTS OF REVIEW AND APPEAL

Determination under Environmental Planning and Assessment Act, 1979

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

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

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

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.



Determination Notice by way of Refusal - Page 3 of 3 - DA20/1579

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

GENERAL ADVICE

Privacy Notification

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

SIGNED on behalf of Shoalhaven City Council:



DE20.133 DA20/1751- 42 Lyrebird Drive NOWRA - Lot 72 & DP 1198691

DA. No: DA20/1751/4

HPERM Ref: D20/478771

Section: Development Services

Approver: Phil Costello, Director - City Development

Attachments: 1. DRAFT - Determination - Refusal - 42 Lyrebird Dr NOWRA - Lot 72

DP1198691 (under separate cover) ⇒

2. Planning Report - 42 Lyrebird Drive NOWRA - Lot 72 DP 1198691

(under separate cover) ⇒

3. Report - Flood Impact Statement - Lot 72 DP1198691 - 42 Lyrebird Dr

Nowra (under separate cover) ⇒

4. Plans (excluding habitable floor plan) - 42 Lyrebird Dr Nowra - Lot 72

DP1198691 (under separate cover) ⇒

5. A copy of DETERMINATION - APPROVAL - DA18/2175 - 38 Lyreboird

Dr Nowra - Lot 74 DP 1198691 (under separate cover) ⇒

Description of Development: Construction of dual occupancy (attached)

Owner: J J Reminis

Applicant: Hotondo South Coast

Notification Dates: 7 August 2020 to 22 August 2020

No. of Submissions: No submissions received

Purpose / Reason for consideration by Council

Council resolved on 7 April 2020 that staff are not to refuse applications, instead the refusal of a Development Application (DA) must only be by Council / Committee resolution (MIN20.240).

The DA is recommended for refusal.

Recommendation (Item to be determined under delegated authority)

That Development Application No. DA20/1751 for the construction of dual occupancy (attached) be determined by way of refusal for the reasons set out in the draft Notice of Determination at **Attachment 1**.

Options

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

<u>Implications</u>: The proposal would not proceed. The applicant can however apply for a section 8.2 review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court against Council's decision.



2. Approve the DA.

<u>Implications</u>: Council would have to provide the grounds to support the proposal, that is, provide reasons to support the development, having regard to section 4.15 considerations. This would require a further report to Council attaching a suite of conditions.

3. Alternative recommendation.

<u>Implications</u>: Council will need to specify an alternative recommendation and advise staff accordingly.

Location Map

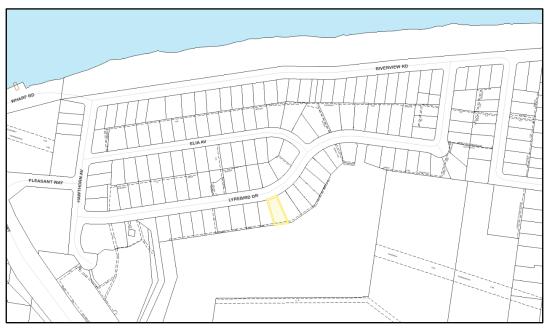


Figure 1: Map showing location of the site (outlined in yellow)

Background

Proposed Development

The proposal is for the construction of an attached dual occupancy comprising 2×2 bedroom dwellings. The habitable rooms are elevated above the Flood Planning Level and there is an enclosed subfloor space which also houses a single garage for each dwelling. Plans of the development can be found in **Attachment 4** to this report.

A separate Strata subdivision application No. SF10818 (lodged with Council on 6 August 2020) is pending the determination of this application.

On 6 August 2019, Council resolved to support a similar attached dual occupancy on land at No. 38 Lyrebird Drive (to the east) (DA18/2175) that:

- 1. Council accept Development Application DA18/2175 for the erection of an attached dual occupancy at Lot 74 DP 1108691, 38 Lyrebird Drive Nowra, a further report be provided to Council with suitable conditions for consent.
- 2. The next Housekeeping Amendment seek to consider inserting provisions in the Shoalhaven LEP to rule out dual occupancy development in the vicinity of Riverview Road and Lyrebird Drive, Nowra.

The conditions of consent for the approved DA18/2175 can be found in **Attachment 5.** If Council were of a mind to approve DA20/1751, conditions of consent similar to DA18/2175 would be applied. These conditions however would need to be amended to be relevant to this application subject of this Council report and should also be based on updated conditions of consent to ensure currency and consistency with other dual occupancies.

Examples of changes that would be required include (but not limited to) the table of approved documents which would need to be adjusted to reflect the plans under consideration, the contributions table would need to be specific and up to date for this proposal, plus formatting would need to be consistent with current approvals.

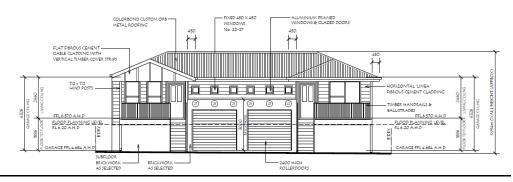


Figure 2: Street (North) Elevation of the proposed development DA20/1751

Subject Land

The subject site:

- Is a vacant parcel of land, devoid of trees and is zoned R2 Low Density Residential under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014).
- Is identified as Lot 72 in DP 1198691 with a street address of 42 Lyrebird Drive, Nowra.
- Has an area of 830.20m² and is located within an established residential area. The site is essentially rectangular and flat.
- Access to the site will be provided from Lyrebird Drive.
- The adjoining and surrounding land use is predominately low scale detached single dwelling houses of a single and two-storey construction.
- Is mapped as a flood prone land and is categorised as High Hazard Floodway in accordance with Shoalhaven Flood Mapping with the following flood levels:
 - 2050 Flood Planning Level of 6.2m AHD;
 - 2050 1% AEP (Annual Exceedance Probability) flood level of 5.7m AHD; and
 - o 2050 PMF (Probable Maximum Flood) of 8.2m AHD.
- If the site is considered to have an average height of 4.6m AHD, this means that the likely depth of floodwaters would be:
 - o 1.6m in the 2050 1% AEP flood event; and
 - o 3.6m in the 2050 Probable Maximum Flood
 - The velocity for the 1% AEP flood event is 1.2m per second.
- Is mapped as containing Class 4 acid sulfate soils (ASS) and is located approximately 69m from Class 3 ASS.
- Is not identified as a bush fire prone land or potentially contaminated land (PCL).





Figure 3: Aerial photograph of the site and immediate surrounds



Figure 4: Street view of the subject site

Site & Context

The site is part of a low-density residential subdivision approved in 1972 that includes Riverview Road, Ella Avenue and Lyrebird Drive. The site is within the Shoalhaven River floodplain and it is located east of the Nowra Bridge.

The Riverview Road Area Floodplain Management Plan (Plan) was adopted by Council in 2002 and applies to the site. The Riverview Road Area Floodplain Management Plan (Outcomes Section at page 2) found that the area is currently protected to the 1% AEP flood level from direct inundation from the Shoalhaven River by the 2 metre high Riverview Road levee which was constructed in 1986/1987.



The Plan further found that in this area (west of Ferry Lane) the flood hazard is low for events less than a 1% AEP and high for larger events because of overtopping of the levee. The report states that "it is likely that the community will not be prepared for the sudden change in hazard which may occur with levee overtopping or failure".

History

The Plan states that approvals for the subdivisions in the Riverview Road, Ella Avenue and Lyrebird Drive areas were made in 1972 under SF3167. The subdivision plan for the stage containing the subject site was registered on 14 October 2014.

Issues

1. Issue - Flooding

Clause 7.3 - Flood Planning of the Shoalhaven Local Environmental Plan 2014

The site is below the 2050 Flood Planning Level of 6.2m AHD, therefore the application has been assessed against the provisions of clause 7.3 – Flood Planning of the Shoalhaven Local Environmental Plan 2014 (SLEP 2014) (see Clause 7.3 Assessment Table at **Attachment 1**). Council's Natural Resources & Floodplain have reviewed the application and have determined that the application does not comply with several subclauses of clause 7.3. A condensed assessment of the application against clause 7.3 is provided below.

This clause has been addressed by the consultant in a submitted *Flood Impact Statement* prepared by Rienco Consulting (Ref: 20096 Report 001 Rev 0) dated 23/6/2020 (see a copy at **Attachment 3**).

- (1) The objectives of this clause are as follows—
- (a) to minimise the flood risk to life and property associated with the use of land,
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
- (c) to avoid significant adverse impacts on flood behaviour and the environment.

Consultant's comment:

On page 4 of the Flood Impact Statement it is stated in relation to these objectives that: In relation to objective 1(a):

"Future risk to property and life is minimised by:

- Developing residentially zoned land in accordance with best practice DCP provisions.
- Ensuring habitable floor levels set at a minimum of the 1% AEP flood level plus 500mm.
- Safe refuge available in the Probable Maximum Flood."

In relation to objective 1(b):

"It is our view that the development is compatible with the lands flood hazard, as it will directly facilitate appropriate future development in accordance with the residential zoning.

Sea level rise has been directly taken into account in the supplied FPL from SCC, and we have adopted this FPL for use in this study."

In relation to objective 1(c):

"It is our view that the impacts arising from the proposed development are not significant or adverse on flood behaviour or the environment, as they are directly commensurate



with the lands zoning. Losses of flood storage in the Lower Shoalhaven River are immaterial."

Discussion:

The land is categorised as High Hazard Floodway in accordance with Shoalhaven Flood Mapping. Given current flood information, the land would not be considered suitable for a dual occupancy or subdivision. Having regard to the site's zoning (R2 Low Density Residential) and Development Control Plan requirements (discussed later in this report). The flood risk to life and property could be **minimised** by limiting development on the site to a single dwelling. While even single dwellings are not strictly compatible with High Hazard Floodway category, allowing a single residential dwelling on lots approved in the subdivision, is a reasonable concession having regard to the historic context and flood risk that applies to the site and locality.

Increasing potential residential densities by approving another dual occupancy development is not desirable nor commensurate with the flood hazard.

In accordance with the Flood Certificate contained within *Flood Impact Statement*, the 2050 PMF is 8.2m AHD. The proposed habitable floor levels are 6.57m AHD. The 2050 PMF would therefore result in inundation above the habitable floor levels of 1.63m, which would result in the flood risk to life and property. Providing a safe refuge on site is considered impossible. The increase in density would result in additional people required to be evacuated from the site in the event of a flood and affect the safe evacuation of the site.

The enclosed subfloor space of approximately 116.38m² will impede flood flows. Based on the *Flood Impact Statement*, the site falls from RL +4.61m AHD in the rear to RL +4.41m AHD at the Lyrebird Drive frontage. The 2050 1% AEP flood will result in inundation of between 1.59m and 1.79m across the site with a velocity of 1.2m/s. The PMF will result in floodwater depths across the site of between 3.59m and 3.79m, with a similar velocity.

No calculations or evidence have been provided in support of the assertion that there will be no significant adverse effects on flood behaviour that may potentially affect nearby properties.

It is not considered that the applicant has satisfactorily demonstrated that the development will minimise the flood risk to life, property associated with the use of land and the environment. The proposed development does not satisfy the above objectives.

<u>Subclause 3 of clause 7.3 states those matters that must be satisfied prior to the grant of development consent. Clause 7.3((3) states as follows:</u>

- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—
- (a) is compatible with the flood hazard of the land, and
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding, and
- (f) will not affect the safe occupation or evacuation of the land.



Consultant's comment:

A Flood Impact Statement (see copy at **Attachment 3**) addresses the requirements of these subclauses as follows:

In relation to subclause (3)(a):

On page 4 of the *Flood Impact Statement* it is stated in relation to this requirement that:

"It is our view that the proposed development is compatible with the flood hazard of the land. In particular, this is achieved by the 'pier' construction of the development allowing the 1% AEP flood to pass safely underneath the development."

In relation to subclause (3)(b):

On page 4 of the Flood Impact Statement it is stated in relation to this requirement that:

"It is our view that the impacts arising from the proposed development are not significant or adverse on the potential flood affectation of other development of properties."

In relation to subclause (3)(c):

On pages 4 and 5 of the *Flood Impact Statement* it is stated in relation to this requirement that:

"It is our view that the proposed development meets this requirement. The proposed habitable FFL's are entirely above the Flood Planning Level, and the development meets the controls of SCC's DCP (Chapter G9)."

In relation to subclause (3)(e):

On page 5 of the Flood Impact Statement it is stated in relation to this requirement that:

"It is our view that the proposed development will not result in unsustainable social and economic costs to the community as a consequence of flooding. This is demonstrated, and managed, by:

- Improvement of residentially zoned land.
- Ensuring habitable floor levels set at a minimum of the 1% AEP flood level plus 500mm
- Use of flood compatible materials below the Flood Planning Level.
- Safe refuge in the PMF."

In relation to subclause (3)(f):

On page 5 of the Flood Impact Statement it is stated in relation to this requirement that:

"It is our view that the proposed development does not hinder evacuation, where it is ever required."

Discussion:

(a) is compatible with the flood hazard of the land, and

The land is categorised as High Hazard Floodway in accordance with Shoalhaven Flood Mapping.

Given current flood information, the land would not be considered suitable for a dual occupancy or subdivision. Increasing potential residential densities by approving another dual occupancy development is not compatible with the land's high flood hazard in regard to safe evacuation or providing a safe refuge on site during flood event.



The 1% AEP flood will not be able to pass underneath the enclosed subfloor space (including the garages) which has a total area of 116.38m².

The 'pier' construction referred to in the *Flood Impact Statement* does not apply to the enclosed subfloor area. The enclosed subfloor area would impact on the passing of any debris and will prevent the easy inundation and flows through that area. Given the above, it is not considered that the proposal is compatible with the flood hazard of the land.

(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and

The enclosed subfloor space including the enclosed garages of approximately 116.38m² will impede the movement of floodwater. The 2050 1% AEP flood will result in inundation of between 1.59m and 1.79m across the site with a velocity of 1.2m/s. The PMF will result in floodwater depths across the site of between 3.59m and 3.79m.

No evidence has been provided by the applicant in support of this assertion that there will be no significant adverse effects on other properties during a flood event.

(c) incorporates appropriate measures to manage risk to life from flood, and Shoalhaven Development Control Plan 2019 Chapter G9: Development on Flood Prone Land provides information and development controls needed to prepare and assess development applications on flood prone land and includes appropriate measures to manage risk to life from flood

Council's Natural Resources & Floodplain unit has reviewed the application and have determined that the application does not demonstrate compliance with the controls in SDCP 2014 Chapter G9.

The proposal provides no practical safe refuge from the Probable Maximum Flood level, given that the habitable floor levels would be inundated by 1.63m of floodwater in the PMF.

Additionally, there is no flood free evacuation route available to the property, and the nearest land above the 1% AEP flood level is located approximately 310m to the west near the intersection of Lyrebird Drive with Hawthorn Avenue).

In a flood event the development will increase the need for evacuation by emergency services. Additional demand for evacuations increases the cost to the community and the risk to emergency services personnel.

It has not been demonstrated that the proposal incorporates appropriate measures to manage risk to life from flood.

(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding, and

The development cannot be described as "Improvement of residentially zoned land that is flood free in the 1% AEP event" as the land is clearly flooded by the 1% AEP flood.

The provision of safe refuge is not achieved, as the habitable floors would be inundated by 1.63m of floodwater in the 2050 PMF. As mentioned earlier, in a flood event the development will increase the need for evacuation by emergency services. Additional demand for evacuations increases the cost to the community and the risk to emergency services personnel.

The risk of unsustainable social and economic costs would be reduced by limiting development on the site.

(f) will not affect the safe occupation or evacuation of the land.

As mentioned earlier, the habitable floor levels would be inundated by 1.63m of floodwater in the PMF during flood event. The proposal will affect the safe occupation and safe refuge of the land in a flood event.



The development will increase the need for evacuation over that which would be required if the land was developed with a single dwelling. There is no flood free access to the land in the event of a flood. The nearest land above the 1% AEP flood level is located approximately 310m to the west.

In a flood event, the development in its current form will increase the need for evacuation by emergency services personnel which would increase the cost to the community and the risk to emergency services personnel.

The applicant has not demonstrated to the satisfaction of council that the development will not affect the safe occupation or evacuation of the land.

In summary, it has not been adequately demonstrated that the requirements of clause 7.3 have been met as the proposal will:

- Increase the flood risk to life and property associated with use of land and other properties;
- Adversely affect flood behaviour;
- Result in social and economic costs to the community as a consequence of flooding;
 and
- Affect the safe occupation or evacuation of the land.

Shoalhaven DCP Chapter G9: Development on Flood Prone Land

The application does not comply with relevant clauses under SDCP 2014 Chapter G9 in particular:

- the generic flood related development controls for the High Hazard Floodway category under Clauses 5.1, 5.2 and 5.3 of Chapter G9; and
- the site specific flood related development controls for the Riverview Road Area under Clause 5.4 of Chapter G9;

The Riverview Road Area controls and the generic controls set out in Schedule 2 to Chapter G9 for the High Hazard Floodway category are outlined below.

The important elements of these controls are:

- Within the Riverview Road/Ella Avenue/Lyrebird Drive subdivision area, no dual occupancies or subdivisions will be permitted;
- Within the High Hazard Floodway category, the 'other residential/habitable' category (which includes dual occupancy) is not suitable for this category of flood hazard.

Council's Natural Resources & Floodplain unit has reviewed the application and recommended that the proposal be refused due to significant non-compliance with this Chapter and Clause 7.3 of the SLEP 2014 (Referral advice at **Attachment 2**). This is primarily because the land is located within a High Hazard Floodway and the development increases the risk to life and property by increasing occupancy in this area.

Council is aware of other existing/approved similar dual occupancy development at No. 38 Lyrebird Drive (DA18/2175). However, approving this application may also result in cumulative impacts in the future having regard to the number of these types of development in High Hazard Floodway.

The objectives of this Chapter are to:

- i. Reduce risk to life and property resulting from floods.
- ii. Ensure that the impacts of the full range of flood sizes up to and including the probable maximum flood (PMF) are considered when assessing development on flood prone land.



- iii. Ensure that the impact of climate change is considered when assessing development on flood prone land.
- iv. Ensure the future use of flood prone land does not cause undue distress to individuals or unduly increase potential flood liability to individuals or the community.
- v. Incorporate site specific floodplain management recommendations from local floodplain risk management plans into Council's overall planning framework.

Consultant's submission

The applicant provides a detailed response to the SDCP provisions in the Flood Impact Statement at **Attachment 3**.

The Flood Impact Statement acknowledges the 'prohibition' on dual occupancies and subdivision in the specific controls for the Riverview Road Area but argues this should be flexibly interpreted and that density as measured by Floor Space Ratio (FSR) ought to be the determining control in this regard. The applicant's argument regarding the appropriateness of FSR is expanded upon in the Flood Impact Statement at **Attachment 3.**

Discussion:

The specific objectives that are relevant to the DCP provisions in question are objectives (iv) and (v). The applicant has not addressed the DCP objectives and has not satisfactorily demonstrated that these provisions should be set aside, nor have they provided an alternative that satisfactorily addresses the objectives.

