

Development & Environment Committee

Meeting Date: Tuesday, 05 October, 2021
Location: Teams Meeting
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.

Agenda

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4. **Mayoral Minute**
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Local Government Act - Section 10A(2)(g) - Advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law.

Development & Environment Committee

Delegation:

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

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

SCHEDULE

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

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

MINUTES OF THE DEVELOPMENT & ENVIRONMENT COMMITTEE

Meeting Date: Tuesday, 7 September 2021

Location: Microsoft Teams (Remotely)

Time: 5:00pm

The following members were present (remotely):

Clr Mitchell Pakes - Chairperson
Clr Amanda Findley
Clr Joanna Gash
Clr John Wells
Clr Patricia White
Clr Kaye Gartner
Clr Nina Digiglio
Clr Annette Alldrick – joined at 5:05pm
Clr John Levett
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

Apologies / Leave of Absence

An apology was received from Clr Guile.

Confirmation of the Minutes

RESOLVED (Clr Gartner / Clr White) MIN21.615

That the Minutes of the Development & Environment Committee held on Tuesday 13 July 2021 be confirmed.

CARRIED

Declarations of Interest

Clr Alldrick - DE21.96 - DA21/1145 – 59 Journal Street, Nowra – Lot 21 DP 2607 - Significant Non Pecuniary Declaration of Interest - One of the property owners is a work colleague and friend - Will leave the meeting and not take part in discussion or vote.

MAYORAL MINUTES

Nil

DEPUTATIONS AND PRESENTATIONS

DE21.90 - Review of Planning Controls And Options for Taylors Lane

Dan Thompson, representing Cambewarra Ventures – FOR

DE21.94 - DA20/1466 - 8-12 Princes Highway Mollymook - Lot 1 & 2 DP 518702 & Lot 3 DP523625

Kirk Perry – FOR

Maree Walsh-Harris - FOR

Stephen Harris - AGAINST

Gabe Reed, representing R & G Creations – AGAINST

DE21.96 - DA21/1145 – 59 Journal Street, Nowra – Lot 21 DP 2607

Greg and Corrinne Hills - AGAINST

DE21.98 - Pre-Dredging Feasibility Studies Grant Application - Lower Shoalhaven River

Gerry Groom, representing Shoalhaven Heads Estuary Taskforce – FOR

Robyn Flack, representing Shoalhaven Heads Community Forum - FOR

NOTICES OF MOTION / QUESTIONS ON NOTICE

DE21.86 Question on Notice - Vincentia Golf Club

HPERM Ref:
D21/373304

Question

Proposal by Shoalhaven City Council to close portions of public land (roads) adjoining Lot 4 DP 872852 Vincentia under Section 38B of the Roads Act 1993

Question 1.

That Council explain the process normally followed in the sale of surplus road reserves including the extent of notification on this particular proposal?

Question 2.

The land over which the “paper” roads sit is occupied by the St Georges Basin Country Club (Vincentia). Under what documented arrangement or legal authority does the Vincentia Golf Club occupy the land? Is there a lease in place and is there an agreed rent?

Question 3.

In a public notice of 11th August, 2021 it was announced that “upon closure of the road(s) Council intends to sell the land to the adjoining land owner, St Georges Basin Country Club (Vincentia).” Would it be normal process to arrive at this “intention” and express it in a public notice before any community consultation or resolution of councillors has occurred? Has Council discussed the option of advertising the land on the open market or leasing it?

Question 4.

Is the parcel of land intended for sale comprised of any land other than that released by the road closures?

Question 5.

How will the sale price of the land be determined and with what zoning would the land be sold? The parent Lot 4 DP 872852 is zoned RE2.

Question 6.

Did the proposal to sell the land arise from an approach by St. Georges Basin Country Club, if not how was it initiated?

Question 7.

What state legislation and Council policies guide the closure and any subsequent sale of the roads and are closure and sale two distinct and separate processes?

Question 8.

Community understanding is that the golf course and road land was originally part of a grant from the Halloran Family to SCC for recreational purposes. Can Council confirm this?

Question 9.

Will any contract of sale for the land include a covenant that prevents its use for residential development?

Community Concerns

These centre around the future plans of the St. Georges Basin Country Club in relation to Vincentia Golf Course and speculation is strong that they may involve redevelopment of the holding to restore liquidity. A resolution has apparently been submitted for the Club AGM on 19th September asking the Board and Management to clarify their intentions for the future of the Vincentia Golf Club.

Question 10.

Does Council consider that it's in the public interest to ask for submissions on the proposed closure of the road reserves and sale of the land to the most likely purchaser before the community has clarity around the intentions of that purchaser?

Question 11.

Community representative groups are requesting an extension for submissions on this matter to 30 days after the date of the St Georges Basin Country Club AGM. Does Council regard this as a reasonable request?

Response

The report being prepared for a future Development and Environment Committee Meeting about this matter will cover off on these questions.

REPORTS

DE21.87 Post Exhibition and Finalisation - Shoalhaven DCP 2014 Amendment No. 48 - Solar Housekeeping Amendment

**HPERM Ref:
D21/302934**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Solar Housekeeping Amendment No.48 to the Shoalhaven Development Control Plan 2014 (DCP2014.48) as exhibited.
2. Notify the adoption and commencement of the Amendment in accordance with legislative requirements.
3. Advise key stakeholders, including relevant industry representatives, of this decision and when the Amendment will be made effective.

RESOLVED (Clr Gartner / Clr Findley)

MIN21.616

That Council:

1. Adopt the Solar Housekeeping Amendment No.48 to the Shoalhaven Development Control Plan 2014 (DCP2014.48) as exhibited.
2. Notify the adoption and commencement of the Amendment in accordance with legislative requirements.
3. Advise key stakeholders, including relevant industry representatives, of this decision and when the Amendment will be made effective.

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

AGAINST: Nil

CARRIED

DE21.88 New Proponent Initiated Planning Proposal - 268A Beach Road, Berry

**HPERM Ref:
D21/313251**

Recommendation (Item to be determined under delegated authority)

That Council

1. Support the Planning Proposal to amend the Shoalhaven LEP 2014 Minimum Lot Size maps to show a 4ha (Z3) parcel for Lot 1 DP 1081549 (268A Beach Rd BERRY), as identified in the Proposed Minimum Lot Size Map associated with this proposal.
2. Prepare and submit the PP documentation to the NSW Department of Planning and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advance as a 'minor' proponent-initiated Planning Proposal with fees charged in accordance with Council's adopted Fees and Charges.
4. Advise the proponent of this resolution.

RESOLVED (Clr Findley / Clr Wells)

MIN21.617

That Council

1. Support the Planning Proposal to amend the Shoalhaven LEP 2014 Minimum Lot Size maps to show a 4ha (Z3) parcel for Lot 1 DP 1081549 (268A Beach Rd BERRY), as identified in the Proposed Minimum Lot Size Map associated with this proposal.
2. Prepare and submit the PP documentation to the NSW Department of Planning and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advance as a 'minor' proponent-initiated Planning Proposal with fees charged in accordance with Council's adopted Fees and Charges.
4. Advise the proponent of this resolution.

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

AGAINST: Nil

CARRIED

**DE21.89 Bomaderry Town Centre - Development Control Plan
Chapter - Review Initiation**

**HPERM Ref:
D21/335187**

Recommendation (Item to be determined under delegated authority)

That Council

1. Endorse the commencement of a review of Shoalhaven Development Control Plan 2014 Chapter N5: Bomaderry Town Centre.
2. Receive a further report on how the review will be undertaken, including relevant options.
3. Acknowledge, as general policy position in the interim, its previous resolutions regarding the development of 44 to 52 Coomea Street, Bomaderry for affordable housing.

RESOLVED (Clr Wells / Clr White)

MIN21.618

That Council

1. Endorse the commencement of a review of Shoalhaven Development Control Plan 2014 Chapter N5: Bomaderry Town Centre.
2. Receive a further report on how the review will be undertaken, including relevant options.
3. Acknowledge, as general policy position in the interim, its previous resolutions regarding the development of 44 to 52 Coomea Street, Bomaderry for affordable housing.

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

AGAINST: Nil

CARRIED

DE21.90 Proposed Exhibition - Review of Planning Controls and Options for Taylors Lane, Cambewarra

**HPERM Ref:
D21/340500**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Receive the review of options for Taylors Lane, as detailed in the report prepared by Studio GL at Attachment 1 for information.
2. Place the report on public exhibition for at least 30 days and invite comment on it from local stakeholders and the broader community.
3. Receive a further report to consider the outcomes of the public exhibition and how to proceed with the review of planning controls associated with Taylors Lane, Cambewarra.
4. Notify local stakeholders (landowners and developers around Taylors Lane), participants in the stakeholder workshops, development industry representatives and the Cambewarra Residents and Ratepayers Association of this decision and of the exhibition arrangements when they are made.