Whilst it is acknowledged that the provisions of a DCP can be flexibly applied having regard to \$4.15(3A) (b) and that the controls permitting development are embedded in the SLEP 2-14, the prohibition in the DCP is well founded. The stated prohibition is grounded in the process Council went through in consultation with the community, State agencies and emergency services in developing and adopting the Riverview Road Area Floodplain Management Plan. The position that lead to the current planning controls for this area should not be lightly set aside for an individual development. Added to this is the potential to establish a precedent for future development, having regard to there being a number of vacant residential allotments in this area. This was also mentioned in the previous report for DA18/2175.

The 2050 Probable Maximum Flood (PMF) would result in inundation above the habitable floor levels of 1.63m, which would result in the flood risk to life and property associated with the use of land during flood event as providing a safe refuge on site is considered impossible. The increase in population would affect the safe evacuation or safe refuge of the land. There is no flood free access to the land in the event of a flood. The nearest land above the 1% AEP flood level is located approximately 310m to the west (near the intersection of Lyrebird Drive with Hawthorn Avenue), refer to Figure 1 above.

In a flood event, the development in its current form will increase the need for evacuation by emergency services personnel which would increase the cost to the community and the risk to emergency services personnel. Having regard to the site's zoning (R2 Low Density Residential), the flood risk to life and property could be minimised by limiting development. In this regard the DCPs adopted limitation on dual occupancy development is considered well founded.

DCP Requirements

5.1 General

A1.1 The development satisfies the requirements as shown in the planning matrix at Schedule 2 including climate change considerations; and



The table for the High Hazard Floodway category in Schedule 2 identifies the category as being "Not suitable for development" in respect of Land Use Category "A(II) Other Residential / Habitable" (this land use category includes dual occupancies).

Accordingly, the land, being categorised as High Hazard Floodway, is not considered to be suitable for the proposed dual occupancy development and is therefore noncompliant with A1.1

Schedule 2 also states that land in the High Hazard Floodway category is not suitable for single residential buildings, but contains the following concession in a note to the table:

"This type of development is not suitable within the risk category - however, if existing use rights (as defined in the Environmental Planning and Assessment Act 1979) can be established and there is no other option, the conditions as per Schedule 2 will apply."

It is clear that the application currently before Council does not meet all of the controls that would apply to the less intensive development of a single residential dwelling. Additionally, no evidence of any calculations or modelling has been submitted to ensure the building can withstand forces of floodwaters including debris and buoyancy forces up to the PMF scenario.

Based on the site plan, the building footprint is 299.07m² which exceeds the 250m² threshold in this control. The *Flood Impact Statement* states that a detailed and expensive hydraulic impact is not required given the site is large and any minor impacts can be mitigated prior to them being transferred to adjoining land. The *Flood Impact Statement* also states that the proposed building is designed on 'bearers and joists' and is thus open underneath to allow floodwaters to flow beneath it.

The concession where no hydraulic impact report is required is not satisfied, as the enclosed subfloor and garage space of approximately 116.38m² would obstruct flood flows.

There is no reliable access for either emergency vehicles or pedestrians during a 1% AEP flood event. The nearest flood free land in a 1% AEP flood event is 310m to the west, near the intersection of Lyrebird Drive and Hawthorn Avenue. The public road between the site and the nearest flood free land has a greater depth of inundation than the site itself. In the 1% AEP flood event, the site would be inundated by floodwaters with a depth of between 1.09m (rear boundary and 1.29 m (street frontage) with a predicted velocity of 1.2m/s.

No flood evacuation plan has been prepared or submitted with the application. Based on the consultant's statement in the Flood Impact statement, this acceptable solution has not been met and basically assigns responsibility to the evacuation authorities during flood event which would add significant cost and disruption to the community or the SES. Further, it is noted that while the rate of rise in the Lower Shoalhaven may be relatively slow, the risk of inundation to this property in the Riverview Road area would arise from overtopping of the Riverview Road levee, which would result in much more rapid inundation of the area than with a natural rate of rise.

A1.3 Buildings and structures are constructed in accordance with the Building Code of Australia – ABCB Standard for Construction of Buildings in Flood Hazard Areas. The controls in this Chapter are to be used in instances where this Chapter specifies more stringent controls; and; Buildings and structures are designed to withstand the forces of flood waters in accordance with best practice engineering standards;

While the development may be capable of satisfying this requirement, no evidence or engineering calculations have been submitted to verify the building and structures are capable to withstand the forces of flood waters in accordance with best practice engineering standards. This is however a matter that is cable of being 'conditioned'.

A1.5 Openings in structures such as fences or the like will be provided below the flood planning level to allow free flow of water; and where relevant;



The Flood Impact Statement states that the building is supported on piers to allow

Figure 5 provides an extract from the Sub Floor Plan which shows the enclosed subfloor area and garages.

floodwaters up to the FPL to flow under the building, however, does not account for the

enclosed subfloor spaces and garages of about 116.38m².

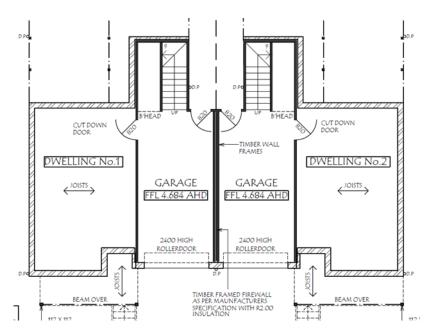


Figure 5 – Extract of the proposed sub-floor of the dual occupancy

A1.6 Building foundations are designed by a suitably qualified geotechnical engineer to be suitable for grounds with potentially reduced bearing capacity under flooding conditions; and

No evidence was supplied to support the proposal's compliance with this acceptable solution. However, this is something that could be 'conditioned'.

A1.8 A report demonstrating that all performance criteria have been met is supplied with the development application.

The submitted *Flood Impact Statement* addresses the performance criteria underpinning the Acceptable Solutions under Clause 5.1. The report states that the proposed development meets or exceeds the assessment criteria.

Based on the response provided in the *Flood Impact Statement* and review thereof, it is not considered however that all performance criteria have been met.

5.2 Fill or Excavation on The Floodplain

A2.1 The development satisfies the requirements as shown in the planning matrix at Schedule 2.

The table for the High Hazard Floodway category in Schedule 2 identifies the category as being "Not suitable for development" in respect of Land Use Category "E Earthworks".

Accordingly, the land, being categorised as High Hazard Floodway, is not considered to be suitable for the proposed earthworks associated with the development on site and is therefore noncompliant with A2.1.

5.3 Subdivision in the Floodplain

A3.1 The development (subdivision and intended future use) satisfies the requirements as shown in the planning matrix at Schedule 2;



A separate Strata subdivision application SF10818, was lodged with Council on 6 August 2020 to subdivide the proposed dual occupancy on the subject site. As shown in the planning matrix at Schedule 2 and Table below under subclause 5.4.5 – Riverview Road Area, no subdivision is permitted within Lyrebird Drive Subdivision as it located in High Hazard Floodway, therefore non-compliant with A3.1.

5.4 Site Specific Flood Related Development Controls

5.4.5 Riverview Road Area states:

Site specific flood related development controls:

Location / Type of Development	Specific Controls
All of Riverview Road Area FRMP Study Area	No new subdivision approvals will be granted as it would increase the demand on the rescue services and the risk to life. The minimum required floor level for infill development and reconstruction is the 1 in 100 year pre levee flood level plus a freeboard of 0.5m for habitable rooms.
New residential buildings where approved in accordance with the zoning requirements	Structural soundness of completed works to withstand water and debris damage up to the 0.2% AEP (1 in 500 year) event is to be certified by a suitably qualified structural engineer. Owners must have measures in place to enable them to self evacuate to not place additional burden on Emergency Services
New residential buildings within:	No Dual Occupancies or subdivisions will be permitted.
 Riverview Road, 	
 Elia Avenue 	
 Lyrebird Drive subdivision 	
Lot 7 DP809132	
Lot 1 DP1053438	
Lot 2 DP1053438	
Lot 6 DP538956	
Lot 1 DP449102	
All vacant land not already subdivided.	

As shown in Table above, dual occupancies or subdivisions are not permitted within Lyrebird Dr subdivision area. This recommendation adopted from the Riverview Road Area Floodplain Risk Management Plan in 2002. The main reason for the restriction of development of dual occupancies in Lyrebird Drive subdivision is to limit the increase in population requiring evacuation and risk to life/property. If Council supports the development however, it follows that support would have to be granted to the subdivision as the impacts of the development and flood issue were assessed and deemed acceptable for the dual occupancy.

Issue - Other DCP departures/ alternative solutions - Shoalhaven DCP Chapter G13: Medium Density and other Residential Development Setbacks and Decking Area

The applicant has sought an alternative or performance-based solution in regard to;

- Acceptable Solutions A5.1 in relation to the proposed side setbacks of both dwellings;
- Acceptable Solutions A5.3 in relation to the garage setback behind the front building line; and
- Acceptable Solutions A17.3 in relation to the proposed dimension/setback of the decking area of both dwellings.



The acceptable solutions are:

- 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 (of the DCP).
- A5.3 Garages must be setback a further 1m behind the front building line.
- A17.3 Where the private open space of a dwelling is provided at the ground level, it shall:
 - Include a defined hardstand area (e.g. concrete, paving, decking) of usable space which:
 - Is setback at least 1.2m from an external boundary.
 - Has a minimum dimension of 5m x 4m, of which 50% shall be covered to provide protection from the elements.
 - Have a minimum dimension of 2m for all other areas.
 - Have a gradient no steeper than 1:20.
 - Be adequately screened to provide privacy to residents.

Discussion

The proposed alternative/ performance-based solution in regard to the above are considered reasonable for the following reasons:

- It is considered that the proposal is still consistent with the objectives of this chapter and the relevant performance criteria underpinning the acceptable solutions.
- The proposal is consistent with the character of the area. The dwellings have been
 designed with suitable levels of articulation and windows on eastern and western
 elevation have been positioned/setback to minimise overlooking to living area and
 private open space of adjoining properties.
- Impacts upon the existing streetscape would be minimal.
- There will be no adverse impacts on the amenity of adjoining properties in terms of overshadowing or loss of view.
- A boundary fence will ensure that there are minimal privacy impacts upon adjoining properties.
- The proposal maintains adequate provision for the on-site car parking including manoeuvring area. Vehicles can safely enter and exit the proposed garage and enter/exit the subject site.
- The areas of functional and usable space would be of a suitable size to suit the projected requirements of future residents, given also that the remainder of the open space provided as grass and landscaping exceeds the minimum 35sqm requirement.
- The reduced decking area is capable to be used as an extension of the function of the dwelling for relaxation, dining, entertainment, active recreation and children's play.
- The departure from the acceptable solutions is unlikely to set an undesirable precedent in the area.
- No submissions were received during the notification period actively objecting to the proposal.

Planning Assessment

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

The applicant has sought an alternative or performance-based solution under the SDCP Chapter G13 - Medium Density and other Residential Development for setbacks and the decking area which have been found satisfactory.



The key issue with respect to this application however is flooding which forms the basis for refusal. This issue has been discussed throughout this report.

Policy Implications

Riverview Road Area Floodplain Management Plan and SDCP 2014 Chapter G9

This Floodplain Management Plan (The Plan) was prepared in accordance with the NSW Flood Prone Land Policy and NSW Floodplain Development Manual as part of the Shoalhaven Flood Program. It was adopted by Shoalhaven City Council in 2002 following extensive consultation with the public, State agencies and emergency services organisations.

As detailed in the report above, the controls in Chapter G9 are based on the findings and recommendations of The Plan. Also, assessment of development proposals under Shoalhaven LEP2014 Clause 7.3 (Flood Planning) and under Section 4.15 of the EPA Act are informed by the findings and recommendations of The Plan.

Dual occupancies and subdivision are development types that were not supported by Council when it adopted the Riverview Road Area Floodplain Management Plan.

If Council were of a mind to approve DA20/1751, this would be contrary to the development standard in SDCP 2014 Chapter G9 that currently does not permit dual occupancies. Further, more similar applications could then be expected, as mentioned with the 2018 application, having regard to the number of vacant allotments in this area and zone that applies to the land.

Council has approved two (2) dual occupancy developments in the area; one in 1993 (DA93/1800) – 37 & 37A Lyrebird Dr and another one in 2000 (DA00/1146) – 14 Riverview Road before the Riverview Road Area Floodplain Management Plan was completed and Chapter G9 of SDCP 2014 was adopted.

There are currently 8 vacant allotments (including No.42 Lyrebird Drive). The most recent and similar dual occupancy development approved and constructed is at No. 38 Lyrebird Drive. Approving this application may encourage similar applications.

Consultation and Community Engagement:

The notification was made in accordance with Council's Community Consultation Policy. The notification was for a two-week period 7 August 2020 to 22 August 2020

No submissions were received in relation to Council's notification of the development.

Financial Implications:

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending any appeal in the NSW Land and Environment Court, should the applicant utilise appeal rights afforded under the EP&A Act.

Legal Implications

Pursuant to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. If such a review is ultimately pursued (if the recommendation is adopted) the matter would be put to Council for consideration. Alternatively, an applicant who is dissatisfied with the determination of the application by the Council may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act. Applicants can choose to do both, setting aside the Appeal pending resolution of the review, noting there are time limitations with respect to lodging applications for review and appeal.



Council is protected in its decisions relating to floodplain management by Section 733 of the Local Government Act 1993 (LG Act), provided it acts (or chooses not to act) in good faith.

Council may not be seen to have acted in good faith if it was to approve a development application that is clearly inconsistent with an adopted Floodplain Management Plan. This could, for instance, expose Council to actions in relation to losses encountered due to flooding of the approved development or in increasing the risk to other properties, people and emergency services personnel.

Approving this application will reinforce a precedent set by the previous approval and potentially result in cumulative impacts in the future having regard to the number of these types of development in high hazard floodway.

Summary and Conclusion

This application for an attached dual occupancy at 42 Lyrebird Drive is not supported, based on assessment against the provisions of Clause 7.3 of the Shoalhaven LEP 2014 and SDCP 2014 in particular Chapter G9 relating to development on flood prone land.

The land is within the High Hazard Floodway category in the Riverview Road Area. The findings and recommendations of the Riverview Road Area Floodplain Management Plan adopted by Council in 2002 state that no dual occupancies or subdivisions should be approved in this area. It is accepted that the levee may protect the area up to the 1% AEP flood; however, in the event of a bigger flood, the levee will be overtopped, and the area will rapidly change from Low Hazard conditions to High Hazard conditions.

The fundamental issue in this area is managing evacuation in the event of a flood greater than the 1% AEP, and minimising the risk to life, for both residents and for the emergency service personnel who will inevitably become involved in the evacuation task.

Chapter G9 of SDCP 2014 seeks an equitable outcome for existing landowners by allowing development of vacant residential lots with single dwellings, despite the flood hazard, but excludes dual occupancies or subdivisions which would increase the number of households or occupancies in this area.

It is recommended that the application be refused for the following reasons:

- 1. The development does not satisfy the objectives and provisions of clause 7.3(3) of the SLEP 2014, which Council must be satisfied of when granting development consent to an application in flood prone land (Section 4.15(1)(a)(i) of EP&A Act).
- 2. The development does not comply with the relevant provisions of Chapter G9 Development on Flood Prone Land of Shoalhaven Development Control Plan 2014 (Section 4.15 (1) (a) (iii) of EP&A Act).
- 3. The site is not considered suitable for the development due to its location within a High Hazard Floodway (Section 4.15 (1) (c) of EP&A Act).
- Approval of the development would be contrary to the public interest (Section 4.15 (1) (e) of EP&A Act) given that the site is flood affected and the development is contrary to Council's land use controls.



DE20.134 SF10686 – Red Gum Dr Ulladulla – Lot 600 DP 1249606 & Lot 2 DP 1076005

DA. No: SF10686/4

HPERM Ref: D20/480834

Section: Development Services

Approver: Phil Costello, Director - City Development

Attachments: 1. Determination - Refusal U

2. Planning Report – S4.15 Assessment (under separate cover) ⇒

3. Plans - Amended Subdivision Layout J.

4. Reports - Fauna & Flora Assessment (under separate cover) ⇒

5. TfNSW Referral Response J.

6. Plans - Swale Drain and Runoff Calculations J.

Description of Development: Residential subdivision to create eight (8) Torrens Title

allotments, including seven (7) residential allotments, one (1) public reserve lot, and associated site works within the

subdivision approved by SF9275

Owner: Hazcorp Pty Ltd and Transport for NSW

Applicant: Rygate & West Ulladulla

Notification Dates: 27 November 2018 to 12 December 2018

No. of Submissions: Nil

Purpose / Reason for consideration by Council

Council resolved (7 April 2020) that staff are not to refuse applications, instead the refusal of a Development Application (DA) must only be by Council / Committee resolution (MIN20.240).

The DA was considered by the Committee on 4 August 2020 and deferred for further assessment (MIN20.541). Following this further detailed assessment, the DA is recommended for refusal.

Recommendation (Item to be determined under delegated authority)

That Development Application SF10686 for a residential subdivision to create eight (8) Torrens Title allotments, including seven (7) residential allotments, one (1) public reserve lot, and associated site works within the subdivision approved by SF9275 at Lot 600 DP 1249606 and Lot 2 DP 1076005, Red Gum Drive, Ulladulla, be refused for the reasons contained in Attachment 1 of this report.



Options

1. Refuse the development application (DA) in accordance with the recommendation.

<u>Implications</u>: The application would not proceed. The applicant is able to apply for a section 8.2 review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court against Council's decision

2. Approve the application.

<u>Implications</u>: Council would have to determine the grounds on which the DA is to be approved, that is, provide reasons to support the development, having regard to section 4.15 considerations. A suite of conditions would have to be prepared by staff in the event that Council supports the proposal. Under some circumstances, third parties (i.e. objectors) can seek a judicial review of Council's decision in the NSW Land and Environment Court.

Alternative recommendation.

<u>Implications</u>: Council will need to specify an alternative recommendation and advise staff accordingly.



Figure 1 – Location Map

Background

Proposed Development - Subdivision of Lot 600 DP 1249606

The subdivision plan prepared by Rygate and West dated 21 March 2018 (Attachment 3) proposes to subdivide Lot 600 DP 1249606 into the following lots as part of Stage 10G of the residential subdivision:

 Proposed Lot 901 – Total area of 2,200.9m² (building envelope located within southeastern front corner and 25m asset protection zone to bushfire prone vegetation on adjoining public reserve).



- Proposed Lot 902 Total area of 809m².
- Proposed Lot 903 Total area of 809m².
- Proposed Lot 904 Total area of 809m².
- Proposed Lot 905 Total area of 809m².
- Proposed Lot 906 Total area of 809m².
- **Proposed Lot 907** Total area of 1,816.7m² (building envelope located within north-eastern front corner and 22m asset protection zone to bushfire prone vegetation on adjoining unformed road reserve).
- **Proposed Public Reserve** Total area of 1424.6m². Located immediately north of Proposed Lot 901 and adjacent to an existing public reserve created as part of Stage 10C. The Reserve would incorporate the existing Category 2 water course and adjacent riparian vegetation.

<u>Proposed Development – Vegetation Clearing on Lot 600 DP 1249606</u>

According to the submitted Fauna and Flora Assessment (Attachment 4), the following vegetation is proposed to be removed from Lot 600 DP 1249606 to facilitate the proposed subdivision:

- Removal of regrowth vegetation totalling 1100m² within Proposed Lot 907.
- Removal of scattered trees across the remainder of the property totalling 500m².
- Total area of vegetation to be cleared from the property 1600m².

Council notes that the proposed development would <u>not</u> trigger entry into the Biodiversity Offsets Scheme in accordance with the Biodiversity Conservation (BC) Act 2016 for the following reasons:

- The extent of clearing proposed does not exceed the specified clearing threshold for the site, being 2500m² or 0.25 ha. The total clearing on the site equates to 1600m²
- No vegetation proposed to be removed is mapped on the Biodiversity Values Map and Threshold Tool.
- The Section 7.3 Test of Significance provided within the Fauna and Flora Assessment indicates that the development is unlikely to have a significant impact upon threatened species fauna or flora.

Proposed Development - Maintenance of Asset Protection Zone on Lot 2 DP 1076005

A Bushfire Hazard Assessment prepared by Bushfire Building Solutions (Ref. BAR 10050/18 dated 29 May 2019) and General Statement of Compliance (Ref. HCPL290420 dated 4 August 2020) were both provided in support of the application. Both submitted documents provide the following with regard to the maintenance of asset protection zones (APZs) for the development:

- 1. Each property shall be maintained in perpetuity as an inner protection area in accordance with the requirements detailed in Section 3.3.
- 2. No habitable building over Lot 901 shall be erected within 25 metres of the northern boundary.
- 3. APZ over adjacent land will be the responsibility of Hazcorp as the licence holder of the land until such time that the NSW Department of Roads and Maritime Services commences construction of the Milton-Ulladulla bypass.

Within their referral response submitted to Council on 5 November 2020 (refer Attachment 5), Transport for NSW (TfNSW) advised that they had undertaken a review of the development occurring and their associated impacts upon the bypass corridor land (Lot 2 DP 1076005). Subsequently, they advised as follows:



TfNSW wishes to advise Council that:

- 1. Landowners consent for any works or asset protection zone to be located on Lot 2 DP 1076005/TfNSW land is being withdrawn;
- 2. The existing licence agreement between TfNSW and Hazcorp Pty Ltd that relates to Lot 2 DP 1076005/TfNSW land is in the process of being cancelled; and
- 3. A new licence agreement will not be entered into with the owner of Lot 600 DP 1249606. As such, the developer will be unable to carry out vegetation maintenance works/creation of an APZ on the TfNSW land to benefit this development.

According to the above advice, the licence agreement between TfNSW and the development permitting maintenance of an APZ over the bypass corridor land (Lot 2 DP 1076005) is being cancelled and will no longer be available.

In this regard, a redesign of the subdivision layout and an amended Bushfire Hazard Assessment would be required to enable the APZ to be wholly contained within the site and to enable compliance with the Planning for Bushfire Protection (PBP) 2006 to be achieved. Further discussion in this regard is contained within the Report below.

Proposed Development – Reconstruction of Catch/Swale Drain on Lot 2 DP 1076005

An existing catch/swale drain, presently in a state of disrepair, is partially located on the subdivision lot and partially on the bypass corridor land.

To facilitate the diversion of upstream runoff away from the proposed lots, it is required to be reconstructed as part of the proposed works with Council's Subdivision & Development Engineer clarifying:

"The catch drain is currently in the wrong location and is in a state of disrepair with scouring and erosion having occurred, and therefore will require reconstruction within the subject lots as part of this application.

Prior to the approval of the application it is suggested that a revised subdivision plan is submitted showing the easement for drainage, or an alternative treatment suggested by the applicant."

The applicant subsequently advised that the swale drain would be reconstructed entirely within the bypass corridor land, and such works would form part of the proposal. A Swale Drain and Runoff Calculations Plan (Attachment 6) was submitted to Council which shows the positioning of the proposed swale drain and its location of discharge towards the existing water course to the north.

Whilst correspondence was previously received from Transport for NSW (TfNSW) providing their owner's consent for the reconstruction works within the bypass corridor land (Lot 2 DP 1076005), as detailed above, this has now been withdrawn.

In this regard, a redesign of the swale drain would be required to ensure that it is wholly contained within the site and to enable upstream runoff to be successfully diverted.

Subject Land

The development site comprises Lot 600 DP 1249606 (proposed subdivision site) and Lot 2 DP 1076005 (TfNSW Bypass corridor site) at Red Gum Drive, Ulladulla. Refer to Figure 1.



Site & Context

The development site:

- Includes land upon which the subdivision is proposed (Lot 600 DP 1249606 formerly known as Lot 500 DP 1235307) and the neighbouring bypass corridor (Lot 2 DP 1076005).
- The subdivision site has an area of 9,497m² and is presently vacant of development.
- Is residue land following the registration of Stage 10E of the residential subdivision estate.
- Is accessed by a legal road frontage to Brushbox Drive to the east of the property.
- Is zoned R1 General Residential and SP2 Infrastructure (Road) in accordance with the Shoalhaven Local Environmental Plan 2014 (refer zoning extract at Figure 2).
- Is mapped as being partially bush fire prone land (refer Figure 3).
- Contains a mapped Category 2 watercourse which traverses from east to west across the northern part of the site.
- Is vegetated in the northern part (riparian vegetation surrounding water course) and in the southern part (regrowth vegetation).

The surrounding area is an emerging residential estate characterised by low density development such as single dwelling houses on urban sized blocks of land.

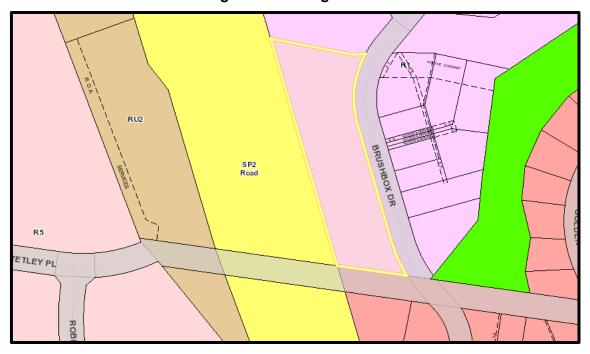


Figure 2 - Zoning Extract

History

The following timeline of events has taken place following the lodgement of the Development Application with Council on 29 June 2018:

• 1st request for information (RFI) was sent to applicant on 6 July 2018 relating to several matters including amended Statement of Environmental Effects plans, and documents.



- A response to 1st RFI was provided by applicant in separate submissions on 5 August, 22 August, 25 September, and 15 November 2018.
- The DA was notified according to Community Consultation Policy for two (2) weeks between 27 November and 12 December 2018. No submissions were received.
- Internal/external referrals were made on 27 November 2018.
- 2nd RFI Request sent to applicant on 19 March 2019 following response to internal/external referrals. Information requested included:
 - Vegetation & Habitat Assessment addressing the Biodiversity Act 2016 (requested by Council's Environmental Assessment Officer); and
 - Amended Bushfire Hazard Assessment addressing the Planning for Bushfire Protection 2006 (requested by NSW Rural Fire Service being Integrated Development).
- A response to the 2nd RFI Request on 11 September 2019 providing the requested documentation.
- Re-referral to Environmental Assessment Officer and NSW Rural Fire Service for consideration of submitted documents on 25 September 2019.
- Re-referral response by Environmental Assessment Officer on 21 October 2019 requesting an amended Vegetation & Habitat Assessment given the submitted Report did not comply with the Biodiversity Conservation Act 2016.
- 3rd RFI Request sent to applicant on 2 December 2019 requesting the amended Assessment.
- A response was received from TfNSW on 2 February 2020 advising the reconstruction of the swale drain within the bypass corridor is acceptable provided amended plans and drainage calculations are provided, depicting the reconstruction.
- The re-referral response provided by NSW Rural Fire Service on 28 February 2020 requested a further amended Bushfire Hazard Assessment given the submitted Report still did not comply with the Planning for Bushfire Protection 2006.
- 4th RFI Request sent to the applicant on 18 March 2020 requesting the amended Assessment required by NSW Rural Fire Service and the plans/drainage calculations required by TfNSW.
- Follow up correspondence sent to applicant seeking updates regarding the progress of the response to the 3rd and 4th RFI Requests on 18 March, 11 May, 14 May, and 3 June 2020 advising that the response is required within a reasonable timeframe or the DA would be reported with a recommendation of refusal.
- Response to 4th RFI Requests provided by the applicant in separate submissions on 4 and 11 August 2020 providing the requested documentation.
- Application considered by the Development and Environment Committee on 4 August 2020 and deferred for further assessment (MIN20.541).
- Internal/external re-referrals were made on 19th August 2020.
- Re-referral responses from NSW Rural Fire Service and Council's Environmental Assessment Officer provided by 10 October 2020 identifying further issues that need to be addressed as it relates to the bushfire assessment and submitted plans.
- Re-referral response from Transport for NSW (TfNSW) provided on 5 November 2020 advising that owner's consent and licence agreements for works on the bypass corridor land (Lot 2 DP 1076005) has been withdrawn / cancelled.



 Applicant notified on 5 November 2020 of issues raised by NSW Rural Fire Service, TfNSW and Council's Environmental Assessment Officer.

Issues

Bushfire Protection

In accordance with **Figure 3** below, the site is mapped as being partially bushfire prone.

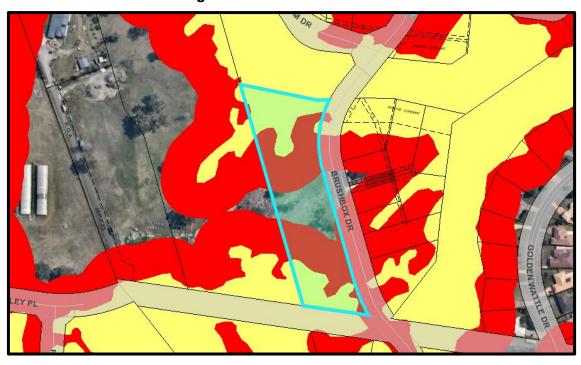


Figure 3 - Bushfire Prone Land

As the proposal is for subdivision of bushfire prone land, the development is Integrated Development under s4.46 of the Environmental Planning and Assessment (EP&A) Act 1979 and triggers referral to NSW Rural Fire Service (RFS).

The application was initially referred to the RFS where a review of the submitted Bushfire Hazard Assessment (prepared by Bushfire Building Solutions, dated 29 May 2019) was undertaken.

In their referral response dated 28 February 2020, RFS advised that the following amendments to the Bushfire Hazard Assessment were required to permit compliance with the Planning for Bushfire Protection (PBP) 2006:

- Amended Subdivision Plan providing a 35m Asset Protection Zone to the bushfire prone vegetation within the adjoining public reserve; and
- Amended Bushfire Hazard Assessment further considering the bushfire prone vegetation with Proposed Lots 906 to 908 given it does not meet the criteria for 'low hazard vegetation'.

Following a Further Information Request, the applicant sought to address these matters through the submission of a 'General Statement of Compliance' (prepared by Bushfire Protection Planning & Assessment Services Pty Ltd, dated 4 August 2020), which is an addendum to the Bushfire Hazard Assessment previously submitted.

In their referral response dated 22 September 2020, RFS raised several additional matters that are required to be addressed to permit compliance with the Planning for Bushfire Protection (PBP) 2006. The matters required to be addressed are as follows:



Bush Fire Modelling:

- The slope transects do not adequately assess all the potential slopes influencing bush fire behaviour that may impact the site, including slopes that would not be considered level, as indicated in transects A and B in the bush fire modelling.
- The reduced fire head width of 35 metres is not a conservative approach and the fire head width should include the contiguous length of vegetation along that northern boundary area.
- The proposed approach of breaking the slope into such small transects (less than 10 metres intervals) and modelling different APZs for each interval is unlikely to represent a true fire, as a bush fire is not a single line/point of impact, rather a 'front' or 'head' with flanks.

Proposed Lot 907:

- The bush fire report indicates that the vegetation within the 'unformed road' portion of land adjacent to proposed lot 907 is to remain and is not part of the RMS licence approval for vegetation management. Should this be the case the vegetation would not meet the criteria for downgrading to remnant vegetation in that it has a fire run of more than 50 metres and is connective to other vegetation giving an area of greater than one hectare.
- Asset Protection Zone (APZ): An amended Bushfire Hazard Assessment is required to be provided which ensures the APZ is wholly contained within the property boundary. This accords with the Transport for NSW advice where they advised that owner's consent and licence agreements for an APZ on the bypass corridor land (Lot 2 DP 1076005) has been withdrawn / cancelled.

It appears that as a result of the above (and TfNSW comments) that a redesign of the subdivision layout is required to address the concerns.

Discussion

Given neither the Bushfire Hazard Assessment nor the General Statement of Compliance addressed the Planning for Bushfire Protection to NSW Rural Fire Services' satisfaction, the proposal is found to be non-compliant with the following items of legislation:

- Section 4.47(2) of the Environmental Planning and Assessment (EP&A) Act 1979 states the following:
 - "Before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent."

Subdivision of bush fire prone land is integrated development under s100B of the Rural Fires Act 1997 and under Section 4.47(2) of the EP&A Act 1979, general terms of approval and a Bush Fire Safety Authority (BFSA) are required prior to determination of the development.

- A79.1/P80 of Chapter G11 Subdivision of Land
 Acceptable Solution A79.1 of Chapter G11 Subdivision of Land of the SDCP 2014 states the following:
 - "A development application is supported by an appropriate level of analysis consistent with Council and other legislative requirements.

The subdivision lot design positively responds to:

• Slope and desirability of minimising earthworks/retaining walls associated with dwelling construction.



- Natural or cultural features:
- Soil erosion and bushfire risk;
- Special features such as trees and views, including identification of mature stands of trees retained & supplementary planting."

Given the requirements of Planning for Bushfire Protection 2006 have not been satisfactorily addressed, Council finds that the subdivision lot design does not positively respond to bush fire risk.

Performance Criteria P80 states the following:

"Lot areas and dimensions take into account the site natural opportunities and constraints."

The proposal remains non-compliant with Performance Criteria P80 of Chapter G11 of the SDCP 2014 for the following reasons:

- Slope transects provided did not adequately assess all slopes affecting bushfire behaviour on the site. As such, the extent of natural opportunities and constraints on the site cannot be properly quantified.
- Given TfNSW has withdrawn their owner's consent, any existing vegetation located on the bypass corridor land would remain, which would create a fire run over 50m and is connective to other vegetation giving an area of greater than one hectare.
- A further redesign would be required, in particular of Proposed Lot 907, to enable the site to be utilised for residential purposes – taking into account the site opportunities and constraints.

Swale Drain and Works within the Princes Highway Ulladulla Bypass Corridor

There is an existing swale drain located partially on Lot 600 (subject subdivision site) and partially on Lot 2 (Bypass Corridor). Its purpose is to collect runoff generated upstream to avoid the potential for overland flow across the subdivision site.

As mentioned previously, Council's Subdivision & Development Engineer commented:

"The catch drain is currently in the wrong location and is in a state of disrepair (see D19/82250) with scouring and erosion having occurred, and therefore will require reconstruction within the subject lots as part of this application.

Prior to the approval of the application it is suggested that a revised subdivision plan is submitted showing the easement for drainage, or an alternative treatment suggested by the applicant".

In correspondence with TfNSW, the applicant advised their intention to reconstruct the swale drain entirely within the bypass corridor (Lot 2 DP 1076005) with the point of discharge for runoff being the existing water course to the north. TfNSW agreed to provide owner's consent for these works, subject to the submission of a plan depicting the reconstruction of the swale drain and the associated drainage calculations.

The applicant submitted a Swale Drain and Runoff Calculations Plan (Attachment 6) which Council referred through to TfNSW for their comments/conditions. In their response, TfNSW advised as follows:

- Landowners consent for any works or asset protection zone to be located on Lot 2 DP 1076005/TfNSW land is being withdrawn;
- 2. The existing licence agreement between TfNSW and Hazcorp Pty Ltd that relates to Lot 2 DP 1076005/TfNSW land is in the process of being cancelled; and



3. A new licence agreement will not be entered into with the owner of Lot 600 DP 1249606. As such, the developer will be unable to carry out vegetation maintenance works/creation of an APZ on the TfNSW land to benefit this development.

Council notes that an extensive redesign of the Swale Drain and Runoff Calculations Plan is required in order to ensure no works are carried out on the bypass corridor land. This would require an amended Plan which depicts its reconstruction within the boundaries of the subdivision lot (Lot 600 DP 1249606) as well as an amended subdivision plan which depicts easements burdening each of the proposed lots.

Discussion

TfNSW has withdrawn their consent as owner of Lot 2 for any proposed works (Refer to Attachment 5). It is noted that in accordance with a consistent line of authority in the Land and Environment Court, there is no opportunity for revocation or withdrawal of landowner's consent once made for a development application. (Rose Bay Afloat Pty Ltd v Woollahra Council (2002) 126 LGERA 36). Thus whilst in a technical sense consent may be able to be granted, the adjoining landowner has denied legal ability to carry out the works required for the subdivision.

Further to the above advice, TfNSW has recommended that the developer either amend the current application to provide the required APZ wholly within their own land (being Lot 600), or wait until the Milton Ulladulla Bypass construction works have commenced on the adjacent land, therefore, removing the need for an APZ.

In this regard, and as detailed earlier in this report, a redesign of the subdivision layout and / or an amended Bushfire Hazard Assessment would be required.

Planning Assessment

The DA has been assessed under s4.15(1) of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 2.

Consultation and Community Engagement:

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 100m buffer of the site, during the period 27 November 2018 to 12 December 2018. No submissions were received in relation to Council's notification of the development.

Financial Implications:

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

Legal Implications

Pursuant to section 8.2 of the Environmental Planning and Assessment Act 1979 (EP&A Act), a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. If such a review is ultimately pursued (if the recommendation is adopted) the matter would be put to Council for consideration. Alternatively, an applicant who is dissatisfied with the determination of the application by the Council may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act. Applicants can choose to do both, setting aside the Appeal pending resolution of the review, noting there are time limitations with respect to lodging applications for review and appeal.



Summary and Conclusion

This application has been assessed having regard for section 4.15 (Matters for consideration) under the EP&A Act. Having regard to the assessment, the proposal is not considered capable of support. Reasons for refusal are provided below and can also be found at Attachment 1 to this report:

1.	Given the significant redesign required to achieve compliance with the Planning for Bushfire Protection (PBP) 2006, NSW Rural Fire Service was unable to issue general terms of approval under Section 4.47(2) of the EP&A Act 1979. (Section 4.47(2) of the Environmental Planning and Assessment Act, 1979)
2.	The application has not satisfactorily demonstrated compliance with A79.1/P80 of Chapter G11 – Subdivision of Land of the Shoalhaven Development Control Plan 2014. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979)
3.	Having regard to the likely impacts of the development, the applicant has not satisfactorily demonstrated that the proposal would not have an adverse impact upon the natural environment. (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979)
4.	The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use. (Section 4.15(1)(c) of Environmental Planning and Assessment Act, 1979)
5.	Having regard to the above matters the granting of development consent is not in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979).