RESOLVED (Clr White / Clr Proudfoot)

MIN21.619

That Council:

1. Receive the review of options for Taylors Lane, as detailed in the report prepared by Studio GL at Attachment 1 for information.
2. Request that Council staff undertake further investigations into the indicative costs (construction, land acquisition, habitat loss, cultural heritage loss and environmental heritage loss) associated with each option, including identification of a preferred option/s, and receive a Councillor briefing from staff at the appropriate point on this work.
3. Place the consultant's report and additional information (point 2 above) on public exhibition for at least 30 days, invite comment on it from local stakeholders and the broader community.
4. Receive a further future report to consider the outcomes of the public exhibition and decide how to proceed with the review of planning controls associated with Taylors Lane, Cambewarra.
5. Notify local stakeholders (landowners and developers around Taylors Lane), participants in the stakeholder workshops, development industry representatives and the Cambewarra Residents and Ratepayers Association and Pride of Bomaderry of this decision and of the exhibition arrangements when they are known.

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

AGAINST: Nil

CARRIED

DE21.91 Proposed Instrument Housekeeping Planning Proposal - Shoalhaven Local Environmental Plan 2014

**HPERM Ref:
D21/341854**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Prepare the Instrument Housekeeping Planning Proposal based on the scope outlined in this report and submit to the NSW Department of Planning, Industry and Environment for an initial Gateway determination.

2. If the Gateway Determination requires formal public exhibition, proceed to public exhibition in accordance with the terms of the determination and legislative requirements and if any submissions are received, these are to be considered in a further report to enable finalisation of the Planning Proposal and subsequent Amendment to the LEP. If no submissions are received (or if exhibition is not required), proceed to finalise the Planning Proposal as exhibited to enable the subsequent Amendment to the LEP to occur, without any further reports.
3. Advise Development Industry Representatives and Community Consultative Bodies of the exhibition arrangements and when the Plan is finalised.

RESOLVED (Clr Watson / Clr Proudfoot)

MIN21.620

That Council:

1. Prepare the Instrument Housekeeping Planning Proposal based on the scope outlined in this report and submit to the NSW Department of Planning, Industry and Environment for an initial Gateway determination.
2. If the Gateway Determination requires formal public exhibition, proceed to public exhibition in accordance with the terms of the determination and legislative requirements and if any submissions are received, these are to be considered in a further report to enable finalisation of the Planning Proposal and subsequent Amendment to the LEP. If no submissions are received (or if exhibition is not required), proceed to finalise the Planning Proposal as exhibited to enable the subsequent Amendment to the LEP to occur, without any further reports.
3. Advise Development Industry Representatives and Community Consultative Bodies of the exhibition arrangements and when the Plan is finalised.

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

AGAINST: Nil

CARRIED

**DE21.92 COVID-19 Contributions Discount Subsidy Policy
Amendment - Post Exhibition Consideration and
Finalisation**

**HPERM Ref:
D21/359253**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the draft COVID-19 Contributions Discount Subsidy Policy as exhibited.
2. Advise those who made a submission and relevant stakeholders of this resolution.

RECOMMENDATION (Clr Watson / Clr Wells)

That Council:

1. Adopt the draft COVID-19 Contributions Discount Subsidy Policy as exhibited, with the following change to the last dot point in Section 2.1 Application of Policy to clarify the intended application period to read:

An application is made for the discount within 2 years of the date of issue of a development consent or complying development certificate issued between 7 April 2020 and 31 March 2022 (inclusive).

2. Advise those who made a submission and relevant stakeholders of this resolution.

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

AGAINST: Nil

CARRIED

DE21.93 Post Exhibition Consideration/Finalisation - Draft Amendment to Chapter G21 Car Parking and Traffic - Shoalhaven DCP 2014 (DCP2014.49)

HPERM Ref: D21/360208

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Housekeeping Amendment (DCP2014.49) of Shoalhaven Development Control Plan 2014: Chapter G21: Car Parking and Traffic as exhibited.
2. Notify the adoption of the Amendment in accordance with the requirements of the *NSW Environmental Planning and Assessment Act 1979* and Regulations.
3. Advise key stakeholders of this decision and when the Amendment will be made effective, including relevant industry representatives, CCBs and those who made a submission.

RESOLVED (Clr Watson / Clr Proudfoot)

MIN21.621

That Council:

1. Adopt the Housekeeping Amendment (DCP2014.49) of Shoalhaven Development Control Plan 2014: Chapter G21: Car Parking and Traffic as exhibited, but with the following amendments:
 - a. Delete the word 'considered' from the notes applicable to dwelling houses.
 - b. Amend P3 to read: "Provision is made for charging facilities for electric vehicles".
 - c. Amend A3.1 to read: "The installation of electrical conduits for electric vehicle charging for each dwelling in a residential development (excluding single dwelling houses and, dual occupancies or boarding houses) to facilitate cost effective installation of vehicle charging stations and associated wiring at a later date".
2. As an interim policy position, where there is an inconsistency between the provisions of AS2890.1 and Chapter G21 of the SDCP 2014, the provisions of AS2890.1 shall prevail to the extent of that inconsistency; and
3. That following the adoption of Amendment 5 to Chapter G21 of the SDCP 2014, Draft Amendment 6 be prepared for public exhibition which adopts the provisions of AS2890.1 in relation to design and construction of off-street parking facilities in place of current unique provisions of Chapter G21.
4. Notify the adoption of the Amendment in accordance with the requirements of the *NSW Environmental Planning and Assessment Act 1979* and Regulations.
5. Advise key stakeholders of this decision and when the Amendment will be made effective, including relevant industry representatives, CCBs and those who made a submission.

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

AGAINST: Nil

CARRIED

DE21.94 DA20/1466 – 8-12 Princes Highway Mollymook – Lot 1 & 2 DP518702 & Lot 3 DP523625

HPERM Ref: D21/300333

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/2166 for Demolition of existing motel and construction of Residential Flat Building, Associated Parking, Landscaping and Stormwater Works at 8-12 Princes Highway Mollymook - Lots 1 & 2 DP518702 & Lot 3 DP523625 be refused subject to the recommended reasons of refusal contained in Attachment 2 of this report.

RESOLVED (Clr Findley / Clr White)

MIN21.622

That Development Application DA20/2166 for Demolition of existing motel and construction of Residential Flat Building, Associated Parking, Landscaping and Stormwater Works at 8-12 Princes Highway Mollymook - Lots 1 & 2 DP518702 & Lot 3 DP523625 be refused subject to the recommended reasons of refusal contained in Attachment 2 of this report.

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

AGAINST: Nil

CARRIED

Clr Proudfoot raised a Point of Order against Clr Findley for casting aspersions on the decision making of Councillors and impugning his reputation. Clr Pakes ruled in favour of the Point of Order. Clr Findley amended her comment and apologised.

DE21.95 Development Application No. SF10873 – 68 Yeovil Drive Bomaderry – Lot 5 DP 803450

HPERM Ref: D21/318864

Recommendation (Item to be determined under delegated authority)

That Development Application SF10873 for a Two (2) Lot Subdivision of an approved Dual Occupancy over Lot 5 DP 803450 at No. 68 Yeovil Drive Bomaderry be determined by way of approval subject to the recommended conditions of consent provided at Attachment 1.

RESOLVED (Clr Findley / Clr Gartner)

MIN21.623

That Development Application SF10873 for a Two (2) Lot Subdivision of an approved Dual Occupancy over Lot 5 DP 803450 at No. 68 Yeovil Drive Bomaderry be determined by way of approval subject to the recommended conditions of consent provided at Attachment 1.

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

AGAINST: Nil

CARRIED

Note: Clr Alldrick left the meeting at 6:13pm.

DE21.96 DA21/1145 – 59 Journal Street, Nowra – Lot 21 DP 2607**HPERM Ref:
D21/338721**

Clr Alldrick - significant non-pecuniary declaration of interest - One of the property owners is a work colleague and friend – left the meeting and did not take part in discussion or vote.

Recommendation (Item to be determined under delegated authority)

That Development Application DA21/1145 for the demolition of an existing dwelling and ancillary structures; and construction of multi dwelling housing (being four (4) dwellings) at Lot 21 DP 2607, 59 Journal Street, Nowra be refused having regard to the reasons contained in Attachment 2 of this report.

RESOLVED (Clr Pakes / Clr White)

MIN21.624

That Development Application DA21/1145 for the demolition of an existing dwelling and ancillary structures; and construction of multi dwelling housing (being four (4) dwellings) at Lot 21 DP 2607, 59 Journal Street, Nowra be refused having regard to the reasons contained in Attachment 2 of this report.