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

Address all correspondence to

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

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

Environmental Planning and Assessment Act, 1979 SF10686

TO:

Rygate & West Ulladulla PO Box 107 ULLADULLA NSW 2539

being the applicant(s) for SF10686 relating to:

Royal Mantle Dr, ULLADULLA - Lot 2 DP 1076005 Red Gum Dr, ULLADULLA - Lot 600 DP 1249606

REFUSED USE AND/OR DEVELOPMENT:

Residential subdivision to create eight (8) Torrens Title allotments, including seven (7) residential allotments, one (1) public reserve lot, and associated site works within the subdivision approved by SF9275

DETERMINATION DATE:

REFUSAL DATE:

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



Determination Notice by way of Refusal - Page 2 of 2 - SF10686

PART A

- Given the significant redesign required to achieve compliance with the Planning for Bushfire Protection (PBP) 2006, the Rural Fire Service were unable to issue general terms of approval under Section 4.47(2) of the EP&A Act 1979. (Section 4.47(2) of Environmental Planning and Assessment Act, 1979)
- The application has not satisfactorily demonstrated compliance with A79.1/P80 of Chapter G11 Subdivision of Land of the Shoalhaven Development Control Plan 2014 (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979)
- Having regard to the likely impacts of the development, the applicant has not satisfactorily demonstrated that the proposal would not have an adverse impact upon the natural environment. (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979)
- The information submitted with the development application does not satisfactorily demonstrate that
 the site is suitable for the proposed use. (Section 4.15(1)(c) of Environmental Planning and
 Assessment Act, 1979)
- Having regard to the above matters the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979)

RIGHTS OF REVIEW AND APPEAL

Determination under Environmental Planning and Assessment Act, 1979

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

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

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

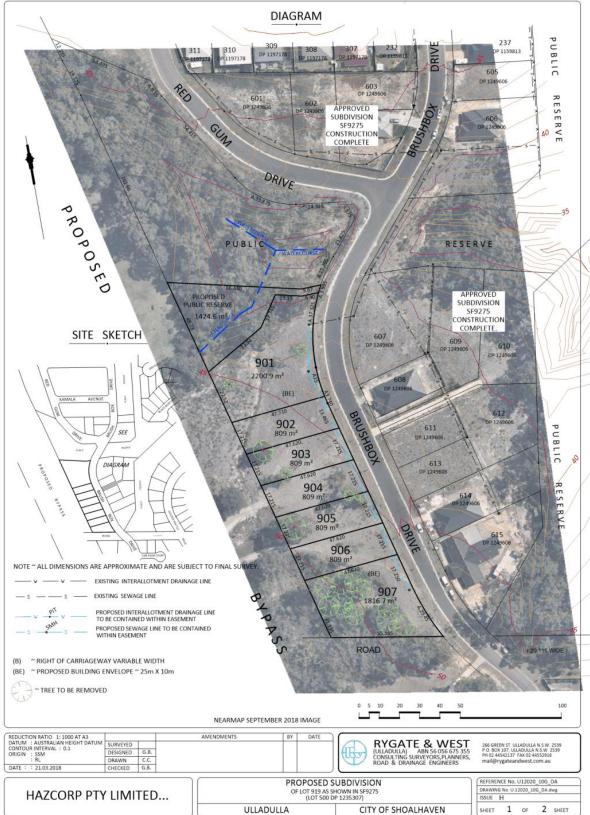
GENERAL ADVICE

Privacy Notification

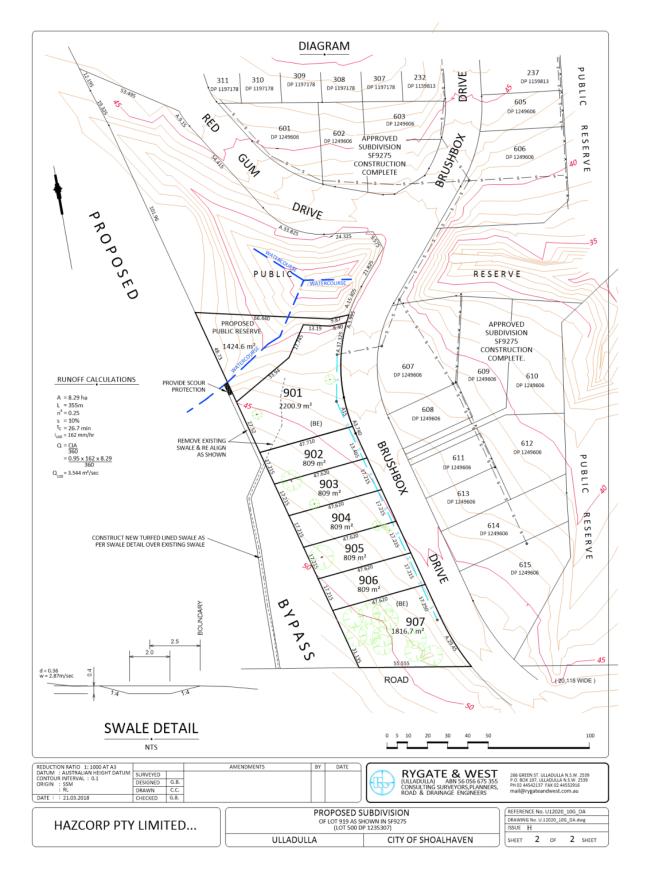
Personal information contained on this Development Consent and any associated documents will be published on Council's website as required by the Government Information (Public Access) Act 2009 (GIPAA).

SIGNED on behalf of Shoalhaven City Council:













Our ref: STH16/00161/05 Contact: Andrew Lissenden 0418 962 703 Your ref: SF10686 (CNR-11308)

5 November 2020

Justin Lamerton
Shoalhaven City Council

BY EMAIL: council@shoalhaven.nsw.gov.au

DEVELOPMENT APPLICATION SF10686 (CNR-11308) - LOT 600 DP 1249606, BRUSHBOX DRIVE, ULLADULLA - SEVEN (7) LOT TORRENS TITLE SUBDIVISION

Dear Justin.

Transport for NSW (TfNSW) refers to the notification received on 19 August 2020 regarding the above development application (DA) and apologies for the delay in providing its written advice.

Since providing previous advice on this DA, TfNSW has been reviewing the impacts of development that is occurring adjacent to land that it owns. This DA is adjacent to Lot 2 DP 1076005 which is land owned by TfNSW and may ultimately form part of the proposed Milton Ulladulla Bypass corridor (refer to **Attachment 1**). TfNSW notes that an asset protection zone (APZ), as well as some drainage works to benefit the current DA will be required on the adjacent land that it owns.

Having regard for the above, TfNSW wishes to advise Council that:

- Landowners consent for any works or asset protection zone to be located on Lot 2 DP 1076005/TfNSW land is being withdrawn;
- The existing licence agreement between TfNSW and Hazcorp Pty Ltd that relates to Lot 2 DP 1076005/TfNSW land is in the process of being cancelled; and
- A new licence agreement will not be entered into with the owner of Lot 600 DP 1249606. As such, the
 developer will be unable to carry out vegetation maintenance works/creation of an APZ on the TfNSW
 land to benefit this development.

TfNSW has contacted Hazcorp and advised them of the above. TfNSW recommends that the developer either:

- 1. Amends the current DA to provide the required APZ wholly within their own land; or
- Wait until the Milton Ulladulla Bypass construction works have commenced on the adjacent land, therefore, removing the need for an APZ.

If you have any questions, please contact myself on 0418 962 703. Please ensure that any further email correspondence is sent to development.southern@rms.nsw.gov.au.

Yours faithfully

Andrew Lissenden

Development Assessment Officer Community and Place I South Region

Cc: justin.lamerton@shoalhaven.nsw.gov.au; Angela.FREW@transport.nsw.gov.au; mail@rygateandwest.com.au; and peter@peterwlean.net.au

Transport for NSW

Level 4, 90 Crown St, Wollongong NSW 2500 | PO Box 477, Wollongong NSW 2520 | ABN 18 804 239 602

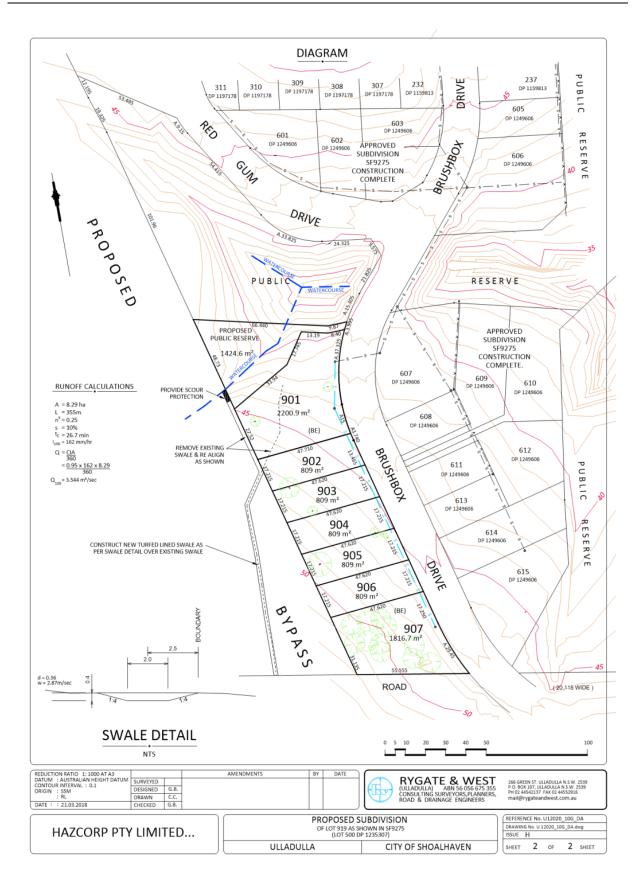


Attachment 1



Development Site







DE20.135 SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823

DA. No: SF10804/4

HPERM Ref: D20/509320

Section: Development Services

Approver: Phil Costello, Director - City Development

Attachments: 1. Plans - Subdivision - Lot 3 DP 851823 - 104 Taylors Lane Cambewarra

Û

Description of Development: Staged residential subdivision to create 232 Torrens Title

allotments, including 228 residential and four (4) open space allotments, and demolition of existing structures, earthworks, and provision of roads, drainage and utility infrastructure

along with associated landscaping works

Owner: KI & JG Tompson

Applicant: Watersplash Lane Pty Ltd

Notification Dates: 25 November 2020 – 9 December 2020

No. of Submissions: As above

Purpose / Reason for consideration by Council

Councillors requested a progress report on the Development Application (DA) on 24 November 2020.

Recommendation (Item to be determined under delegated authority)

That the report on SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823 be received for information.





Figure 1 – Location Map

Background

Proposed Development

The DA seeks approval for staged residential subdivision to create 232 Torrens Title allotments, including 228 residential and four (4) open space allotments, and demolition of existing structures, earthworks, and provision of roads, drainage and utility infrastructure along with associated landscaping works.

This is one of the first subdivisions in the Moss Vale Road South Urban Release Area (URA), which is one of the first URAs in Nowra-Bomaderry to be released for development. As such Council has made a considerable effort to get the planning documents in place (Indicative Layout Plan, DCP Chapter and Contributions Plan amendment) to guide the development of this new area and then work with developers, including the applicant for this DA, throughout the planning of the URA to 'do things differently', encourage compliance with planning controls and set a positive example for future development in Moss Vale Road South URA and other URAs within the broader Nowra-Bomaderry area.

Subject Land

The development site comprises Lot 3 DP 851823 (104 Taylors Lane, Cambewarra). Refer to Figure 1.

Site & Context

The development site:

- Is within the Moss Vale Road South Urban Release Area (URA) and contains an existing dwelling and ancillary structures, six (6) earth dams and scattered trees and vegetation. Historically, the site has been used for rural residential and agricultural purposes, predominantly grazing.
- Is zoned R1 General Residential, E2 Environmental Conservation, E3 Environmental Management, and SP2 Infrastructure. Only the R1 zoned portion of the site is within the Urban Release Area.
- Is 25.25ha in area.



- Is identified as being partially flood prone and of aboriginal cultural heritage significance.
- Is identified as "Scenic Protection" in the northern section, adjacent to Moss Vale Road.
- Has frontage to Moss Vale Road and Taylors Lane.
- Adjoins land zoned R1 General Residential, E2 Environmental Conservation, E3 Environmental Management, SP2 Infrastructure and RU1 Primary Production.

History

It is noted that Council staff engaged extensively with the applicant before lodgement of the DA, including during the finalisation of the Development Control Plan (DCP) and Contributions Plan (CP) projects for the Moss Vale Road South URA. Comments were provided on the proposed planning provisions for the subject land as part of the exhibition of the draft DCP and draft CP projects. These comments were considered by Council as part of the finalisation of the documents during 2018. It is however noted that some of the issues/concerns with this DA are the same as or similar to, those considered through the DCP/CP finalisation process.

The following provides details on post-lodgement actions for context:

- The application was lodged on 9 June 2020.
- As a result of detailed assessment of the application, additional information has been requested from the applicant on four (4) occasions – 11 June 2020, 10 July 2020, 2 September 2020 and 16 November 2020.
- On 11 June 2020, Council requested additional information. It was particularly noted that given the absence of a Special Infrastructure Contribution (SIC), satisfactory arrangements for State public infrastructure are required to satisfy clause 6.1 of Shoalhaven Local Environmental Plan 2014 (SLEP 2014). Satisfactory arrangements may be in the form of a Voluntary Planning Agreement (VPA). Any VPA must be consistent with the Draft Practice Note issued by the Department of Planning & Environment and Council's VPA Policy.
- On 1 July 2020, the applicant submitted additional information, which was subsequently referred to the relevant sections of Council and external agencies for comment. The VPA was not and is still yet to be submitted.
- On 8 July 2020, relevant Council staff met with the applicant and raised concern with the currently proposed development. It was agreed that Council would confirm what was discussed in this meeting and requirements in writing.
- On 10 July 2020, Council requested the additional information as discussed in the meeting. The applicant was requested to address inconsistency with the Indicative Layout Plan (ILP), in accordance with A1.1, Control 7.1 Indicative Layout Plan, Chapter NB3, Shoalhaven Development Control Plan 2014 (SDCP 2014), particularly in relation to the location of the northern perimeter road and through road connections/alignments and how it relates to that approved as part of Development Consent SF10632 (subdivision within Stage 1 of the Moss Vale Road South URA). Refer to Figure 2 and the attached current subdivision plan. There were also other matters raised relating to design and layout, inconsistency with the residential density targets, and non-compliance with mandatory controls under Controls 7.3 Subdivision Design and 7.4 Street Network and Hierarchy, Chapter NB3, SDCP 2014.
- On 30 July 2020, the applicant submitted a letter with preliminary response to Council's request dated 10 July 2020.
- On 2 September 2020, Council provided comments in response to the applicant's letter, along with a request for additional information as requested by Transport for NSW and Nowra Local Aboriginal Land Council. Whilst Council was agreeable to some aspects of the proposed design response, there was still concern raised in relation to consistency

with the ILP, particularly in relation to the location of the northern perimeter road and through road connections/alignments.

- On 23 October 2020, the applicant submitted a letter with preliminary response to Council's request dated 2 September 2020. No specific direction was provided as to how they particularly intended to proceed with this application in ensuring the design layout was to better align with the ILP.
- On 13 November 2020, the applicant submitted a response with specific direction in relation to the northern perimeter road alignment. They believe that the location and landscaping of this road as proposed delivers a superior urban design outcome for the URA.
- On 16 November 2020, Council requested additional information as requested by Heritage NSW. Council also confirmed a meeting date with relevant staff to discuss the design further and work through outstanding matters.
- On 24 November 2020, relevant Council staff met with the applicant to discuss their preliminary response submitted to Council on 23 October 2020 along with additional drawings showing potential solutions to some of Council's requests. It was agreed that Council would provide formal response in relation to its position on some of the matters raised to allow the applicant to provide a revised suite of documentation as soon as possible. The applicant indicated in this meeting that they intended to pursue the currently proposed layout particularly the location of the northern perimeter road.

Planning Assessment

The DA has been (or will be) assessed under s4.15(1) of the Environmental Planning and Assessment Act 1979.

Summary of Issues

The proposed development currently includes a range of variations from relevant provisions of SLEP 2014 and SDCP 2014, including fundamental variations from the Indicative Layout Plan (ILP) that Council encouraged the applicant to resolve numerous times, both pre and post lodgement of the DA. Specifically:

- a) The proposal extends outside of the URA boundary along the northern perimeter by placing a perimeter road (Road 10) in the E3 Environmental Management zone. This is not consistent with the intended function of the E3 zone as an environmental corridor/scenic protection area between the URA and Moss Vale Road under Chapter NB3 of SDCP 2014. It is also not good planning practice when an opportunity exists to place the road within the zoned development area. The ILP shows no road along the western portion of the northern perimeter and requires the road along the eastern portion of the perimeter to be within the URA boundary. Council has consistently asked the applicant both pre and post lodgement of the DA to comply with the DCP and locate Road 10 within the URA boundary and also enable through road connections to the adjoining conditionally approved subdivision (SF10632).
- b) The proposal does not provide large lots within the Large Lot Residential area (northern edge of the URA) and instead proposes standard size residential lots. This area is intended to provide an appropriate transition between the URA and the rural land around it. This was consistent with the feedback received from the community as part of the finalisation of SLEP 2014 when the residential zone boundary was pulled back from Moss Vale Road in response to community concerns. The DCP includes the provision for large lots and rural style edge fencing in this location. However, the



- proposal exceeds the lot density target and potentially presents a 'hard edge' to surrounding rural land and when viewed from Moss Vale Road.
- c) Safe intersection sight distances need to be assessed for the Road 17/Road 11 intersection (northbound). The intersection angle is higher than shown in the DCP layout. The roundabout location should be practical as an LATM device. The proposed location will be too close to the western collector road and there is a road missing based on the DCP layout making the laneways longer than necessary. Additional LATM devices should be provided to ensure Road 20 does not have a significant segment without slow points. Additional LATM measures may be required for other roads that exceed the maximum leg length outlined in Chapter G21, SDCP 2014.
- d) The intersections to the laneways are too close to the adjacent roads.
- e) The distance between intersections may be too small for laneways. Potential no right turn movements should be provided into Road 18 and Road 21.
- f) It is crucial for the small lots to be fully compliant with the DCP regarding vehicular access and parking requirements due to the nature of the access road. On street parking overflow is not permitted and should be "designed out" at this stage.
- g) A "mini-roundabout" is proposed as part of the stage at the intersection of Road 20 and Road 15, which is not acceptable. This roundabout is not mentioned in the DCP. It is also noted that this would need to be compliant for a 14.5m bus as it is located on the interim bus route as shown in the DCP.
- h) There is a consistency issue with the residential density targets in relation to the ILP, in accordance with A1.2, Control 7.1 Indicative Layout Plan, Chapter NB3, SDCP 2014.
- i) One (1) block of small lots exceeds 100m in length by approximately 10%, as indicated by the applicant. Street blocks are required to be designed to be rectangular in shape to enable permeability. The length and width of street blocks (excluding road verges) are a maximum of 100m x 70m in areas where small lots are proposed, and rear lane access or shared driveways are located. 200m x 70m in all other areas.
- j) Lots 101-104 are proposed with direct access to Road 20 (a tree-lined boulevard). No direct vehicular access or waste collection is permitted on tree-lined boulevards, except for the area to the far-west of the western Collector Road (as illustrated by the dashed line in Figure 9 of Chapter NB3, SDCP 2014).





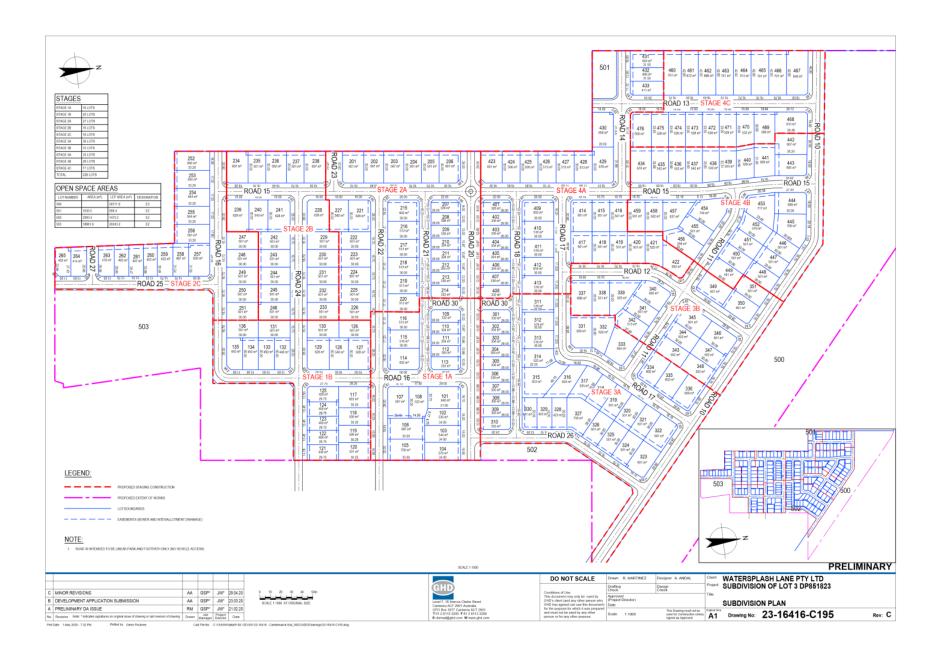
Figure 2 – Site in relation to Indicative Layout Plan (ILP)

Conclusion

Given the current design, the proposal is inconsistent with the DCP and importantly fails to integrate with the already approved subdivision on the adjoining land. Council has repeatedly sought consistency with the adopted DCP layout and has conveyed this advice to the applicant on several occasions. Having regard to the above, the application would not receive a positive recommendation from staff in its current form.

The applicant has indicated they will consider the discussion of 24 November 2020 and respond with a package of information as soon as practicable. However, the applicant has indicated that their preference is to pursue the design as put, particularly the location of the perimeter road.







DE20.136 Quarterly Review for Compliance Matters

HPERM Ref: D20/422071

Section: Building & Compliance Services

Approver: Phil Costello, Director - City Development

Attachments: 1. Penalty Notices Issued 4

Reason for Report

At Council's Ordinary meeting held on 13 November 2018 it was resolved to receive a detailed quarterly report on compliance activities (MIN18.907).

This report provides information on the period from 1 July 2020 to 30 September 2020 (first quarter 2020/2021).

Recommendation (Item to be determined under delegated authority)

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

Options

1. Council receive the report for information

Implications: Nil

2. Council receives the report and provides additional direction for future reports.

<u>Implications</u>: Any changes or additional matters can be added to future reports.

Report

Compliance activities are completed by the following Teams within City Development:

- (a) <u>Compliance Team</u>: Development compliance matters including unauthorised development, development not in accordance with development consent, land, and water pollution incidents (including building sites), land use management issues, fire safety and swimming pool safety issues.
- (b) <u>Environmental Health</u>: Pollution incidents (noise and water), environmental incidents, food shops and the operation of on-site sewage waste management facilities.
- (c) Parking: All parking offences.
- (d) <u>Rangers</u>: Animal control, littering, unauthorised camping, rubbish dumping and other environmental offences.

This report provides Councillors with an update on the penalties issued (number, type, and ticket value), penalty reviews dealt with by the Review Panel and any Local or Land and Environment Court matters determined or progressing.

This report relates to July - September 2020 (first quarter).

Penalties issued during the period

A combined total of 1,609 penalty notices were issued by the Teams during the period. These penalties have a face value of \$334,225. Historically Council stands to receive approximately 70% of this ticketed figure.



A total of 164 cautions were also issued during the period.

Attachment 1 to this report provides a breakdown of the penalties and cautions issued.

The following is a summary of the penalties issued for each team:

Team	Number Issued	Total Amount	% of total amount	Cautions issued
Compliance	1	\$1,500	1%	23
Compliance – Fire Safety	0	\$0	0	0
Compliance – Pools	0	\$0	0	0
Environmental Health	0	\$0	0	2
Rangers – Animal issues	291	\$113,785	34%	21
Rangers – Environmental issues	80	\$43,176	13%	11
Parking	1,237	\$175,764	52%	107
Sewer Management Facility	0	\$0	0	0
Total	1,609	\$334,225	100%	164

Penalties related to Compliance issues

The following details are provided in relation to the single compliance penalty notice issued:

a) <u>Little Forest (\$1500):</u> One penalty notice issued to the owner of the premises. The penalty notice relates to development without development consent (Class 1a or 10 building - \$1500). A further seven (7) warning notices were issued.

The matter was brought to Councils attention following an assessment by Council staff identifying the unauthorised use of the premises as a primitive campground.

In addition, the investigation revealed a two-storey structure had been constructed adjacent to an existing shed. The structure contained accommodation used for short term tourist and visitor accommodation on the upper floor which was advertised through 'Air bnb'.

The value of the warning notices if issued as penalty notices, would have been \$6,300.

Warnings related to Compliance issues

A total of 23 warning notices were issued for compliance matters in the period and these equate to \$49,430 in ticket face value. Potentially the Compliance Team could have issued \$50,930 in penalties for the period. The caution rate is approximately 97%.

Penalty infringement panel reviews

During the period, the review panel met on 3 September 2020. There were four (4) penalty infringement notices considered during this period.

(a) Development without development consent – any other case – individual' with a penalty amount of \$3000 and Fail to demolish or remove building contrary to order – individual' with a penalty amount of \$3000 x2



The penalty notices subject to the review relate to the unauthorised placement of two shipping containers and the failure to remove the unauthorised shipping containers placed on the premises located within Jerberra Estate.

A property was identified as one of a number of properties in the Jerberra Estate where unauthorised structures had been erected. Council wrote to the owners back in October 2017 to ascertain what their intentions were to address the unauthorised structures located on the property. No response was received.

A demolition order was issued directing the owner to remove the shipping containers. Australia Post revealed the Order had been received. A follow up inspection revealed both shipping containers still located at the premises.

On review of a submission from the offender it was determined that a consistent approach was required in this matter. Penalty notice for development without development consent and 1x fail to demolish or remove building contrary to order were withdrawn.

The other fail to demolish or remove building contrary to order was determined by way of penalty to stand.

(b) <u>Development without development consent - Class 1a or 10 building - Individual</u> (\$1500)

The penalty notice subject to the review related to the unauthorised rebuild of a treated pine deck located to the rear of the premises. The premises were identified as Bush Fire Prone Land and the deck was in flame zone. The construction of the deck did not satisfy the requirements for exempt development and required approval from a consent authority.

This matter came to Councils attention as the result of a complaint where concerns were raised about the demolition and reconstruction of timber decks on bush fire prone land.

After reading the builders submission, a decision was made to explain the legislation to him via a meeting. Each item of the submission was addressed including the evolution of the legislation. During the meeting the builder gained a new appreciation of the legislation and conceded that all the works identified were unauthorised. He also explained that his speciality of commercial style development had slowed down due to Covid-19 and he and is business were experiencing considerable financial impact.

It was recommended the Penalty Notice subject to this review be withdrawn and reissued as a formal warning. The panel concurred with the recommendation.

Local Court matters

A second mention was held at Nowra Local Court relating to Court Elected penalty Notice – Fail to Comply with development control order (Demolish Works) – Jerberra Estate.

The defendant failed to appear and the matter has been listed for hearing on 2 December 2020.

Land and Environment Court matters

NIL

Compliance Merits received this guarter

During the period the Compliance Team received a total of 177 Merits and these are detailed in the following table.



Type of Merits Received	Number Received	Percentage of total
Asbestos issues	4	2.26%
Building Works - Not in Accordance Consent	32	18.08%
Building Works - Without Consent	62	35.03%
Defective Building Works	1	0.56%
Earthworks - Without Consent	10	5.65%
Erosion Control - Building Sites	1	0.56%
Erosion Control - Subdivision sites	3	1.69%
Land Use - Without Consent	12	6.78%
Sewerage Management Facility	1	0.56%
Stormwater Runoff - Building Site	40	22.60%
Swimming Pool Fencing Inspection	8	4.52%
Vegetation Clearing - Without Consent	3	1.69%
TOTALS	177	100%

Of these Merits, building works without consent make up 35.03% of all complaints registered in the period. This is a clear indication that development without consent is still high in the Shoalhaven.

Stormwater runoff – building sites (22.60%) is higher than normal for the period. This increase is most likely attributed to the two east coast low events that occurred during the quarter.

Development not in accordance with consent (18.08%) is also high and this reflects the expectation of the community to keep developments true to the approval.

Penalties related to Rangers issues

(a) Dog Attacks:

In the reporting period, Rangers have received and attended 61 reports of dogs attacking. Of these, 29 investigations have been completed with 18 penalty notices issued (i.e. $18 \times 1320 = 23,760$). A further 32 matters remain under investigation.

5.0 Other activities by Ranger Services

- (a) <u>Beach Patrols</u>: Rangers have completed 1262 beach patrols during this quarter. A total of 97 dog owners have been spoken to with 235 dogs sighted. A total of 56 penalty notices have been issued with 8 official warnings and 19 verbal cautions given.
- (b) <u>Shoalhaven City Council project Cigarette Butt Bin installation</u>: Rangers have coordinated a project with the community to reduce cigarette butt litter around Shoalhaven District Memorial Hospital. In consultation with NSW Health and



members of the community from the local 'Riverwatch' group, four (4) cigarette butt litter bins have been installed on SCC owned land on Scenic Drive and Shoalhaven Street.

A community clean-up is scheduled for the area and Rangers will continue to monitor but bin usage to capture further data for future projects. It is expected the result of this trial will be reported in media outlets.

(c) <u>Illegal Dumping</u>: Rangers have documented 212 new illegal dumping incidents within the Shoalhaven. Shoalhaven City Council (Assets & Maintenance division, and Parks & Ops division) have removed waste to the approximate cost of \$19,420 during the reporting period. A total of 71 tonne of illegally dumped waste was reported for the same quarter.

A large amount of mixed household and demolition waste was located illegally dumped on a parcel of land off Naval College Road, Hyams Beach. The land is owned by National Parks and Wildlife Services. The investigation has now concluded, and two separate offenders were issued \$2000 penalty notices for the offence of 'Transport waste to unlawful facility – class 1 officer – individual' under the Protection of the Environment Operations Act 1997. The land owner will complete clean up and will consider issuing a cost compliance notice on the offenders to recoup associated costs.

Approximately 200kg of mixed household waste was located after being illegally dumped along an electricity easement in Yerriyong State Forest, off Wandean Road Wandandian. The offender was issued a verbal clean up notice to which he complied with and was subsequently issued a Penalty Notice for the offence of 'Transport waste to unlawful facility – class 1 officer – individual' under the Protection of the Environment Operations Act 1997 bearing a penalty amount of \$2000.

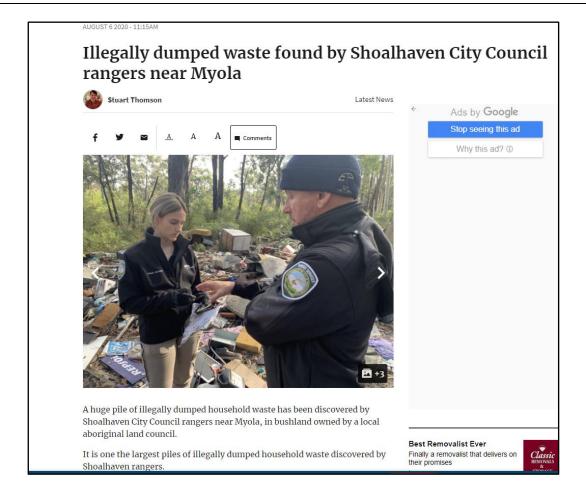
A large amount of mixed household waste was illegally dumped on the Council nature strip on Dudley Ave, Nowra. Neighbours provided information leading Rangers to the offender who made admissions to taking the waste across the road and dumping it on the Council verge. A verbal clean up notice was delivered and was partially complied with however some waste was required to be cleaned by Council. A \$2000 Penalty Notice was issued the offence of 'Transport waste to unlawful facility – class 1 officer – individual' under the Protection of the Environment Operations Act 1997.

Three lounge suites were illegally dumped at Callala Bay. A member of the public has witnessed the incident and providing vehicle registration details for Rangers. The offender was formally interviewed and made admissions to dumping the lounges and was ordered to clean up the area. The offender complied with this direction and provided tip receipts as proof of lawful disposal. A \$2000 Penalty Notice was issued the offence of 'Transport waste to unlawful facility – class 1 officer – individual' under the Protection of the Environment Operations Act 1997.

Statistics show Shoalhaven Council is one of the leading Councils in this region in the fight against illegal dumping. It is important the community continue to be our eyes and ears and report incidents to Rangers as soon as they notice it happening. A description of the vehicle together with its registration is vital evidence and can lead to identifying the perpetrator.

(d) <u>Illegal Dumping media spotlight for Shoalhaven</u>: In August 2020, Rangers invited WIN News Illawarra to "ride along" whilst undertaken proactive patrols to identify illegally dumped waste. During the patrols a large illegal dumping was located consisting of approximately 10 tonnes of mixed waste. WINTV covered the story in their local news with newspaper "South Coast Register" also running a piece.





(e) Jerrinja and Nowra Local Aboriginal Land Council collaboration

Rangers have located approximately 300 vehicle tyres dumped at a known hotspot along Braidwood Road, Yerriyong. This parcel of land is owned by Nowra Local Aboriginal Land Council and the dumping is under investigation.

Rangers are also assisting Jerrinja Local Aboriginal Land Council in making application for clean-up funds to remove waste from a number of problem areas across the LGA. It is hoped this collaborative approach will strengthen existing partnerships and encourage others to join the fight against illegal dumping and littering.

(f) Animal Shelter: Shoalhaven Animal Shelter's Facebook page now has more than 11,643 followers. The page has a weekly "Did you know" post which shares information about responsible pet ownership in the Shoalhaven with 21 posts during the period. This has included pet registration requirements, desexing assistance, researching breeds before buying and education about health and welfare.



List of penalties issued from 1 July 2020 to 30 September 2020 via offence Code

Team	Offence Code	Number issued	Offence penalty	Total amount
Compliance	Development without development consent - class 1a or 10 building - Individual	1	1500	1500
Parking	Disobey motor bike parking sign	4	116	464
Parking	Disobey no parking sign	3	116	348
Parking	Disobey no stopping sign	37	268	10060
Parking	Disobey no stopping sign (in school zone)	2	349	698
Parking	Not parallel park in direction of travel	7	272	1904
Parking	Not park wholly within parking bay	28	82	2322
Parking	Not position front/rear of vehicle correctly - 90 degree angle parking	1	83	83
Parking	Not position rear of vehicle correctly - 45 degree angle parking	21	83	1743
Parking	Not stand vehicle in marked parking space	12	83	996
Parking	Obstruct access to ramp/path/passageway	1	272	272
Parking	Park continuously for longer than indicated	38	82	3146
Parking	Park vehicle for longer than maximum period allowed	437	82	36254
Parking	Stop at side of road with continuous yellow edge line	1	272	272
Parking	Stop in bus zone (clearway or transit/bus lane)	3	272	816
Parking	Stop in bus zone (in school zone)	1	349	349
Parking	Stop in bus zone (not clearway or transit/bus lane)	3	272	816
Parking	Stop in disabled parking area without current permit displayed	33	572	19164
Parking	Stop in loading zone	11	191	2131
Parking	Stop in taxi zone	9	194	1746
Parking	Stop on path/strip in built-up area	3	272	816



Parking	Stop on/across driveway/other access to/from land	16	272	4352
Parking	Stop within 10 metres of an intersection (no traffic lights)	2	349	698
Parking	Stop in loading zone longer than 30 minutes	2	194	388
Parking	Not parallel park in direction of travel in school zone	1	349	349
Ranger Parking	Disobey motor bike parking sign	9	116	1044
Ranger Parking	Disobey no parking sign	6	116	696
Ranger Parking	Disobey no stopping sign	50	268	13596
Ranger Parking	Disobey no stopping sign (in school zone)	18	349	6282
Ranger Parking	Double park	2	272	544
Ranger Parking	Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	11	110	1210
Ranger Parking	Not angle park as on parking control sign or road marking	7	83	581
Ranger Parking	Not parallel park in direction of travel	16	272	4352
Ranger Parking	Not park wholly within parking bay	4	83	332
Ranger Parking	Not position front/rear of vehicle correctly - 90 degree angle parking	45	82	3733
Ranger Parking	Not position rear of vehicle correctly - 45 degree angle parking	93	82	7717
Ranger Parking	Not stand vehicle in marked parking space	40	83	3320
Ranger Parking	Obstruct access to ramp/path/passageway	2	272	544
Ranger Parking	Park continuously for longer than indicated	45	83	3735
Ranger Parking	Park vehicle for longer than maximum period allowed	119	83	9877
Ranger Parking	Stand vehicle in area when area closed to public	1	116	116
Ranger Parking	Stop at side of road with continuous yellow edge line	26	268	7068
Ranger Parking	Stop in bus zone (clearway or transit/bus lane)	1	272	272
Ranger Parking	Stop in bus zone (in school zone)	7	349	2443
Ranger Parking	Stop in bus zone (not clearway or transit/bus lane)	6	272	1632