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

AGAINST: Nil

CARRIED

Note: Clr Alldrick returned to the meeting at 6:16pm.

DE21.97 Coastal Zone Management Plan Progress Update**HPERM Ref:
D21/336463****Recommendation (Item to be determined under delegated authority)**

That Council:

1. Note the progress of the Coastal Zone Management Plan (CZMP), certified by the NSW State Government in 2018; and,
2. Note the expiration date of the Coastal Zone Management Plan (CZMP), at the end of the calendar year of 2021.

RESOLVED (Clr White / Clr Wells)

MIN21.625

That Council:

1. Note the progress of the Coastal Zone Management Plan (CZMP), certified by the NSW State Government in 2018; and,
2. Note the expiration date of the Coastal Zone Management Plan (CZMP), at the end of the calendar year of 2021.

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

AGAINST: Nil

CARRIED

DE21.98 Pre-dredging feasibility studies grant application - Lower Shoalhaven River - partially awarded

HPERM Ref: D21/342040

Recommendation

That the committee:

1. Receives this report for information on the background to, and next steps for, undertaking dredging at Shoalhaven Heads.
2. Endorse the recommendation that additional matching Council funds (\$50,000) required to undertake the pre-dredge studies be allocated as part of the Budget Quarterly Review
3. Formally accept the offer of funding from Maritime Infrastructure Development Office, under their NSW Boating Access Dredging Program funding and thank them for their assistance.

RECOMMENDATION (Clr Wells / Clr White)

That the Committee:

1. Receives this report for information on the background to, and next steps for, undertaking dredging at Shoalhaven Heads.
2. Endorse the recommendation that additional matching Council funds (\$50,000) required to undertake the pre-dredge studies be allocated as part of the Budget Quarterly Review
3. Formally accept the offer of funding from Maritime Infrastructure Development Office, under their NSW Boating Access Dredging Program funding and thank them for their assistance.

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

AGAINST: Nil

CARRIED

DE21.99 Quarterly Review for Compliance Matters

HPERM Ref: D21/225822

Recommendation (Item to be determined under delegated authority)

That Council receive the April to June 2021 quarterly report on compliance matters for information.

RESOLVED (Clr Proudfoot / Clr Gash)

MIN21.626

That Council receive the April to June 2021 quarterly report on compliance matters for information.

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

AGAINST: Nil

CARRIED

DE21.100 Shoalhaven Animal Shelter Yearly Report**HPERM Ref:
D21/337777****Recommendation (Item to be determined under delegated authority)**

That Council receives the report for information.

RESOLVED (Clr Pakes / Clr Findley)

MIN21.627

That Council receives the Shoalhaven Animal Shelter Yearly Report for information.

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

AGAINST: Nil

CARRIED

DE21.101 Additional Item - Urgent Assistance for Country University Centre, Ulladulla**RESOLVED** (Clr Findley / Clr Levett)

MIN21.628

That Council call on the Shoalhaven Traffic Committee to consider:

1. The creation of an accessible car parking space on the Princes Hwy located at the southern end of the existing bus zone located in front of the old Rivers building in Ulladulla.
2. Also consider how best the accessible space be developed.

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

AGAINST: Nil

CARRIED

DE21.102 Additional Item - Urgency Motion - DA21/1673 for Determination**RESOLVED** (Clr Watson / Clr White)

MIN21.629

That Council call in DA21/1673 (116 St Vincent St Ulladulla - Lot 1 DP 21597 - New Commercial - Mixed Use - Commercial & Residential - Demolition of existing shed. Proposed development 3 levels of residential & basement carpark) for determination at either the Development Committee to be held on 5 October 2021 or the Ordinary Council Meeting to be held on 26 October 2021.

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

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 6:42pm.

Clr Pakes
CHAIRPERSON

DE21.105 Notice of Motion - Ulladulla Milton Lions Club - Local Farmers Producers Markets

HPERM Ref: D21/414855

Submitted by: Cllr Patricia White
Cllr Mark Kitchener

Purpose / Summary

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

Recommendation

That Council provide a donation of \$2,200 from the unallocated donations budget to the Ulladulla Milton Lions Club for the Local Farmers Producers Markets to be held at Burrill Lake.

Background

The Ulladulla Milton Lions Club are continuing their FAB (Local Farmers Producers Markets) commencing in October 2021 (hopefully).

The markets at Lions Park, Lake Burrill, gathers many 'local' producers who have been literally shut down and unable to sell through COVID and the 2019 bushfire aftermath. Niree Creed, the co-ordinator and member of the Lions Club, has pulled it all together again. They were also successful in acquiring an FRRR grant to cover promotion and marketing, signage, coordination, and flyers.

There is a requirement for a Development Application and a request has been received to waive the fees of \$2,200 due to the current economic conditions with COVID and bushfires where there has been very limited opportunities to raise funds.

Note by the CEO

The unallocated donations budget available balance is currently \$16,174.74.

DE21.105

DE21.106 Notice of Motion - Village Green St. Georges Basin

HPERM Ref: D21/415518

Submitted by: Cllr Patricia White
Cllr John Levett

Purpose / Summary

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

Recommendation

That Council:

1. Resolve to reclassify 132 Island Point Road, St Georges Basin (Lot 10 DP1143842) from operational to community land, following the registration of a sewer easement to Shoalhaven Water on the northern boundary.
2. Undertake house-keeping amendments to the DCP/LEP as required to remove the future proposed car-parking and other services and adjust the zoning if necessary, at an appropriate time determined by Council
3. Notify Basin Villages Forum of the changes.

Background

This matter has been reported to Council on two occasions over the last 10 months in relation to the classification and sewer easements, being Development & Environment Committee 3 November 2020 and Ordinary Council Meeting 27 April 2021.

In November Council considered the reclassification and in April considered the sewer issues. As the sewer reticulation line has now been determined, it is appropriate for Council to reconsider the reclassification due to the strong community representations. Council has previously changed the DCP to remove the service lanes and further developments should rely on providing carparking within their property boundaries.

Residents, community members and Basin Village Forum have continued requesting the change of classification from operational to community.

The Park is regularly used by locals and visitors alike due to its location adjacent to the IGA Supermarket immediately to the north. It comprises formal landscaping with pathways and gardens, a table with seating as well as a reserve of remnant bushland.

St Georges Basin is the focus of intense residential development, and several proposals in the proximity of the park are high density and multi-story. Recent inspections show that in a short period of time this community space will be the only area of trees within the village shopping precinct.

This is a valuable park to many as a quiet and beautiful community space, where local residents and employees of businesses can enjoy their lunch or quiet time during the day. The land needs to be given the appropriate classification so that it remains so into the future for passive daily recreation.

DE21.107 Notice of Motion - Community Car Sales Markets

HPERM Ref: D21/418532

Submitted by: Cllr John Levett

Purpose / Summary

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

Recommendation (Item to be determined under delegated authority)

That Council report back on the feasibility of establishing Community Car Markets at appropriate locations across the Shoalhaven to accommodate private sellers of cars, motorcycles, boats, trailers, caravans etc. It is envisaged that these markets would ultimately be run by a "not for profit" organisation and that proceeds be used to assist the homeless in the Shoalhaven.

Background

There is clearly a need in the Shoalhaven for community car markets. We all regularly drive past roadside mini markets where cars park on verges with homemade signs attached. These are unregulated and often located where prospective buyers, in the act of pulling up to check out cars on offer, create traffic hazards; the safety of participants in this practice is put at risk. It is prudent for the owners of cars on sale to remove them by sunset as nightfall brings the vandals. Burnt out wrecks, for example, can often be seen in St Georges Basin near the roundabout on the corner of Island Point Road and the Wool Road.

Going back a few years I bought and sold a number of vehicles at a weekend car market in the grounds of Endeavour High School which was run by Caringbah Rotary Club. Sellers paid a fixed fee to park their car for a maximum of five weeks. They were provided with a sales sheet listing details of the car and owner and the fee included a REVS check showing history such as finance owing, stolen status, written off data and registration details.

I've spoken to a representative of Nowra Rotary who has expressed a willingness to discuss and consider helping with such a scheme in association with other Rotary clubs in the Shoalhaven. Such markets won't be competing with registered car dealers as many sellers don't wish to trade-in a vehicle because they can often achieve a higher price on the private market. Cars that are traded are often wholesaled and find their way to auction sales out of the area and so are lost to local buyers looking for a bargain. Local community markets provide a range of cars in a convenient and nearby location in a safe and managed environment.

DE21.107

DE21.108 Kent Lane, Huskisson and Moss Vale Road South URA (Stage 1) Agreements - Alter Process to Works in Kind Agreements

HPERM Ref: D21/393617

Department: Strategic Planning

Approver: Gordon Clark, Acting Director - City Futures

Reason for Report

Following legal advice, adjust Council's previous decisions relating to the Kent Lane, Huskisson Voluntary Planning Agreement (VPA) and Moss Vale Road South URA (Stage 1) VPA so that Works in Kind Agreements (WIKAs) can be entered into instead.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Change the agreement mechanism (only) associated with the delivery of the required infrastructure for the Moss Vale Road South URA (Stage 1) (MIN21.448) and the delivery of Kent Lane, Huskisson (MIN21.449) from a Voluntary Planning Agreement to a Works in Kind Agreement.
2. Continue to delegate authority to Council's Chief Executive Officer, or his delegate, to prepare and enter into the two WIKAs.

Options

1. As recommended.

Implications: This is the preferred option consistent with a recent Land and Environment Court decision and contemporary legal advice.

As VPAs can no longer be considered for the proposals in question, a WIKAs is the only remaining mechanism (form of agreement) to legally facilitate the works and reimbursement. The resolved scope of the proposals will remain the same, with the change in mechanism only altering the obligation to publicly exhibit the agreement and modify the relevant development consents. The WIKAs process offers a more efficient and cost-effective approach which will see the respective developments occur sooner which is a good outcome.

2. Alternate recommendation.

Implications: Depending on the nature of the alternative, there may be legal implications for Council, including the inability to enter into an agreement to facilitate the timely delivery of the much-needed infrastructure.

3. Rescind the previous resolutions (MIN21.448 and MIN21.449) and not proceed with any agreement.

Implications: This option is not preferred as an agreement will not be in place to facilitate the timely delivery of the developments, which is considered in the broader public interest.

DE21.108

Background

Both matters were reported to the Development & Environment Committee on 13th July 2021 and the following resolutions were made. The relevant reports can be review online [here](#).

Moss Vale Road South URA (Stage 1) – Proposed Agreement

Council resolved (MIN21.448) to:

1. *Provide ‘in-principle’ support to finalise negotiations and enter into a Voluntary Planning Agreement (VPA) with the Owner/Developer of Lot 1 DP 949932, Taylors Lane Cambewarra for the following; except where further negotiations result in substantial changes to the proposal, in which case Council will receive a further report prior to finalisation:*
 - a. *Acquisition of a drainage reserve (Lot 29) and wetland construction*
 - b. *Construction of the roundabout at the intersection of Road01 and Road02.*
 - c. *Construction of part of Road01, including access from Moss Vale Road to the Road01 and Road02 roundabout, associated pathways and the kerb returns and pavement construction at the intersection of Road01 and Taylors Lane, adjacent to Lots 37 and 51.*
 - d. *Offset conditioned s7.11 contributions for SF10632 relating to 01DRAI0006 and 01ROAD0154 against the relevant construction costs, and reimbursement of the balance of construction works undertaken above.*
 - e. *Waiver of 01DRAI0006 contributions relating to approved Lots 38-51 and 53.*
2. *Delegate authority to Council’s Chief Executive Officer, or his delegate, to:*
 - a. *Prepare the draft VPA and associated Explanatory Note, including the addition of a provisional clause encompassing the security of indexation in line with the Shoalhaven Contributions Plan 2019 to compensate for inflation and the potential timing of the VPA.*
 - b. *Publicly exhibit the draft VPA and associated Explanatory Note for a minimum period of 28 days as required by legislation.*
 - c. *Enter into the Agreement consistent with the detailed key terms, except where objections or substantial issues are raised as a result of public notification, in which case the Agreement is to be reported to Council before it is entered into.*
3. *Notify landowners adjacent to the subject land of the public exhibition arrangements in due course.*

Kent Lane, Huskisson – Proposed Agreement

Council resolved (MIN21.449) to:

1. *Provide ‘in-principle’ support to enter into a Voluntary Planning Agreement (VPA) with the owner and developers of Lots A and B DP 390332, 15-17 Fegen Street, Huskisson for the construction of Kent Lane, Huskisson as detailed in the letter of offer at Attachment 1 and in accordance with the design drawings specified in the Amended Engineer Design Approval issued by Council on 4 May 2021.*
2. *Endorse the allocation of ‘deleted funds’ to cover the shortfall in funds available (approximately \$108,572.34 in 2020-21 Financial Year).*
3. *Delegate authority to Council’s Chief Executive Officer, or his delegate, to:*
 - a. *Prepare the draft VPA and associated Explanatory Note, including the addition of a provisional clause encompassing the security of indexation in line with the Shoalhaven Contributions Plan 2019 to compensate for inflation and the potential timing of the VPA.*

- b. Publicly exhibit the draft VPA and associated Explanatory Note for a minimum period of 28 days as required by legislation.*
 - c. Enter into the Planning Agreement consistent with the detailed key terms, except where objections or substantial issues are raised as a result of public notification, in which case the Planning Agreement is to be reported to Council before it is entered into.*
- 4. Notify landowners adjacent to Kent Lane of the public exhibition arrangements in due course.*

Change in Agreement Approach to Works in Kind Agreement (WIKa)

As a result of a recent Land and Environment Court decision (*Ku-ring-gai Council v Buyozo Pty Ltd* [2021] NSWCA 177) and contemporary legal advice, Council is no longer able to consider the two proposals in question as VPAs.

As such this report seeks to alter Council's previous resolutions (MIN21.448 and MIN21.449) to progress the proposals as WIKAs instead of VPAs.

The particulars of the proposals and staff delegation opportunities generally remain the same, except that public notice (exhibition) is not required for a WIKA, and the respective development consents will not need to be modified to reflect a WIKA.

A WIKA offers a more efficient and cost-effective process which will see the respective developments occur sooner. Both applicants are aware of the required change and are comfortable with progression being via a WIKA.

Conclusion

As a result of a court decision and legal advice there is a need to adjust the process to followed to facilitate the two development related infrastructure items discussed in the report that have previously been endorsed by Council.

Community Engagement

No community consultation is required as part of the WIKA process. This is the only substantial change in progressing WIKAs instead of VPAs and is essentially because the infrastructure works are generally consistent with a policy position already adopted by Council (i.e. Shoalhaven Contributions Plan 2019).

Policy Implications

The implications outlined in the previous reports (DE21.66 and DE21.67) remain the same.

Financial Implications

The implications outlined in the previous reports (DE21.66 and DE21.67) remain the same, except that the development consent conditions will not need to be amended to reflect a WIKA. Reimbursement opportunities can still be achieved with a WIKA.

Risk Implications

There are no risk implications associated with altering the approach to a WIKA. Council's original intent can still be realised, and this approach is consistent with legal advice and the recent Land and Environment Court decision (case law).

DE21.109 Proposed Voluntary Planning and Works in Kind Agreements - Road Construction - Land Dedication/Embellishment - Lot 188 DP 755952, Old Southern Road, South Nowra

HPERM Ref: D21/238952

Department: Strategic Planning
Approver: Gordon Clark, Director - City Futures

Attachments: 1. Letter of Offer for VPA - May 2021 [↓](#)

Reason for Report

Obtain 'in-principle' support to commence the process of entering into a Works in Kind Agreement (WIKa) and Voluntary Planning Agreement (VPA) with the owner/developers of Lot 188 DP 755952; Old Southern Road, South Nowra for the:

- Dedication of a drainage reserve.
- Dedication of land for sewer pumping station.
- Dedication of a public reserve, including embellishment prior to dedication.
- Construction of part of Old Southern Road (including drainage infrastructure).

These are associated with the staged residential subdivision of the subject land - SF10631 (Stage 1) and SF10743 (Stage 2).

Recommendation (Item to be determined under delegated authority)

That Council:

1. Provide 'in-principle' support to finalise negotiations and enter into the following agreements with the owner/developers of Lot 188 DP 755952; Old Southern Road, South Nowra, as outlined in this report, except where further negotiations result in substantial changes to the proposals, in which case Council will receive a further report prior to proceeding:
 - a. A Works in Kind Agreement (WIKa) for Stage 1 (SF10631) for the construction of part of Old Southern Road.
 - b. A Voluntary Planning Agreement (VPA) for Stage 2 (SF10743) for the dedication of the drainage reserve, land for the sewer pumping station, public reserve (and embellishment) and the construction of part of Old Southern Road.
2. Delegate authority to Council's Chief Executive Officer, or his delegate, to:
 - a. Prepare and enter into the WIKa for Stage 1.
 - b. Prepare the draft VPA and associated Explanatory Note for Stage 2, including the addition of a provisional clause encompassing the security of indexation in line with the Shoalhaven Contributions Plan 2019 to compensate for inflation and the potential timing of the VPA.
 - c. Publicly exhibit the draft VPA and associated Explanatory Note for a minimum period of 28 days as required by legislation.
 - d. Enter into the Planning Agreement consistent with the detailed key terms, except where objections or substantial issues are raised as a result of public notification, in

which case the Planning Agreement is to be reported to Council before it is entered into.