Ranger Parking	Stop in disabled parking area without current permit displayed	13	581	7553
Ranger Parking	Stop in loading zone	6	194	1164
Ranger Parking	Stop in taxi zone	6	194	1164
Ranger Parking	Stop on path/strip in built-up area	8	268	2172
Ranger Parking	Stop on/across driveway/other access to/from land	4	272	1088
Ranger Parking	Stop within 10 metres of an intersection (no traffic lights)	3	349	1047
Ranger Parking	Stop on/across driveway etc to/from land (in school zone)	2	349	698
Ranger Parking	Stop heavy/long vehicle longer than 1 hour	4	116	464
Ranger Parking	Not park at 90 degree angle	2	82	164
Ranger Parking	Not parallel park in direction of travel (road related area)	2	116	232
Ranger Parking	Disobey no parking sign (in school zone)	2	194	388
Ranger Parking	Stop on path/strip in built-up area (in school zone)	1	349	349
Ranger Animal	Companion animal (other) not registered as prescribed - first offence	44	330	14520
Ranger Animal	Companion animal (other) not registered as prescribed - second or subsequent offence	4	330	1320
Ranger Animal	Fail to comply with dangerous dog control requirements	1	1760	1760
Ranger Animal	Fail to comply with nuisance dog order - 1st offence	2	275	550
Ranger Animal	Fail to comply with nuisance dog order - 2nd plus offence	1	275	275
Ranger Animal	Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	66	220	14520
Ranger Animal	Fail to state full name/residential address	1	330	330
Ranger Animal	In charge of dog in prohibited public place	2	330	660
Ranger Animal	In charge of dog not under control in public place	24	330	7920
Ranger Animal	In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	4	1320	5280
Ranger Animal	Not comply notice re registration (other) - first offence	12	305	3660
Ranger Animal	Not identify companion animal as prescribed - not dangerous/menacing/restricted dog	6	180	1080



Ranger Animal	Owner of dog in prohibited public place	11	330	3630
Ranger Animal	Owner of dog not under control in public place	61	330	20130
Ranger Animal	Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	14	1320	18480
Ranger Animal	Fail to comply with menacing dog control requirements	2	1760	3520
Ranger Animal	Companion animal (other) not registered if required by regulations - first offence	12	305	3660
Ranger Animal	Not comply notice re registration (other) - prior offence	1	305	305
Ranger Animal	Former owner not notify change of ownership	2	180	360
Ranger Animal	Dog to be declared dangerous or menacing not under effective control	3	1320	3960
Ranger Animal	Not notify change in registration/identification information - not dangerous/menacing/restricted dog	8	180	1440
Ranger Animal	Dog not wear collar and name tag - not dangerous/menacing/restricted dog	1	180	180
Ranger Animal	Fail to prevent dog from escaping - dangerous dog	2	220	440
Ranger Animal	Fail to prevent dog from escaping - menacing dog	3	220	660
Ranger Animal	Companion animal (other) not registered if required by regulations - second or subsequent offence	1	305	305
Ranger Animal	Owner not control/muzzle/register dog-section 58A	1	1320	1320
Ranger Animal	Owner not comply with restricted dog control requirements	2	1760	3520
Ranger Environment	Abandon a motor vehicle in a public place	6	550	3300
Ranger Environment	Abandon an article (not motor vehicle or shared device) in a public place	2	220	440
Ranger Environment	Aggravated deposit litter from vehicle no exclusions - Individual	2	450	900
Ranger Environment	Deposit litter excluding cigarette and from vehicle - Individual	7	250	1750
Ranger Environment	Deposit litter from vehicle no exclusions - Individual	2	250	500
Ranger Environment	Development without development consent - any other case - Corporation	1	6000	6000
Ranger Environment	Fail to comply with terms of notice erected by council	34	110	3740
Ranger Environment	Not position rear of vehicle correctly - 45 degree angle parking	2	83	166



	Grand Total	1609	82	334225
Ranger Environment	Owner transport hazardous waste to unlawful facility-class 1 officer - Individual	1	4000	4000
Ranger Environment	Light fire for land clearance/fire break without notice prescribed	1	1100	1100
Ranger Environment	Not comply with approval dispose of waste in council sewer - item 4 of Part C	2	330	660
Ranger Environment	Fail to comply with order number 22 (store/treat/process/collect/remove/dispose of/destroy waste)	1	330	330
Ranger Environment	Fail to comply with terms of notice erected at public place	2	110	220
Ranger Environment	Wilfully contravene/disregard notice/barrier	6	116	696
Ranger Environment	Unlawfully remove plant/animal/rock/soil from public place	7	220	1540
Ranger Environment	Transport etc waste to unlawful waste facility - class 1 officer - Individual	5	2000	10000
Ranger Environment	Pollute waters - class 1 officer - Corporation	1	8000	8000

Warnings issued from 1 July 2020 to 30 September 2020 via offence Code

Compliance	23
Commence building without construction certificate - class 1a/10 building - Corporation	1
Development not accord consent - any other case - Corporation	2
Development not accord consent - class 1a or 10 building - Corporation	1
Development without development consent - any other case - Individual	3
Development without development consent - class 1a or 10 building - Corporation	1
Development without development consent - class 1a or 10 building - Individual	12
Not notify plumbing regulator when work ready for inspection	1
Operate sewage management system otherwise than as approved	2
Enviro Health	2
Development without development consent - any other case - Individual	1
Pollute waters - class 1 officer - Individual	1



Parking	71
Disobey motor bike parking sign	5
Disobey no stopping sign	8
Not parallel park in direction of travel	1
Not park wholly within parking bay	10
Not position rear of vehicle correctly - 45 degree angle parking	1
Park continuously for longer than indicated	3
Park vehicle for longer than maximum period allowed	11
Stop at side of road with continuous yellow edge line	1
Stop in bus zone (clearway or transit/bus lane)	1
Stop in bus zone (in school zone)	4
Stop in bus zone (not clearway or transit/bus lane)	1
Stop in disabled parking area without current permit displayed	11
Stop in loading zone	4
Stop in loading zone longer than 30 minutes	1
Stop in taxi zone	2
Stop on path/strip in built-up area	2
Stop on path/strip in built-up area (in school zone)	1
Stop on/across driveway/other access to/from land	4
Ranger Parking	36
Disobey no stopping sign	4
Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	3
Not parallel park in direction of travel	2
Not park wholly within parking bay	2



Not position rear of vehicle correctly - 45 degree angle parking	3
Park vehicle for longer than maximum period allowed	3
Park vehicle not wholly in marked parking space	1
Stop heavy/long vehicle longer than 1 hour	2
Stop in bus zone (in school zone)	1
Stop in disabled parking area without current permit displayed	2
Stop on path/strip in built-up area	8
Stop within 10 metres of an intersection (no traffic lights)	5
Ranger Animal	21
Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	9
In charge of dog in prohibited public place	1
In charge of dog not under control in public place	1
In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	1
Not notify change in registration/identification information - not dangerous/menacing/restricted dog	1
Owner of dog in prohibited public place	1
Owner of dog not under control in public place	4
Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	1
Owner restricted dog not have permit in force as required	2
Ranger Environment	11
Abandon an article (not motor vehicle or shared device) in a public place	2
Development not accord consent - any other case - Individual	1
Drive/tow vehicle with unsecured load	1
Fail to comply with terms of notice erected by council	5
Transport etc waste to unlawful waste facility - class 1 officer - Individual	1



Wilfully contravene/disregard notice/barrier	1
Grand Total	164



DE20.137 Misuse of vegetation Policy Report

HPERM Ref: D20/461817

Section: Environmental Services

Approver: Phil Costello, Director - City Development

Reason for Report

To provide a report in response to the Notice of Motion MIN20.637

Recommendation (Item to be determined under delegated authority)

That Council:

- 1. Receive this report for information; and
- 2. Having regard to the fact that there is already a process through the Land & Environment Court, supported by the Tree (Disputes Between Neighbours) Act 2006, to deal with the type of issues outlined in Council Minute MIN20.637, Council not proceed with developing a separate policy relating to the misuse of vegetation at this time.

Options:

- As recommended. Not support developing a policy to prohibit the misuse of vegetation, noting there is already a process through the land & Environment Court supported by the trees (Disputes between neighbours) Act. Creating Council's own policy would create an unnecessary financial and resourcing burden on Council and potentially expose Council to unnecessary risk in getting involved in neighbourhood tree disputes.
- Not adopt the recommendation.

Background

At the Ordinary Meeting on 22 September 2020, Council considered a Notice of Motion from Councillor Proudfoot and resolved (MIN 20.637) that a report is received from staff regarding the potential development of a policy which could prohibit the misuse of vegetation which has been planted in order to deliberately have a negative impact on the amenity or aspect of a neighbour's property, OR has the unintended consequence of doing so. Some species worth consideration include bamboo, conifers, Norfolk Island pines or even wild pittosporum.

Current situation

Under the Biosecurity Act, Council already takes regulatory action to ensure weed species are managed across the City. Council already provides education and advice to the community on weed species when receiving enquiries to assist residents where possible and this includes nuisance species such as bamboo.

In regard to Trees and other vegetation such as hedges, there is currently a process in place through the Land & Environment Court to deal with potential negative impacts of planting of vegetation on neighbouring properties. The legislation is called the Tree (Disputes Between Neighbours) Act 2006 (The Trees Act) and aims to provide a simple, inexpensive and accessible process for resolving neighbour disputes about trees.



Landholders can apply for the Court to make an order to:

- 1. Remedy, restrain, or prevent a neighbour's tree from causing damage to their property;
- 2. Prevent injury to people; or
- 3. Remedy, restrain, or prevent a neighbour's high hedge (over 2.5m) from severely obstructing sunlight to their window or a view from their house.

If the Land and Environment Court intervenes a court order is issued on the owner of the subject land to remedy the situation.

Further information about the process can be found at

http://www.lec.justice.nsw.gov.au/Pages/types_of_disputes/class_2/Trees-hedge-disputes-process/Treedisputes-helpfulmaterials/treedisputes_helpfulmaterial.aspx

The Court also sets out tree dispute principles, from time to time, when appropriate cases arise, to provide an understanding of how the Court has approached a particular aspect of such disputes.

While tree dispute principles are stated in general terms, they may be applied to cases to promote consistency. Tree dispute principles are not legally binding but give guidance to all as to how the LEC may view specific situations. For example, the following table lists some of these principles.

PRINCIPLE	SPECIFIC ASPECT	CASE REFERENCE AND LINK
Claims for structural damage to property	Guidance where applications made pursuant to Part 2 of the Trees Act 200 include claims for rectification of, or compensation for, structural damage to property caused by roots of a tree.	Fang v Li & anor [2017] NSWLEC 1503
The tree was there first	Matters to be considered when determining who should pay for any works or removal of a tree	Black v Johnson (No 2) [2007] NSWLEC 513
Urban trees and ordinary maintenance issues	The dropping of leaves, flowers, fruit, seeds, or small elements of deadwood by urban trees ordinarily will not provide the basis for ordering removal of or intervention with an urban tree.	Barker v Kyriakides [2007] NSWLEC 292

Policy and Risk Implications

The Court acts as an independent arbitrator in these cases. If Council creates its own policy this may conflict with the current legislative court processes and create an unnecessary onus or legal obligation or risk burden on Council and an additional policy layer that will protract an outcome for an individual.

It will also create an additional administrative and cost burden to process applications or enforce a policy and also create the situation where individuals may not agree with the Council policy and in turn take Council to court to seek to have the situation remedied, resulting in a further cost burden on the ratepayer.

Under the Biosecurity Act Council already has power to take regulatory action to ensure weed species are managed accordingly so as not to impact adjoining properties.



Council already provides advice to customers and the community on this process when receiving enquiries to assist residents as much as possible.

Financial Implications

Proceeding to develop policy which could prohibit the misuse of vegetation would require additional resources/ staffing to regulate this policy and potentially a burden of court action or claims made against Council if the person seeking the remedy does not agree with a decision of Council.



DE20.138 Collingwood Beach Dune Vegetation Two-Year Trial Action Plan - Final Report

HPERM Ref: D20/480826

Section: Environmental Services

Approver: Phil Costello, Director - City Development

Attachments: 1. Final Report - Collingwood Beach Dune Vegetation Two-Year Trial

Action Plan (under separate cover) ⇒

2. Evaluation Survey Report - Collingwood Beach Dune Vegetation Two-

Year Trial Action Plan (under separate cover) ⇒

3. DRAFT brochure summarising outcomes and findings J.

Reason for Report

To provide the Final Report on the implementation of the Collingwood Beach Dune Vegetation Two-Year Trial Action Plan and recommendations from the Trial.

Recommendation

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. This 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;
- Consider allocation of an additional \$125,000 for additional annual maintenance funds from 2021/22 onwards, to prune overhanging vegetation, to allow for at least three maintenance events each year of the Shoalhaven's 170 km of coastline with more than 250 beach access ways;
- 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 maintenance works that are required; and
- 6. Adopt the recommendations of the Final Report Collingwood Beach Dune Vegetation Action Two-Year Trial Plan.

Options

1. Adopt the recommendation.

<u>Implications</u>: The community and the environment will benefit from implementing the learnings from the Collingwood Beach Dune Vegetation Two-Year Trial Action Plan with the budget required.



2. Choose an alternative recommendation

<u>Implications</u>: This would depend on the alternative recommendation and may delay implementing the learnings from the Trial that would benefit both the community and the environment. Any implications of the alternative recommendation relating to legislative responsibility, cost, policy and risk would need to be considered.

Background

On 14 August 2018, Council's Development Committee resolved the following (MIN18.607):

That Council endorse the Draft Collingwood Beach Dune Vegetation two-year trial Action Plan to enable implementation of the actions contained within the Plan.

Section 6 – Communication Strategy of the adopted Collingwood Beach Dune Vegetation Action Plan – (the Plan) identifies that the final report is to be available in December 2020 after the 2-year trial period has expired.

The Plan provides a framework for the restoration and future management of the Collingwood Beach dune vegetation system using two trial study sites. The goal of the Plan is to achieve a positive outcome in terms of protecting the health and resilience of the dune system, as per the *NSW Coastal Management Act 2016*, whilst also meeting the desires and expectations of the community and other key stakeholders.

The Collingwood Beach Dune Vegetation Action Plan – Two Year Trial Plan (D18/59947) can be viewed on Council's website at:

https://shoalhaven.nsw.gov.au/Environment/Collingwood-Beach

Purpose of the Plan

The following is a summary of key purposes/outcomes identified in the Plan:

- 1.To develop recommendations leading to a long-term sustainable management plan for dune vegetation for Collingwood Beach to deter vegetation vandalism;
- 2. Install a viewing platform in accordance with Manly Hydraulic Laboratory (MHL) report; and
- 3. Recognise the recommendations and proposed management and communication methods compiled by the former Collingwood Beach Dune Vegetation Reference Group (Chaired by Allan Baptist in the former Council and referred to as the "Baptist Plan" in this document. A full copy of the recommendations from the Baptist Plan is contained within Appendix 1 of the Plan). The main recommendations from the Baptist Plan are:
 - i. That Council develop a plan for the management of the Collingwood Beach dune vegetation on a 5-year trial basis;
 - ii. Improve diversity of vegetation on the Dune through natural seedlings and planting of local native species;
 - iii. Vegetation on the dune to provide a wedge effect to retain sand on the beach and to protect private and public assets;
 - iv. Manage the dune vegetation to provide a range of experience, with filtered views (in appropriate locations), thickets, healthy vegetation and tall occasional shade trees:
 - v. The dune vegetation needs to be managed and maintained in a sustainable way, meaning it will need to be legally, financially, and environmentally, acceptable for present and future generations; and



vi. Community education and engagement to ensure the community understands the role of dune vegetation management and the complexities of managing a natural active system in an urban tourism setting, and supports the balanced approach required.

Actions Completed

Table 1 summarises the implemented actions from the Plan.

Table 1. Collingwood Beach Action Plan - implemented actions

Action	Progress	Timeline for completion
Pruning works undertaken at trial site and cut wood felled throughout foreshore reserve	100%	Completed
Pruning site fencing works	100%	Completed
Install seating at both trial sites	100%	Completed
Install viewing platform at revegetation site with access ramp	100%	Completed
Community and school planting days Planting of trial site	100%	Completed
Drone footage of trial sites	100%	Completed 21/02/2020, 17/5/2019, 26/2/2020 and 15/10/2020.
Vegetation Vandalism Strategy presented to Council	100%	Completed 05/11/2019
CCTV research undertaken and presented to Councillors	100%	Completed 05/03/2019
Collingwood Beach 'Get Involved' page (community engagement)	100%	Completed
Monitoring of revegetation site	100%	Completed over the length of the trial.
Weed monitoring	100%	Completed over the length of the trial.
Photo monitoring of both trial sites	100%	Completed Aug 2018; Nov 2018; Feb 2019; Oct 2019; Jan 2019; Jul 2020 and Oct 2020.
Poster/signage program for community appreciation of native vegetation to be implemented citywide	Ongoing	Signs installed. Review and installation of additional signage ongoing.
Project management	100%	Completed
Internal costs and charges (wages, stores, fleet inventory, miscellaneous)	100%	Completed

Key Findings

The Collingwood Beach Dune Vegetation Two-Year Trial Action Plan Final Report (Final Report) may be viewed in full in Attachment 1. A **draft** brochure summarising the outcomes and findings of the Trial is contained in Attachment 3.

The Final Report provides a comprehensive review of all actions undertaken during the Collingwood Beach Dune Vegetation Two-Year Trial (the Trial). The Final Report also details results and conclusions from the Trial and provides recommendations moving forward that incorporate learnings from the Trial. The following is a brief summary of key findings from the Trial:



- The Collingwood Beach Dune Trial location is unique to the Shoalhaven. It is a
 modified dune system due to clearing in the 1960s to prepare for subdivision of the
 area and a coastal erosion event in the early 1970s. Accordingly, the outcomes from
 the Trial can only apply to this section of the beach (Susan Street to Albion Street)
 and not to other areas within the Shoalhaven or even Vincentia.
- The Trial was a mixed success. However, important learnings were gained across all areas of the Trial and these learnings need to be implemented and funding allocated to ensure benefits to both the community and the environment.
- The Trial was not successful in deterring vandalism. During the Trial, an additional eleven events were recorded across Trial Sites 1 and 2 and six in the control site.
- Vandalism of Banksias leads to more epicormic growth and root shoots. This results in a bushier tree with thicker foliage.
- Banksias pruned in accordance with the Australian Standards not only survive and remain healthy, but continue to grow upwards and not with thick foliage, thus maintaining filtered views to the Bay.
- Selective planting in consultation with residents was a positive outcome from the Trial. This is evident by planted vegetation, including Bangalay trees, not being vandalised during the Trial and the high survival rate of specimens.
- The diversity of native species in the dune increased from 13 to 16 species. In addition, the number of weed species declined from 11 to 5 species.
- There was insufficient width on the dune to create a vegetation wedge effect.
- Since the initial pruning event, over 80% of the Banksia trees have been subject to pruning and many on more than one occasion. Most of these trees have had all branches removed up to 2 m and therefore have little more to prune. The nature of the area provides minimal light to the understory therefore slowing growth of understory plants and retarding stem growth on Banksias. Accordingly, follow-up pruning to retain the filtered views is estimated to be required once every two years.
- There are unobstructed views to the ocean resulting from vandalism of vegetation, from 63% of the shared pathway from Susan St to Albion St. An increase from 50% identified in the original NGH Report, of area vandalised creating views.
- The potential for additional filtered views could be considered in southern portion of Pruning Trial Site 2, near the end of Susan Street. However, any assessment must consider that as Banksia trees are thinned out or removed, the increase in light initiates growth of remaining trees and understory plants, which would potentially block views and would also require regular maintenance at an ongoing cost.