3. Endorse the allocation of deleted funds from Planning Area 1 to cover the shortfall in available funds relating to the construction of Old Southern Road. If there is not enough in the Planning Area 1 deleted funds budget to cover the shortfall, the remaining shortfall is to be covered by the developer upfront and reimbursed back to the developer as contributions are received overtime for 01ROAD2038, to the value of the difference.
4. Provide 'in principle' support for the allocation of funds from Council's General Fund for the construction of the additional 2.8m in Old Southern Road width and the widening of the footpath outcome to a shared user path in some locations along Old Southern Road. Once detailed costs are known, formal consideration is to be made at the next appropriate quarterly budget review.
5. Request Council staff to continue to consider funding opportunities (grants, general budget etc.) to ensure that shade structures are provided in the proposed SF10743 (Stage 2) public reserve post embellishment and dedication.
6. Notify the Owner/Development of this resolution.
7. Notify landowners adjacent to the proposed Old Southern Road works of the public exhibition arrangements for the VPA in due course.

Options

1. As recommended.

Implications: The proposed WIKA and VPA will result in a positive public benefit through the construction of part of Old Southern Road, dedication of reserves for public recreation (including embellishment) and drainage, and dedication of land for a sewer pumping station. The subdivisions (Stages 1 and 2 combined) will bring approximately 220 residential lots to the market and the progression of these agreements will help facilitate this development.

Only concept detail and costings are currently available for the construction of Old Southern Road, which does result in some uncertainty at this stage. This option will however minimise any further delays to the development by enabling the agreements to be finalised under delegation, subject to no major changes resulting from the detailed designs and costings or issues arising from the public exhibition period.

2. As recommended, with no allocation of deleted funds to cover the shortfall.

Implications: This option will still enable the agreements to progress, however the cost burden relating to the likely shortfall from the construction of Old Southern Road will be borne by the developer and reimbursement will occur only when contributions are received overtime. The use of deleted funds to cover the shortfall as far as possible is preferable and is consistent with Council's general resolution of 2 April 2019 (MIN19.212(4)) relating to deleted funds.

3. Provide 'in-principle' support to conclude the negotiations and report back to Council for endorsement to enter into the agreements prior to proceeding.

Implications: This option will enable staff to finalise negotiations with the developer, including procuring detailed costings (based on detailed designs) prior to reporting back to Council. This is the usual way a WIKA/VPA is progressed and provides greater up-front certainty for all parties, however this will likely result in further delays to the delivery of Stage 1 and the determination of Stage 2 which is not a good overall outcome.

4. Adopt an alternative recommendation.

Implications: May further affect the timely delivery of the subdivision and/or the nature and quality of the works provided.

Background

On 24 April 2019, development consent (SF10631, known as Stage 1) was granted for a 60 lot residential subdivision at Lot 188 DP 755952 Old Southern Road, South Nowra. An aerial of Lot 188 is shown in **Figure 1**. The approved subdivision is located immediately to the south of the existing 'Twin Waters' Estate.

In May 2019, a development application (SF10743, known as Stage 2) was submitted for a 158 lot residential subdivision over the remainder of Lot 188 (Figure 1). Whilst some matters still need to be resolved, this application is close to determination.

Figure 2 indicatively shows the Stage 1 (approved) and Stage 2 (proposed, June 2021) subdivision layout over Lot 188.

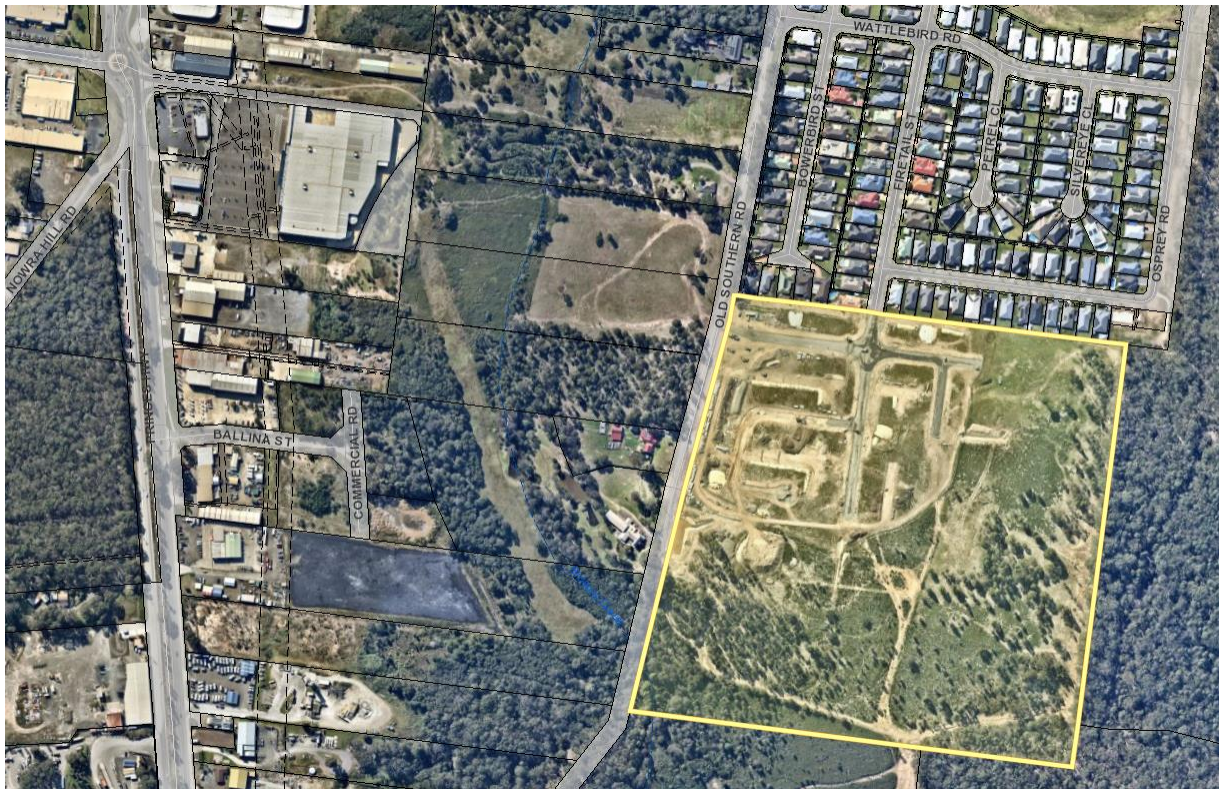


Figure 1: The subject land

- Stage 2 – From the common boundary between approved lots 41 and 42 in Stage 1 to the southern extent of Lot 188.
- Reimbursement of certain Section 7.11 contributions paid for Stage 1 and shortfall of funds covered by Council.

The following excerpt from the plan (**Figure 3**) shows the proposed location and arrangement of the proposed public reserve, drainage reserve area (water quality) and sewer pumping station in Stage 2.

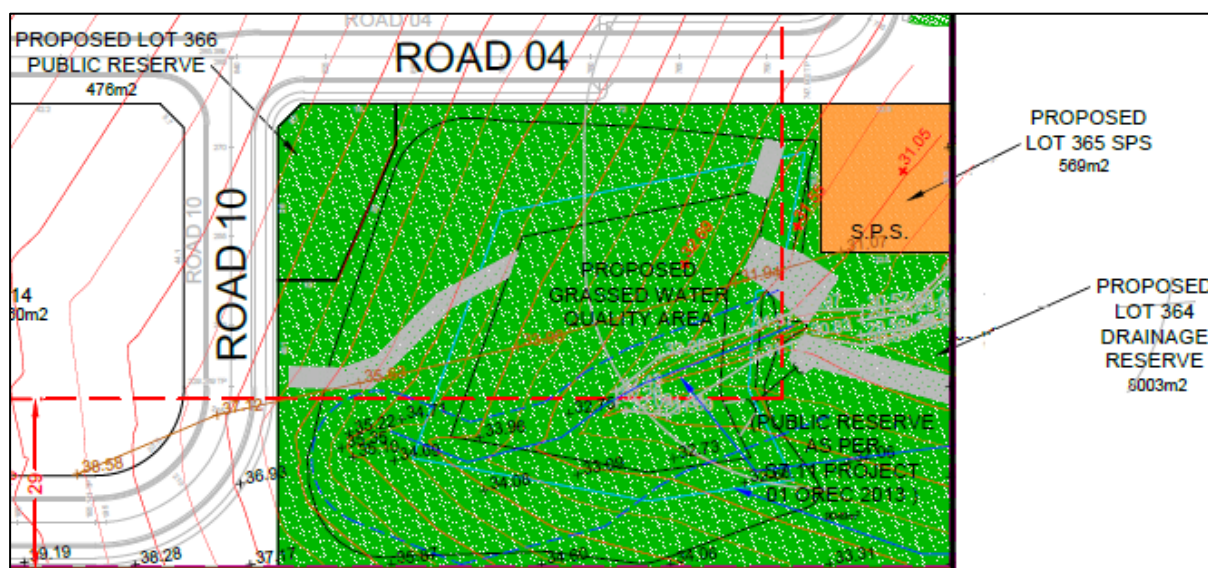


Figure 3: Proposed public reserve, drainage reserve area and sewer pumping station (Source: Allen Price & Scarratts, June 2021)

Due to the complexities of the proposal, contemporary legal advice/case law and legislative constraints regarding WIKAs and VPAs, it would be appropriate to consider progressing the proposal as outlined in **Table 1**. It is noted that the ultimate mechanism may change and be confirmed as necessary as the process progresses.

Table 1: WIKA/VPA Breakdown

Mechanism	Element	Rationale
WIKA	Construction of part of Old Southern Road (including drainage infrastructure) for Stage 1; from the development's common boundary with Lot 113 DP 1068633 (southern extent of Twin Waters) to the common boundary between approved Lots 41 and 42 (which corresponds with the crest of Old Southern Road).	S7.11 contributions have already been paid by the developer for Stage 1. Recent caselaw precludes the ability to modify the Stage 1 consent to enter into a VPA.
VPA	Dedication of a drainage reserve, sewer pumping station and public reserve (Stage 2). Embellishment of public reserve prior to dedication (Stage 2). Construction of part of Old Southern Road (including drainage infrastructure) for Stage 2; from the common boundary between approved Lots 41 and 42 in Stage 1 to the southern extent of Lot 188.	A VPA is the only way to facilitate the dedication of the public reserve, drainage reserve and sewer treatment station. As the application has not yet been determined (no consent issued), a VPA could be lawfully conditioned.

The proposal overview presented in this report is based on concept plans and tentative costings to maintain momentum on this important project and to enable SF10743 to be determined. Staff delegation is requested to continue to negotiate the particulars of the agreements, including the procurement of detailed designs and costings at the appropriate point.

Each of the agreement elements are discussed in more detail below:

Dedication of drainage reserve

The developer proposes to dedicate proposed Lot 364 (**Figure 3**) for water quality purposes for Stage 2, approximately 8,000m². Staff have considered the development application (concept) plans for the drainage/water quality devices, and whilst further work is required before the proposal is satisfactory, it is considered that these matters can be finalised following further review and negotiation. On this basis, the dedication is supported 'in principle', noting that final location and area may change slightly following negotiations.

Dedication of land for sewer pumping station

The developer proposes to dedicate proposed Lot 365 (**Figure 3**) for the required sewer pumping station (SPS), approximately 569m².

Shoalhaven Water have advised that the proposal to dedicate the land required for the SPS based on the development application plans is satisfactory 'in principle', however the final location and size is to be confirmed following review of detailed design plans (at the appropriate point), including cut/fill and infrastructure requirements associated with the SPS and the drainage reserve.

Dedication of the public reserve

The developer proposes the dedication of a public reserve (proposed Lot 366) required for Stage 2, approximately 476m², including embellishment prior to dedication.

The public reserve and embellishment is a requirement of Shoalhaven Contributions Plan 2019 project [01OREC0013 Land acquisition for passive open space \(Old Southern Road, South Nowra\)](#) and Shoalhaven Development Control Plan 2014.

Embellishment is proposed to a value of \$127,000, which at this point includes playground equipment, table/chairs with shelter, fencing, footpath/kids bicycle loop, benches, shaping and landscaping. Shade has not been incorporated into the design at this point due to limitations on the scope of the current Contributions Plan project and also what can be requested of the developer. Council staff will however continue to pursue opportunities to ensure that the final built outcomes meet the intent of Council's general resolution of 9 February 2021 (MIN21.63) regarding shade provision.

The dedication of the land is accepted 'in-principle', as is the value of embellishment required for Stages 1 and 2 at approximately \$127,000. The size of the reserve is considered appropriate as there is an oversupply of recreation space in the vicinity and the location of the reserve will achieve good surveillance from the surrounding streets and lots.

Construction of Old Southern Road along the development frontage

The developer is required to construct part of Old Southern Road (including drainage infrastructure) for:

- Stage 1 - From the development's common boundary with Lot 113 DP 1068633 (southern extent of Twin Waters) to the common boundary between approved lots 41 and 42 (which corresponds with the crest of Old Southern Road).
- Stage 2 – From the common boundary between approved lots 41 and 42 in Stage 1 to the southern extent of Lot 188.

Only part of the Old Southern Road roadworks along the frontage is a requirement of contributions project [01ROAD2038 Old Southern Road upgrade \(For 1km south from Quinns Lane\)](#), being the area shown in red in **Figure 4**. The developer is generally responsible for the construction of the length of Old Southern Road not within the 01ROAD2038 project area.

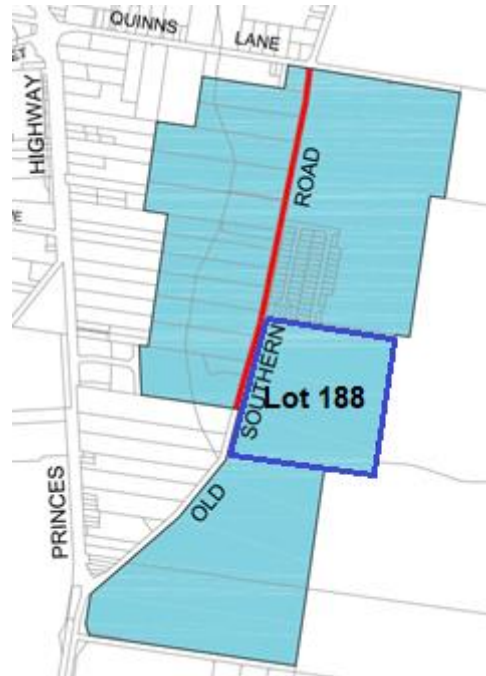


Figure 4: Extent of 01ROAD2038

Staff have considered the development application (concept) plans for the road works and negotiations are ongoing regarding the ultimate alignment and design. Although further work is required before the proposal is satisfactory, it is considered that these matters can be advanced with further review and negotiation. Delegation is requested to continue to resolve these design matters.

It is noted that the Stage 1 Old Southern Road roadworks have lawfully commenced. Whilst there are no legal implications for entering into a WIKA after construction has commenced, to protect Council's interests the WIKA should:

- Specifically acknowledge that it applies to works commenced before the date the WIKA is entered into and, to the extent that those works may not comply with Council's requirements, they must be modified at the developer's cost, and
- State that the s7.11 contributions offset/reimbursement only applies if the works are completed and handed over to Council's satisfaction.

With regards to the ultimate width of Old Southern Road, in discussions with City Services, a 12.8m width is required so that a long-term strategic vision for Old Southern Road can be realised. The 01ROAD2038 project only requires a 10m width. As such, the developer has designed the extension of Old Southern Road to 12.8m in the 01ROAD2038 area and the area beyond the 01ROAD2038 project. As this width is beyond the developer's obligation under the Contributions Plan, Council will be responsible for funding the construction of the additional 2.8m in road width. Additionally, in discussions with City Services the widening of the footpath outcome to a shared user path in some locations to provide a better outcome and public benefit is required. Council will also be responsible for the cost difference between the two outcomes in this regard. City Services have advised that the additional cost to Council can be covered to achieve this highly desirable strategic outcome.

Delegation Opportunities

In accordance with Council's existing [Planning Agreement Policy](#) and [Works In Kind Policy](#), Council may resolve to delegate authority to Council's Chief Executive Officer, or his delegate, to negotiate, publicly notify, enter into and register the agreement (as relevant).

The proposed agreements have some final negotiation yet to occur (including final detailed design endorsement and costings), however the proposal is supported in principle and these matters can be resolved and progressed in time. As such, it is recommended that Council extend delegation for the above functions, unless:

- Further negotiations result in substantial changes to the proposal, in which case Council will receive a further report prior to finalisation.
- There are objections or substantial issues raised as a result of public notification (for the VPA), in which case Council will receive a further report prior to finalisation.