Photographs in Plates 1 to 4 were taken at Pruning Trial Site 2 in August 2020, post pruning event. Plates 5, 6 and 7 were taken following completion of the viewing platform, bench seating and fencing respectively. Plate 8 and Plate 9 were taken on Vincentia Public School planting day and the community planting day, held on 24 August 2018 and 25 August 2018 respectively.



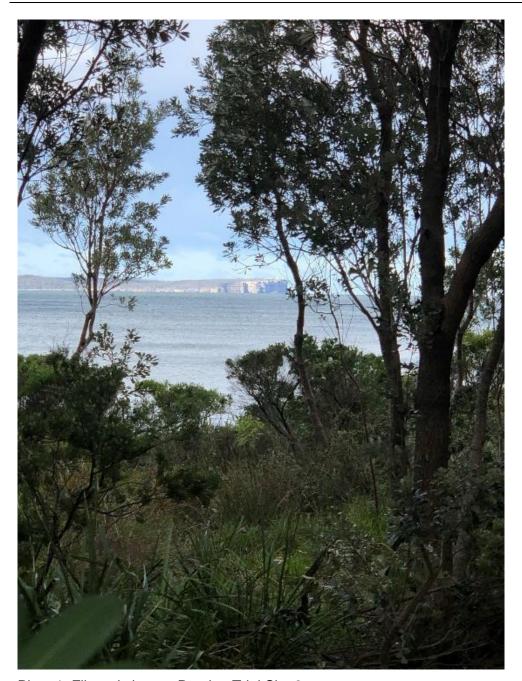


Plate 1: Filtered views – Pruning Trial Site 2





Plate 2: Filtered views – Pruning Trial Site 2





Plate 3: Filtered views – Pruning Trial Site 2



Plate 4: Filtered views - Pruning Trial Site 2





Plate 5: Completed inclusive-access viewing platform



Plate 6: Completed bench seat





Plate 7: Fencing installed at the Trial site.





Plate 8: Vincentia Public School planting day





Plate 9: Community planting day

Evaluation of Trial success

Table 3 provides an evaluation of the success of the implemented actions from the Plan.

Table 3: Evaluation of Trial Success

Success	Measure	Status	
Pruned Banksias in good health	Assessment by arborist at 6 monthly intervals and prior to pruning.	√	
Surviving plant specimens	Percentage of survival of planted specimens.	√	
Positive social response	Number and opinion of unsolicited posts, letters, etc.	✓	
Plant diversity	lumber of weed vs native species.		
Filtered views	Cost effectiveness of view window maintenance - time and money spent.	× 1	
Decreased vandalism on trial sites: - A control site in Vincentia will be chosen for comparison	Percentage of known vandalism decreasing over time across trial sites.	X 2.	
Acceptance by the community of the outcome of the trial	Community survey to be undertaken (web-based).	× 3.	

¹The total cost of creating filtered views was \$25,796 with follow-up pruning recommended once every two years. Therefore, whilst effective filtered views were created, they were not considered to be cost-effective, especially considering the size of the trial area compared to potentially effected coastline.



²·Vegetation vandalism did not decrease over the Trial. However, importantly, none of the vegetation planted at Regeneration Trial Site 1, including four Bangalay trees, was vandalised. This indicates general support and acceptance by the community of the approved revegetation species list. It was also noted that species other than Banksias were vandalised during the Trial.

³·More than half of 90 survey participants considered the actions undertaken as part of the Trial would not lead to an acceptable balance between dune stability, amenity (views/accessibility) and habitat at Collingwood Beach. Generally, either participants felt not enough vegetation was removed from the dune or too much vegetation was removed and not enough was planted.

Community Engagement

Table 2 details the implemented communication actions from the Plan.

Table 2: Communication Strategy

Action	Strategy	
Develop a strong engagement and communication strategy with identified stakeholders including a program of public consultation and education throughout trial period	Incorporate multi-media, information displays and signage and/or presentations.	
Implementation	Status	
Meet with adjacent property owners	Completed	
	Community planting day on 25 August 2020 and throughout the Trial.	
	Ranger letterbox drops and vegetation vandalism investigations undertaken throughout trial period.	
	Collingwood Beach Dune Reference Group Meetings – April 2018, April 2019, May 2019 and October 2020.	
Website and Facebook updates to Vincentia and Huskisson communities	Completed	
	'Get Involved' page on Council's website updated throughout the Trial.	
	Five Facebook updates were posted throughout the Trial and an additional post was made on 16 October 2020 requesting the public to participate in the evaluation survey.	
Information posters in local villages	Completed and ongoing	
	Bay & Basin Leisure Centre and Ulladulla Leisure Centre Education Poster installed on 21 August 2020.	
	Stocklands in Nowra installed the Education Poster on 21 August 2020.	
	A review of the signage and additional installations is ongoing and will be distributed to Libraries and CCBs	
	Specific requests have been made by Callala Bay Community Association, Conjola Community Association and Huskisson Community Centre.	



Erect explanatory signs at trial sites	Completed	
Lieu explanatory signs at that sites	Installed August 2018.	
	Completed	
Planting day	24 & 25 August 2018 (Vincentia Public School and Community planting days respectively).	
Progress Report to Council	Completed November 2018, June 2019, February 2020, September 2020 and December 2020.	

Community Survey

Ninety (90) community members participated in an online community survey. A report on the results of the survey may be viewed in Attachment 2. The survey was available for participation from 9 October 2020 to 2 November 2020. Signs were erected in the trial site informing the community of the survey and providing the option to call Council to participate in the survey if they were unable to do so online. Council also advertised the survey on the online Get Involved Page and through social media.

Policy Implications

The Collingwood Beach Dune trial location is unique to the Shoalhaven as it is a modified dune system due to clearing in the 1960's to prepare for subdivision of the area and a coastal erosion event in the early 1970's. Accordingly, the outcomes from the Trial can only apply to this section of the beach (Susan Street to Albion Street) and not to other areas within the Shoalhaven or even Vincentia.

The adopted outcomes and learnings from the Trial will inform the Collingwood Beach Dunecare Action Plan and guide the work of the Dunecare Group under Council's Bushcare Program.

Council's adopted Shoalhaven Tree and Vegetation Vandalism Prevention Policy is already in place and supports the outcomes and learnings from the Trial.

Financial Implications

The Trial was a substantial investment by Council. To capitalise on this investment, the following funding is recommended for consideration in the 2021/22 budget to implement the outcomes and learnings from the Trial:

- \$37,700 for Council's contribution for the submitted 2020 Collingwood Beach Coastal and Estuary Grant application;
- A dedicated annual budget of \$125,000 from 2021/22 for additional maintenance funds to prune overhanging vegetation, to allow for at least three maintenance events each year of the Shoalhaven's 170 km of coastline with more than 250 beach access ways; and
- a dedicated annual budget of \$15,000 from 2021/22 to continue to implement Council's Vegetation Prevention Vandalism Policy across the Shoalhaven.

Risk Implications

The two-year Trial has been a substantial investment of Council's and the community's time, money and resources. Should the recommendations from the Trial not be adopted or funded, Council will risk not capitalising on this investment and that both the community and the environment will not benefit from the Trial.



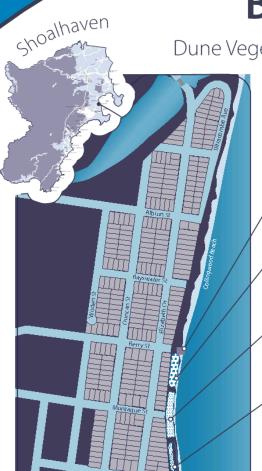
If Council deviates from the recommendations from the Trial, the implications relating to legislative responsibility, cost, policy and risk would need to be considered for any alternative recommendation. This would include and alternative recommendations regarding the removal of any additional vegetation. The long-term impacts of such an action are unknown and an environmental assessment would be required.





Collingwood Beach Snapshot

Dune Vegetation Two-Year Trial Action Plan





Lookout platform site

A new accessible lookout platform was installed on the south side of the Berry St beach accessway. A bench seat and splayed fence corners were also installed at the western end of the dune.

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Revegetation site

100m of foreshore reserve, extending south from the Berry St beach accessway, was fenced with wire mesh & timber posts on all sides and revegetated.



Control site

100m of foreshore to compare the results of the trial sites.



Pruning site

100m of foreshore reserve extending north from the Susan St beach accessway. Minimum 15m non-pruned buffer to the Endangered Ecological Community (EEC), extending north from the Susan St beach accessway.

A bench seat and splayed fence corners were installed at the western end of the Susan St beach accessway.

The dune vegetation at Collingwood Beach, Vincentia, has been the subject of contrasting public opinions for many years.

While there is a clear appreciation of the value of natural areas and native vegetation in the broader community, there has been extensive unauthorised vegetation removal, poisoning and vandalism of foreshore vegetation.

As a result, Council adopted a collaborative approach to manage the vegetation vandalism.

Two trial study sites were used to assess a recommended framework for the restoration and management of the dune vegetation system.

This brochure outlines the actions taken over the two- year trial and the outcomes produced.



What We've **Achieved**

The following was achieved by working successfully with the community during the trial



2000m² of fencing installed

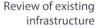










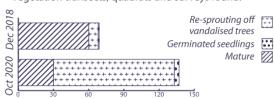




- · Installation of informative signage
- Temporary vandal signs created

Monitoring & Analysis

Vegetation transects, quadrats and surveys found:



Mature trees declined by 31% over an 18 month period

Minimal seeds germinated at the site

Root suckers

· Dominant form of banksia regeneration at the site as a result of vandalism

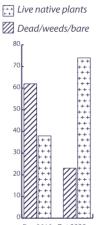
Page 180

Substantial growth in banksias that presented signs of vandalism





Both weed cover and bare areas were lower by the end of the trial. Native plants compete with weeds for space, nutrients and water



Dec 2018 Oct 2020

Trial Timeline

Council Resolution to commence trial.

21 November 2017 → 24 & 25 August 2018 → September 2018-2020

School and community planting days.

Implementation of Collingwood Beach Dune Vegetation Two-Year Trial Action Plan. Two sites; revegetation site and the selective pruning site.

> October 2018 and March 2019

6 working bees with 8 participants within both trial sites, Vincentia Bushcare Group.

- Shoalhaven Tree and Vegetation Vandalism Prevention Policy Reported to Council. It was resolved not to place the Strategy on public exhibition but rather referred it to a Councillor workshop.
- Collingwood Beach Surveillance Vegetation Vandalism was reported not install surveillance cameras along Collingwood Beach.

June 2019 and Jan 2020 Removal of weeds north of Susan St (Trial Site 2). Vincentia Bushcare Group and Vincentia Dunecare Group.



Evaluation

- Pruned Banksia's in good health
- Surviving plant specimens
- Positive social response
- Plant diversity
- \otimes Decreased vandalism on trial sites
- Acceptance by the community of the outcome of the trial





- Observation surveys completed
- · Reduction in number of weed species
- · Reduction in coverage of area by weeds
- · Weed species control





Establishment of **Dunecare Group**

Registration and investigation of

31 vandalism events



5 social media posts

148 comments

256 reactions



Supervised pruning of vegetation by a qualified arborist

Implementation of vegetation vandalism policy



Felling dead wood and scattering







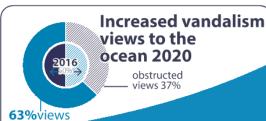
\$9,388 and 96 hours of labour spent on pruning





Other Engagement

- · Letter box drops
- Progress reports updating Council and the community
- Community Survey
- Updates listed on Council's Get Involved page
- · Community planting day
- Forming of Reference Group
- · Vincentia Public School planting day
- Foot patrols
- Education



30 July - 28 August 2019 and Vegetation Vandalism Exhibition for Feedback.

5 November 2019

Policy adopted by Council (MIN19.815) Implementation of Shoalhaven Tree and Vegetation Vandalism Prevention Policy.

12 December 2019

Trimming of selective height reduction and pruning of sides Pruning January 2020-July 2020 Removal of weeds in both

trial sites by Vincentia Bushcare and Vincentia **Dunecare Groups**

18 August 2020 Banksia roots suckers and seedlings were Site 2, along with additional trimming.

9 October 2020 Online Community Survey open for comment.

14 October 2020 8 volunteers from Vincentia Bushcare Group worked within the Trial Site 2.

→ 2 November 2020 Online Community Survey closed for comment.

→ December 2020 Final progress report submitted to Council. Council to determine future actions.





funded and implemented to ensure both the community and the environment benefits.

Vegetation vandalism was found to continue during the trial, with eleven events recorded across the two trial sites and six in the control site.

However, the trial clearly demonstrated that vandalised Banksias result in a bushier tree with thicker foliage, due to more epicormic growth and root shoots. Conversely, Banksias pruned in accordance with the Australian

Standards not only survived and remained healthy but continued to grow upwards, not out with thick foliage - thus keeping filtered views to the Bay.

The trial also demonstrated the success of selective planting that was completed in consultation with residents. Plantings were not vandalised and there was a high survival rate of specimens, including Bangalay trees.

Where to from here

1) Plans and strategies

- Support the implementation of the 2020 Collingwood Beach Coastal and Estuary Grant Application to apply learnings across the dune, from Susan Street to Albion Street to support the work of the Dunecare Group.
- Support the preparation of the Collingwood Beach Dunecare Action Plan to guide their under Council's Bushcare Program.
- The Dunecare Action Plan support the strategic planting of trees (from the approved revegetation species list) in line with property boundaries or other strategic locations to act as "stepping stones" to provide links to other urban bushland canopies and not impede views.
- Council consider further strategies to deter vandalism, including more rigorous fencing, letterbox drops outlining penalties and CCTV.
- · Consider future options and costs to improve the aesthetics of stumps remaining from vandalised trees, including: planting native vines; creating sculptures; or re-shaping.

Funding

- Council's contribution for the 2020 Collingwood Beach Coastal and Estuary Grant
- · Dedicated annual budget to continue to implement Council's Vegetation Prevention

Vandalism Policy across the Shoalhaven.

· Allocate additional funding for identified maintenance work.

Education

- · Pop-up education stall in vegetation vandalism hot spot areas.
- · Continued posting online and on social media.

Maintenance

- Follow up pruning every two years to retain the filtered view windows. These works are to be supervised or undertaken by a qualified arborist or staff trained by a qualified arborist to ensure compliance with AS 4373.
- · Pruning of overhanging vegetation along the shared pathway and three maintenance events each year of the Shoalhaven's 170 km of coastline and more than 250 beach access ways.
- · Audit the stormwater outlets, shared pathway and accessways along Collingwood Beach to maintain the resilience of the dune and identify any maintenance works that are required.
- · Council's Bushcare Coordinator continue to work with the Collingwood Beach Dunecare Group to manage dead vegetation and dead branches.
- · Review the viewing areas in the southern portion of Pruning Trial Site 2, near the end of Susan Street.



DE20.139 Review of Tabourie Lake Entrance Management Policy

HPERM Ref: D20/486502

Section: Environmental Services

Approver: Phil Costello, Director - City Development

Attachments: 1. Councillor Briefing 6 August 2020 - Tabourie Lake Entrance

Management 4

2. Tabourie Lake Entrance Management Policy June 2019 (under separate

cover) ⇒

Reason for Report

To inform Council regarding the review of the Tabourie Lake Entrance Management Policy and present the policy for adoption.

Recommendation (Item to be determined under delegated authority)

That Council

- Adopt the Tabourie Lake Entrance Management Policy (June 2019), with the policy recommendation to increase the trigger level, for mechanical opening, from 1.17m AHD to 1.3m AHD.
- 2. Continue to investigate stormwater drainage issues affecting properties on Princes Highway, Tabourie Lake in conjunction with Transport for New South Wales.

Options

1. As recommended

<u>Implications</u>: Would be in line with the recommendation of the policy review and the equally highest ranked preferred option based on community feedback.

2. Not adopt the Tabourie Lake Entrance Management Policy (June 2019) and retain the Tabourie Lake Entrance Management Policy (EMP, 2005).

Implications: Reviewing the Tabourie Lake Entrance Management Policy was a key recommendation of the adopted Lake Tabourie Flood Risk Management Plan 2016. Not adopting the reviewed Policy would place Council in conflict with this recommendation. The current 2005 entrance management policy was previously resolved to be updated and replaced following completion of the Tabourie Lake Floodplain Risk Management Study and Plan (FRMS&P) which were completed in 2016. Council would not be managing the lake based on best available information and analysis.

3. Alternative recommendation

Implications: Would depend on the recommendation.



Background

Council, together with the NSW Government, manages five estuary entrances for flood mitigation purposes. Historical land use planning and development of estuary catchments and floodplains has resulted in low-lying properties being at risk from flooding under certain rainfall and entrance conditions.

The review of the Tabourie Lake Entrance Management Policy, dated June 2019 (EMP), was first reported to Council on 5 November 2019 at the meeting of the Development & Environment Committee. Council resolved to adopt the Tabourie EMP, with the policy recommendation to retain the trigger level, for mechanical opening, of 1.17m AHD (MIN19.809). Following a number of rescission motions and notice of motions, Council officers briefed the Councillors on 6 August 2020. Please see **Attachment 1** for the presentation given at the 6 August 2020 briefing and see **Attachment 2** for the full copy of the revised EMP.

Council records indicate that localised flooding is experienced from the Princes Hwy for properties south of the bridge. Council has in the past liaised with the Tabourie Lake Community Consultative Body and Transport for New South Wales (TfNSW) in an attempt to alleviate localised flooding. Council will continue liaising with TfNSW in resolving this matter.

Response to the Notice of Motion (CL20.77)

At the Ordinary meeting of Council on 28 April 2020, Council considered a Notice of Motion (CL20.77) in relation to the Tabourie Lake Entrance Management Policy and resolved (MIN20.287):

That this matter be deferred pending a Clr Briefing and be brought back to the next available meeting.

As noted above, a Councillor briefing was held on 6 August 2020 following the July flood event. A copy of the presentation is contained in Attachment 1. The 2005 policy states that if the water level stabilises after rainfall at a level of between 1.0 m AHD and 1.17m AHD for a period of over two (2) months, the policy recommends that Council opens the lake.

The proposal to reduce this two (2) month period to one-week (7 days) will result in the increased frequency of intervention. Statistically, average peak water level immediately prior to entrance opening events is 1.19 m AHD (Cardno, 2019). This means that more frequent intervention particularly during wet periods (e.g. El Niño) will be required.

Increased intervention at the lake entrance will have an economic impact to Council and the community, and an unknown impact to the Lake ecology, environment and potential for increased shoaling. Following inflow events, water levels gradually decrease due to evaporation from the water surface and seepage through the berm, particularly at higher lake water levels. Shallow estuaries such as Tabourie Lake tend to experience accelerated reduction in water levels due to the above mechanisms.

Therefore, it is recommended that Council should not consider the one-week protocol for the reasons mentioned above. No additional assessment by Cardno is required as this has already been assessed.

Recorded Debris Line – Flooding of 27 July 2020

The Lake was mechanically breached by Council on 26 July 2020. Water levels reached 1.18m AHD and falling to 1.0m AHD. Following significant rainfall and prevailing swell, a peak water level of 1.31m AHD was recorded on 27 July 2020. Thus, even though the Lake was open to the Ocean, flooding occurred due to catchment runoff and prevailing swell, coinciding with the high tide.



Debris survey was undertaken by Council Surveyors following the flood event. Please see Attachment 1 for further details which includes photographic evidence of debris lines recorded at 1.31m AHD.

History of the Review of Tabourie Lake Entrance Management Policy (EMP)

Cardno Pty Ltd was engaged by Shoalhaven City Council to review the existing Entrance Management Policy (EMP) for Tabourie Lake. Tabourie Lake is an Intermittently Closed and Open Lake or Lagoon (ICOLL) and has periods during which the entrance is closed off from the ocean by the formation of a berm. The study area for the EMP comprises the tidal waterway of Tabourie Lake, its foreshores, and the adjacent lands.

The Tabourie Lake Floodplain Risk Management Study/Plan (FRMS, 2016) proposed a review of Council's existing Tabourie Lake Entrance Management Policy (EMP, 2005) and the accompanying Review of Environmental Factors (REF). The ocean storm event in June 2016 further highlighted the importance of this review.

A Draft Entrance Management Policy and REF was developed for Tabourie Lake by Peter Spurway & Associates in 2005. The Draft EMP has been used since that time by Council to guide the management of the entrance of Tabourie Lake for flood mitigation purposes. Under the Draft EMP the entrance is mechanically opened by Council when:

- Lake water levels are equal to, or in excess of, 1.17m AHD, this initiates an immediate entrance opening; or
- Lake water levels stabilise after rainfall at a level between 1.00m and 1.17m AHD and a period of over two months has elapsed since attaining that level, resulting in below floor level flooding of foreshore land.

Peter Spurway & Associates (2005) recommend that the assumptions of the Draft EMP and the management framework contained therein be reviewed following adoption of the Tabourie Lake Floodplain Risk Management Study and Plan (FRMS&P). The FRMS&P was completed in 2016, and one of the recommended actions in the FRMS&P was to review the Draft EMP considering the improved understanding of flood behaviour.

Given the significant amount of time that has passed since the Draft EMP was prepared, and acknowledging the changes in the catchment and improved understanding of flood behaviour, Council resolved to proceed with a review of the Draft EMP and preparation of a final EMP.

EMP Considerations

The review of the EMP considered the detailed flood modelling results presented in the 2016 FRMS&P, the combined risks associated with catchment and ocean flooding, and the potential impact of climate change on flooding and entrance behaviour.

There is a range of existing information for Tabourie Lake, that is of relevance to understanding the need and context for the EMP. ICOLL behaviour, entrance behaviour and flooding processes are important determinants of the level of risk to low-lying development from inundation, and aid in determining potential entrance management options.

The statutory and policy context, and environmental and social values of Tabourie Lake are important in assessing the appropriateness and acceptability of entrance management options from both regulatory and stakeholder perspectives.



EMP Review – Management Options

Options were identified and presented to the community. The following options were presented in the following order:

- **Option 1**: A "Do Nothing" option. Under this scenario, there is no active management of the lake entrance. For the "do nothing" option the entrance berm would be overtopped when water levels rise during a rainfall event and the entrance breaks out naturally without any intervention.
- Option 2: The continuation of the existing management approach, comprising mechanical entrance opening, when lake water levels reach the trigger level of 1.17 m AHD.
- **Option 3**: Raising the trigger Level to 1.3m AHD. This would lead to fewer mechanical openings of the entrance of Tabourie Lake, thereby reducing the environmental impact on the Lake.
- **Option 4**: Berm height management. This involves managing the entrance berm height (when closed) such that it does not exceed a pre-determined level; this is known as maintaining a "dry notch", which is a low or "saddle" point in the entrance berm, which the water can preferentially flow across. The purpose of the notch is to dispense with the need to mechanically open the lake when a flood occurs.
- **Option 5**: Construction of a permanently open entrance, using rock armoured training walls.
- **Option 6**: Implementation of a pilot channel a mechanical excavation of sand from the entrance berm 1 3 days before a large storm is scheduled to arrive, by digging a pilot channel starting from the ocean. The exercise is intended to reduce the volume of sand required to be removed to instigate a lake breakout, thereby inducing an earlier breakout and reducing flood levels within the lake.

Management Options - Community Consultation

An online questionnaire was distributed during the consultation period and over 90 responses were received from the community. In the questionnaire, the community was asked to rank the options presented (refer above) from a scale 1 to 5. It was found there was a wide range of opinions within the community.

As demonstrated in Table 1, final scores for Options 2 to 5 were very similar, with Option 1 scoring the least. Therefore, the options assessment based on community feedback concluded that options would come down to cost and impacts to the community.

Table 1: Summary of results from the community questionnaire

Option No.	Average Score	Rank	
1	4.9	6	
2	3.2	3	
3	3.1	1	
4	3.1	1	
5	3.4	4	
6	3.4	4	

Table 1 above shows the options ranking results, including an indication of how respondents ranked each option. An average score is also provided, whereby each respondent ranked their most preferred option "1" and their least preferred option "6". The survey results were inconclusive, with no clear preference indicated by the community. The "most preferred"



options were Options 3 (Raise trigger level) and 4 (Dry notch) with an average score of 3.1 out of 6, followed closely by Option 2 (Existing approach) with a score of 3.2.

The least preferred option was Option 1 (Do nothing), which would allow flooding to occur with no intervention. Option 6 (Construction of a permanently open entrance) appeared to be a fairly polarising option, being scored as the most preferred option by 38.8% of respondents, and least popular by 30.6% of respondents.

Management Options Modelling

Computer-based numerical modelling of various sub-sets of the entrance management options was undertaken using the Delft3D hydrodynamic and morphological model of the Tabourie Lake Estuary, which was established during the Tabourie Lake FRMS&P (Cardno, 2016). The same model set-up and catchment inflow data was used as in the Cardno 2016 study.

Numerical modelling was undertaken to assess the impact of three of the potential management options on peak flood levels and durations for the more regularly occurring 20% Annual Exceedance Probability (AEP) event. It is noted that the 1% AEP flood event occurs so rapidly that entrance management is not feasible for purposes of flood mitigation; hence it was not considered in the options assessment.

Option 1 was not modelled as it was lowest ranking and was considered unacceptable to the community. Option 5 was not modelled as it was considered unacceptable due to its lower ranking, high cost of implementation and risk of coastal inundation (refer to Section 4.5 of the EMP). Despite being ranked equal number one by the community, Option 4 was not modelled due to its higher cost and the fact that its technical feasibility was questionable (refer to Section 4.4 of the EMP).

The remaining three options modelled were:

- Option 2: Existing approach with trigger level of 1.17 m AHD;
- Option 3: Raising the trigger level to 1.30 m AHD; and
- Option 6: Incorporation of a pilot channel (in conjunction with the existing trigger level).

Each of the three options was modelled under five discrete conditions, summing to a total of 15 model simulations (as detailed below). These are different scenarios tested for each option to indicate the peak water levels. Further detail on the modelling methodology is provided in Section 5.3 of Attachment 2:

- Condition A: High High Water Springs (HHWS) and initial berm height of 2.1 m;
- Condition B: HHWS and initial berm height of 1.8 m;
- Condition C: 1% AEP ocean level and initial berm height of 2.1m;
- Condition D: 1% AEP ocean level and initial berm height of 1.8m;
- Condition E: HHWS + 0.4m sea level rise and initial berm height of 2.2 m.

Note: High High Water Springs (HHWS) refers to the highest level that spring tides reach on average over a period of time. The 2.1m berm height is deemed to be the maximum probable berm height.

Table 2: Peak Water Levels for Each Option for Each of Model Run

Option	Condition A	Condition B	Condition C	Condition D	Condition E
2	1.86	1.86	2.52	2.53	1.86
3	1.93	1.93	2.52	2.53	1.93
6	1.76	1.76	2.52	2.52	1.77



Management Options Modelling Results and Comparisons

Comparison of results for Options 2 and 3 (Table 2) shows that raising the trigger level from 1.17 m AHD to 1.30m AHD (an increase of 13cm) would result in an increase in the maximum flood level. However, the increase in flood level is not one for one, and flood levels only increase for Option 3 by around 7 cm (from 1.86 to 1.93 m AHD) for conditions A and B.

The increase is non-linear due to the fact that as flood level increases, so too does the available flood storage. Additionally, the flood levels are likely heavily influenced by the geometry of the entrance channel, which constricts the rate of lagoon outflow.

The results also show the same level of storm tide inundation for Options 2 and 3. This would suggest that Options 2 and 3 result in a comparable level of entrance scour, and therefore allow ingress of the storm tide to the same degree.

Cardno Pty Ltd has recommended that Council adopt Option 3 (raising trigger level to 1.3 m AHD) in the Tabourie Lake EMP, as described in the attached Tabourie Lake Entrance Management Policy. This recommendation is based on the technical assessment presented in Section 5.4 of the EMP), which included a triple bottom line cost-benefit assessment. The assessment resulted in highest score for Option 3 out of the six options considered.

If adopted, the EMP (Attachment 2) will henceforth supersede the previous Peter Spurway & Associates (2005) EMP. The 2019 EMP sets out the procedure by which Council will decide to open the entrance of Tabourie Lake for flood mitigation purposes, whether in response to a flood event or to alleviate below floor level inundation of foreshore land.

It is anticipated the implementation of the measures outlined in the 2016 FRMS&P would, in the future, likely remove the need to undertake entrance management and mechanical lake opening as a means of mitigating below floor level flooding. These options included structural options aimed at preventing, avoiding or reducing the likelihood of flood risks – including the construction of levees behind properties and raising roads in specific locations.

Therefore, it is intended that the EMP be adopted, until the relevant measures outlined in the 2016 FRMS&P have been fully funded and implemented. Please note that Appendices A to E are not included in the EMP attached (Attachment 2), as they are the accompanying operational documents.

Community Engagement

The outcome of the options assessment and the 2019 EMP were subject to public exhibition by Council between 21 January 2019 and 22 March 2019. As part of this public exhibition, the 2019 EMP was presented to the local community on 20 February 2019 at a Community Workshop at the Tabourie Lake Rural Fire Service (RFS) Shed. More than 30 community members attended this workshop.

In total 13 online submissions were received, of which seven submissions were in support of the EMP, 1 was neutral, and 4 were against. Of the submissions that were not in favour of the EMP, one submission was made by ten residents. Please refer to Attachment 1 for a summary of submissions received. Furthermore, a petition with 105 signatures against raising the trigger and to continue with the current management was presented by Councillor White at the Ordinary Meeting of Council, held on 30 April 2019. This petition was lodged post consultation period.

Council has received numerous correspondences from the community in relation to raising the trigger to 1.3m AHD, with the majority supporting the increase to 1.3mAHD. These correspondences can be found in Trim Container 5118E.



Policy Implications

The current Tabourie Lake Entrance Management Policy (final draft, 2005) remains current until such time as this review is completed and formally adopted by Council.

Financial Implications

The review of the Tabourie Lake Entrance Management Policy was completed within budget.

The project is for the provision of consultancy works and does not have any direct or immediate implications on Council's assets. The project is managed by staff from the Natural Resources and Floodplain Unit.

Once the EMP is adopted, Council is required to prepare a Review of Environmental Factors, as per the requirements of Part 5 of the NSW Environmental Planning and Assessment Act 1979. The cost of this is estimated to be approximately \$15,000. There are sufficient funds in the Flood Programme budget for this work.

Risk Implications

Opening of the entrance of the lake will not prevent flooding of property and dwellings in many circumstances. For example, even if the entrance is fully open at the start of a large flood event, if the flood is greater than a 10% Annual Exceedance Probability (AEP), it is expected that there are existing dwellings that would be affected by flooding

The Policy aims to reduce (where possible) but not eliminate the impacts of catchment flooding. Further, there may be circumstances (e.g. closed access roads, night, or dangerous sea conditions) where, despite its best endeavours, Council cannot act to mechanically open the entrance of the lake at the levels indicated in this Policy.

Legal advice was sought on a submission received from a resident, who is in favour of Option 2 (keep current trigger level) and made the following comments:

- Believes that adopting Option 3 could lead to legal action from residents who are
 potentially negatively impacted by the entrance management (e.g. destruction of
 assets and health and safety concerns).
- Makes a note about the costs and lead time involved with potential legal action for Council, as well as any potential media attention.
- Believes that the outcomes of the Study (Option 3) are led by environmental arguments and Council is not well-informed.

The legal response and acknowledgement to this submission is contained within Attachment 1. In summary, under the provisions of Section 733 of the Local Government Act, if Council acts in good faith it is protected from legal action in instances such as this. The "good faith" principle would be supported by the scientific study completed in regard to the Tabourie Lake catchment.



Tabourie Lake Entrance Management



Thursday, 6th August 2020



Background

The Tabourie Lake Floodplain Risk Management Study and Plan (2016) recommended that the Tabourie Lake Entrance Management Policy (2005) be review considering potential changes to entrance behaviour and flood levels arising from climate change.

Council engaged Cardno (NSW/ACT) to undertake the review of the 2005 entrance management policy. The review concluded that there was opportunity to raise the emergency trigger. After extensive community consultation the review recommended that it was viable to increase the current emergency trigger from 1.17m AHD to 1.3m AHD.

The Tabourie Lake Entrance Management Policy (2019) was reported to Council for adoption 5th November 2019. Council resolved to adopted the policy but retain the trigger level, for mechanical opening, of 1.17m AHD (MIN19.809). A Notice of Motion was presented to the Council Ordinary 28th April 2020 (CL20.77), that Council:

- 1. Request further detailed assessment and advice from Cardno on implementing the following changes to the Lake Tabourie Entrance Management Policy adopted by Council in November 2019;
 - a) adopts the policy recommendation to increase the trigger level, for mechanical opening, from 1.17m AHD to 1.3m AHD; and
 - b) a protocol that if lake water levels stabilise after rainfall above 1.0m AHD for a period of more than 1 week and additional rainfall is not forecast, the lake will be mechanically opened to allow a reduction in water levels to RL0.8m AHD:
- 2. Provide a further report to Council following the assessment by Cardno.

The matter was deferred pending a Councillor Briefing and brought back to the next available meeting (MIN20.287).



Response to the Notice of Motion (CL20.77)

The current adopted policy states that if the water level stabilises after rainfall at a level of between 1.0 m AHD and 1.3 m AHD (1.17m AHD as adopted by Council) for a period of over two (2) months, the policy recommends that Council opens the lake.

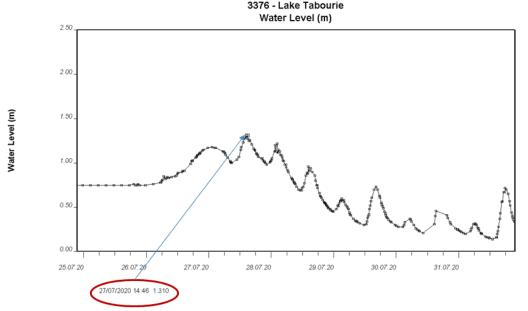
The proposal to reduce this two (2) month period to one-week (7 days) will result in the increased frequency of intervention. Statistically, average peak water level immediately prior to entrance opening events is 1.19 m AHD (Cardno, 2019). This means that more frequent intervention particularly during wet periods (e.g. El Niño) will be required.

Increased intervention at the lake entrance which will have an economic impact to Council and an unknown impact to the environment. Following inflow events water levels gradually decrease due to evaporation from the water surface and seepage through the berm, particularly at higher lake water levels. Shallow estuaries such as Tabourie Lake tend to experience accelerated reduction in water levels due to above mechanisms.

Therefore, it is recommended that Council should not consider the one-week protocol for the reasons mentioned above. Furthermore, additional assessment by Cardno is not required.



Flooding – 27th July 2020 – Water Levels



- Tabourie Lake was mechanically breached by Council on 26th July 2020.
- Water levels reached 1.18m AHD and falling to 1.0m AHD.
- Following significant rainfall and prevailing swell, peak water level of 1.31m AHD was recorded on 27th July 2020.
 - Flooding mechanism due to catchment runoff and prevailing swell, coinciding with the high tide.



Debris Lines – 2 Princes Hwy



Important to note that Council records indicate that localised flooding is experienced from the Princes Hwy for properties south of the bridge. Council has been liaising with the CCB and tfNSW on this matter.



Debris Lines – 4 & 6 Princes Hwy





Debris Lines – 8 & 10 Princes Hwy





Debris Lines - 6 Oak Avenue





Debris Lines – Holiday Haven Tabourie Lake





Recommendation

That Council:

- 1. A mechanical lake opening occurs as per the following conditions as per the Tabourie Lake Entrance Management Policy (2019):
 - a) Lake water level at or exceeding 1.30 m AHD initiates an immediate entrance opening (emergency trigger)

OR

- Lake water level stabilises after rainfall at a level between 1.00 m and 1.30 m AHD and a period of over two (2) months has elapsed since attaining that level (planned trigger);
- 2 Council's Assets and Works Group continue to investigate stormwater drainage issues in conjunction with tfNSW.



Options

- 1. Council retain the current adopted trigger levels as follows:
 - a) Lake water level at or exceeding 1.17 m AHD initiates an immediate entrance opening (emergency trigger)

OR

- b) Lake water level stabilises after rainfall at a level between 1.00 m and 1.17 m AHD and a period of over two (2) months has elapsed since attaining that level (planned trigger).
- 2. Council seek further community feedback from residents and ratepayers of Tabourie Lake on recommended options presented in the Tabourie Lake Entrance Management Policy (2019) and Notice of Motion (CL20.77).
- 3. Council undertake a one-off trial of mechanically opening the lake at the recommended emergency trigger of 1.3m AHD as per the Tabourie Lake Entrance Management Policy (2019) and report to Council the outcome.



LOCAL GOVERNMENT AMENDMENT (GOVERNANCE & PLANNING) ACT 2016

Chapter 3, Section 8A Guiding principles for councils

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Chapter 3, Section 8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services



Chapter 3, 8C Integrated planning and reporting principles that apply to councils

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils:

- (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) Councils should identify strategic goals to meet those needs and aspirations.
- (c) Councils should develop activities, and prioritise actions, to work towards the strategic goals.
- (d) Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) Councils should regularly review and evaluate progress towards achieving strategic goals.
- (f) Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) Councils should collaborate with others to maximise achievement of strategic goals.
- (h) Councils should manage risks to the local community or area or to the council effectively and proactively.
- (i) Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.