Conclusion

Due to the public benefit realised from the ultimate construction of Old Southern Road, dedication of the public reserve (and embellishment), drainage reserve and land for the sewer pumping station, it is in Council's interest to support the proposal as recommended, finalise negotiations and proceed to prepare the respective agreements.

Community Engagement

The *Environmental Planning and Assessment Regulation 2000* requires that the draft VPA component be publicly exhibited for a minimum period of 28 days. Community engagement will be encouraged through the public exhibition period.

Financial Implications

Options to Address the Funding Shortfall for the Construction of Old Southern Road

Independent costings have not yet been obtained for this proposal; however, it is likely that there will be a shortfall between the developers s7.11 obligations for 01ROAD2038 and the Old Southern Road construction costs in both Stages 1 and 2. If this is the case, a funding source will need to be identified for the shortfall.

To date a small amount of s7.11 contributions have been collected for the 01ROAD2038 project, as well as the \$99,989.66 already paid into the project by the developer as part of Stage 1. These funds are available to spend and should be used in the first instance.

It is preferable that any remaining shortfall be covered by recently received deleted funds. On 2 April 2019, Council resolved (MIN19.212(4)) to:

Endorse the position that all funds from deleted projects are to remain within each relevant planning area and be transferred to a "recoupment fund", with those funds used as Council's apportionment towards projects and to provide seed funding for community infrastructure projects identified in the revised contributions plan.

This project is an excellent candidate for the use of deleted funds and this option is preferred. If a shortfall remains, this shortfall could be covered by the developer upfront. The agreement could be drafted so that regular claims can be made for any contributions received overtime for 01ROAD2038 to the value of the difference (i.e. a reimbursement mechanism).

Alternatively, the entire shortfall (if any) could be covered by the developer upfront. Whilst this is certainly a viable option, it is not preferred as deleted funds have been set aside by Council specifically to seed fund infrastructure delivery in circumstances like Old Southern Road. It is noted that the developer has also proposed a reimbursement schedule in this scenario which would see Council reimburse the developer the shortfall in 3 equal payments

in a three year period, with interest payable. The proposed reimbursement timeframe and interest payment is not supported.

Reimbursement of Certain Stage 1 Contributions

Stage 1 has paid all s7.11 contributions relating to the development, including the following which are relevant to the VPA:

- \$110,155.95 relating to 01OREC0013; and
- \$99,989.66 relating to 01ROAD2038.

On the basis that the embellishment works provided by the developer in the VPA (Stage 2) is equivalent to \$127,000 (i.e. provided in-kind), the reimbursement of the \$110,155.95 paid in s7.11 contributions for Stage 1 is considered acceptable and could be considered as part of the VPA. Contributions for 01OREC0013 relating to SF10743 would also not be required as the proposed dedication and embellishments proposed meets the obligations of both Stages 1 and 2.

On the basis that the Old Southern Road construction works provided by the developer in the WIKA (Stage 1) is equivalent to \$99,989.66 (i.e. provided in-kind), the reimbursement of the \$99,989.66 paid in s7.11 contributions for Stage 1 is considered acceptable and could be considered as part of the WIKA. Contributions for 01ROAD2038 relating to Stage 2 would be required, however it would be appropriate for this to be offset in the VPA rather than payment of monetary contributions.

The developer has already received a COVID-19 Contributions Discount Subsidy relating to 01OREC0013 and 01ROAD2038 for Stage 1 to the value of \$105,072.81. Despite the general support for the reimbursement of the s7.11 contributions for these two projects, it is considered that the Subsidy received for 01OREC0013 and 01ROAD2038 should not be repaid to Council as the value of the monetary contributions is being paid in kind. Commentary could be included in the agreements in this regard if required.

Council Contribution for Old Southern Road

The developer has requested that Council cover the shortfall between the contributions payable for 01ROAD2038 for SF10631 (Stage 1) and SF10743 (Stage 2) and the construction value of Old Southern Road. As discussed above, it is considered appropriate that the shortfall be managed through the use of the s7.11 contributions collected for the 01ROAD2038 project to date and recently received deleted funds. This is consistent with Council's resolution (MIN19.212(4)) to support the provision of seed funding for community infrastructure projects.

Detailed plans and costings have not been prepared to date so it is difficult to approximate the ultimate shortfall, however it is likely that collected contributions for 01ROAD2038 and deleted funds from Planning Area 1 will cover the remaining shortfall. If this is not the case and a shortfall remains, ideally the shortfall should be covered by the developer upfront with reimbursement overtime from further contributions collected for 01ROAD2038 by Council.

Stage 2 Development Contributions Consent Conditions

Should Stage 2 (SF10743) be favourably determined, it is appropriate that no monetary contributions be levied for 01OREC0013 or 01ROAD2038 in the development consent, however a suitable condition should be included in the consent relating to the VPA to reflect the offset (01ROAD2038) and arrangements (01OREC0013) relating to these two projects which will remain via the VPA.

Costs associated with the drafting and entering into the WIKA/VPA

In accordance with Council's [Planning Agreement Policy](#) and [Works In Kind Policy](#), the developer will cover Council's costs (direct and incidental) relating to the negotiation, preparation and entering into the agreements (including associated legal costs) and enforcing the agreements.

Policy Implications

Following the construction of Old Southern Road as envisaged in the proposed WKA/VPA, changes to the current contributions plan project 01ROAD2038 will be required. Changes should reflect the partial completion status of the project, updated cost estimates, and subsequent changes to the contribution rate.

Following dedication of the public reserve and its embellishment as envisaged in the proposed VPA, the provision of open space and embellishment required in 01OREC0013 will have been completed for the whole benefiting area (including Twin Waters and Green Orchid Estates). As the project is not in arrears (i.e., recoupment is not required), it would be appropriate for the project to be deleted from the Shoalhaven Contributions Plan 2019 at that point.

The changes to 01ROAD2038 and deletion of 01OREC0013 can be undertaken as part of a future amendment/s to the Shoalhaven Contributions Plan 2019 and would be reported separately at the appropriate point in time.



17 May 2021

Our Ref: N26982 MJPogp
Your Ref: SF10743 and SF10631

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

Attention: Mr Elliot Weston – Senior Development Planner

Dear Elliot,

LETTER OF OFFER FOR PROPOSED PLANNING AGREEMENT BETWEEN SHOALHAVEN CITY COUNCIL AND TWIN NOWRA ESTATE PTY LIMITED REGARDING DEDICATION AND EMBELLISHMENT OF LAND PLUS FUNDING OF CONSTRUCTION OF OLD SOUTHERN ROAD AT LOT 188 DP755952 OLD SOUTHERN RD, SOUTH NOWRA

I refer to:

- our previous Letter of Offer dated 2 December 2019 regarding dedication of public reserves for SF10743;
- our previous letter dated 29 May 2019 regarding a proposed WIKA for the construction of Old Southern Rd for SF10631;

This revised Letter of Offer is now provided based on negotiations undertaken over last 2 years for both the Stage 1 Development Consent (SF10631) and the Stage 2 Development Application (SF10743).

Background to Public Reserve Dedication

S7.11 Contributions Project 01OREC0013 proposes to:

- collect developer contributions from Lot 188 for the acquisition and embellishment of open space in the broader South Nowra area; and
- provide open space reserves on the subject land.

SF10631 has been levied \$110,155.95 (20/21 FY rates) towards this project. These contributions have been paid and 50% of these funds have been reimbursed under Council's Covid Discount Policy; SF10743 will be levied \$302,462.10 (20/21 FY rates) towards this project assuming a consent is issued;

Further, SCCs *Community Infrastructure Strategic Plan 2017-2036* outlines there is an oversupply of open space in Planning Area 1. Based on this and the other nearby public reserves in proximity to the site, during the assessment of SF10743, it has been accepted by SCC that a small embellished public reserve embedded within a larger drainage reserve in the south-eastern corner of the site will satisfy the requirements for the open space provision for this subdivision.

It is therefore proposed that:

- A small Public Reserve be dedicated as part of the first stage of SF10743 as indicated on APS Plan N26982-06 Rev 12 (see Attachment B);
- A Drainage Reserve also be dedicated containing structures for treatment of stormwater runoff;
- The proposed Public Reserve be embellished to the value of \$50,000 prior to its dedication;
- S7.11 Contributions for 01OREC0013 not be levied for SF10743 (Stage 2); and
- The balance of s7.11 Contributions for 01OREC0013 paid for SF106431 (Stage 1) amounting to \$55,088 be reimbursed.

It is also proposed that a small site for a sewer pumping station also be dedicated to Council.



This proposal is attached in draft Schedule 1 to a proposed Planning Agreement (see **Attachment A**), which outlines the timing and funding of the necessary works.

Background to Funding of Roadworks on Old Southern Rd

S7.11 Contributions Project 01ROAD2038 proposes to collect developer contributions from Lot 188 for the construction of an 8m wide extension of Old Southern Rd to 1km south of Quinns Lane (which covers approximately 307m across the frontage of the subject site)

SF10631 has been levied \$99,989.66 (20/21 FY rates) towards this project. These contributions have been paid and 50% of these funds are in the process of being reimbursed under Council's Covid Discount Policy; SF10743 will be levied \$274,547.88 (20/21 FY rates) towards this project assuming a consent is issued;

Further, and beyond the requirements of the s7.11 CP, SCC has required the extension of Old Southern Rd in SF10631 to be a 12.8m carriageway. This additional width (beyond the 8m requirement of the s7.11 CP) can be accommodated within the existing north-south portion of Old Southern Rd. However, this additional width cannot be accommodated in the portion of Old Southern Rd adjacent to the south-western corner of the site where the road runs more north-west/south-east due to site and development constraints. This section of Old Southern Rd can accommodate a 10m carriageway but not the full 12.8m wide requested by SCC.

It is our position that the developer of Lot 188 should not incur costs beyond the s7.11 Contributions (including any Covid discount) for the 307m of Old Southern Rd included in the CP. This totals \$324,542.71 based on 20/21 FY rates and accounting for the discount provided by Council's Covid discount policy (which is from the general fund and not from s7.11 funds).

It is also our position that the developer of Lot 188 should not incur costs additional to the normal requirement (8m width) for the construction of the 184m of Old Southern Rd beyond the CP project limit to the southern boundary of Lot 188.

As with other CP projects, the developer should pay the required funds to Council and Council then delivers the infrastructure. The fact that Old Southern Rd is adjacent to the site and is required to provide access to the site should not financially disadvantage the developer of Lot 188.

To simplify the calculations, I have broken Old Southern Rd into 3 sections:

- Section 1 (approx. 209m long): from the northern boundary of Lot 188 to the southern end of SF10631;
- Section 2 (approx. 98m long): from the southern end of SF10631 to the southern end of the CP project;
- Section 3 (approx. 184m long) : from the southern end of the CP project to the southern boundary of Lot 188 – approx. ;

It is therefore proposed that:

For Section 1

- Section 1 roadworks (and associated downstream drainage works) be constructed by the developer of Lot 188 in accordance with SF10631 (note the consent allows this section to be staged)
The cost of the road and drainage works in Section 1 are expected to be approximately \$700,000 + GST (subject to final tender and construction costs);
- The balance of s7.11 contributions paid towards this project (\$49,995) be reimbursed following Subdivision Certificate;
- Additional overspend by the developer on this section of road (expected to be approximately \$600,000 + GST ie \$700,000 less \$99,989.66 be reimbursed by Council over a 3-year period with interest at a rate of 5% per annum with quarterly repayments and interest calculated quarterly);



Shoalhaven City Council
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For Section 2

- Section 2 roadworks be constructed by the developer of Lot 188 in accordance with SF10743 (when issued)
The cost of the road and drainage works in Section 2 are expected to be approximately \$202,000 + GST (subject to final tender and construction costs) (Note drainage works provided in Section 1);
- S7.11 Contributions for Project 01ROAD2038 (approx.. \$274,547.88 (20/21 FY rates) be waived;
- Any underspend by the developer on this section of road (expected to be approximately \$72,500 + GST) be deducted from amounts owed by Council for Section 1 roadworks;
- If there is any additional overspend by the developer on this section of road (not expected), the Section 2 overspend be reimbursed by Council over a 3-year period with interest at a rate of 5% per annum with quarterly repayments and interest calculated quarterly);

For Section 3

- Section 2 roadworks be constructed by the developer of Lot 188 in accordance with SF10743 (when issued)
The cost of the additional road and drainage works in Section 3 (i.e. additional 2m wide pavement increasing width from 8m to 10m + pro-rata drainage costs) are expected to be approximately \$75,000 + GST (subject to final tender and construction costs) (Note drainage works provided in Section 1);
- Additional overspend by the developer on Section 3 roadworks be reimbursed by Council over a 3-year period with interest at a rate of 5% per annum with quarterly repayments and interest calculated quarterly);

This proposal is attached in draft Schedule 1 to a proposed Planning Agreement (see **Attachment A**), which outlines the timing and funding of the necessary works.

This correspondence acts as our formal letter of offer in this matter.

It is understood that the parties will need to enter into an agreement in accordance with Sections 7.4 to 7.10 of the Environmental Planning and Assessment Act 1979. The formalisation of the Planning Agreement is therefore proposed to be a condition of consent.

Should you require further detail, please do not hesitate to contact us.

We look forward to hearing from you.

Yours faithfully
ALLEN PRICE & SCARRATTS PTY LTD



Matt Philpott

Attachments:

- A - Schedule 1 to Proposed Planning Agreement between Shoalhaven City Council and Twin Nowra Estate Pty Limited
B – APS drawing N26982-06 Rev 12;



ATTACHMENT A

Schedule 1 to Proposed General Terms for a Planning Agreement between Shoalhaven City Council and Twin Nowra Estate Pty Limited

Stage	Public Benefits	
	Monetary Contributions	Land Contributions
1 of SF10743	Nil	Twin Nowra Estate Pty Limited will dedicate the following lots to the public as shown on APS drawing N26982-06 Rev 12: <ul style="list-style-type: none"> • Lot 364 as "Drainage Reserve"; • Lot 365 as "Sewer Pumping Station"; • Lot 366 as "Public Reserve".
1 of SF10743	S7.11 Contributions towards Project 01OREC0013 will not be levied on SF10743	Nil
1 of SF10631	The balance of S7.11 Contributions paid towards Project 01OREC0013 under SF10631 will be refunded following dedication of the public Reserve and Drainage Reserve	Nil
1 of SF10631	The developer will construct Section 1 Roadworks (and associated downstream drainage works)	Nil
1 of SF10631	Upon satisfactory completion of the Section 1 roadworks (and associated downstream drainage works), the Council will reimburse the developer for s7.11 contributions already paid towards the project (\$49,995)	Nil
1 of SF10631	Upon satisfactory completion of the Section 1 roadworks (and associated downstream drainage works), the Council will reimburse the developer the balance of costs incurred over a 3-year period with interest at a rate of 5% per annum (calculated and paid quarterly);	Nil
1 of SF10743	The developer will construct Section 2 Roadworks (and associated downstream drainage works)	Nil
1 of SF10743	S7.11 Contributions for Project 01ROAD2038 be waived	Nil



1 of SF10743	<p>Upon satisfactory completion of the Section 2 roadworks (and associated downstream drainage works), the Council will either:</p> <p>A) Deduct any underspend on Section 2 from the amount owing on Section 1; OR</p> <p>B) reimburse the developer the balance of costs incurred over a 3-year period with interest at a rate of 5% per annum (calculated and paid quarterly);</p>	Nil
1 of SF10743	The developer will construct Section 3 Roadworks (and associated downstream drainage works)	
1 of SF10743	<p>Upon satisfactory completion of the Section 3 roadworks (and associated downstream drainage works), the Council will reimburse the developer the additional costs to incurred over a 3-year period with interest at a rate of 5% per annum (calculated and paid quarterly);</p>	



Shoalhaven City Council
17 May 2021
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ATTACHMENT B



DE21.109 - Attachment 1

DE21.110 Proposed Agreement - Delivery of New Key Urban Release Areas Roundabout, Moss Vale Road, Cambewarra

HPERM Ref: D21/401521

Department: Strategic Planning

Approver: Gordon Clark, Director - City Futures

Reason for Report

Obtain 'in-principle' support to finalise and enter into an agreement at the appropriate point with the owner/developer of the Stage 1 subdivision land in the Moss Vale Road South Urban Release Area (URA), to reimburse the costs of constructing the new key roundabout on Moss Vale Road using money allocated to Council for the project from the NSW Government's Housing Acceleration Fund (HAF).

Recommendation

That Council:

1. Provide 'in-principle' support to finalise and enter into an agreement with the owner/developer of stage 1 of Moss Vale Road South Urban Release Area to fund the construction of the new release areas roundabout on Moss Vale Road using the HAF grant funding, consistent with the following key terms:
 - a. The agreement is subject to Council receiving access to the remaining \$2M HAF funding (plus possible contingency) allocated to construction.
 - b. Council will reimburse the developer's costs of constructing the roundabout up to a maximum of \$2M (plus possible contingency).
 - c. If Council does not receive access to the remaining HAF funding (plus possible contingency) the agreement will be terminated and Council will not be required to make any contribution towards the developer's costs of constructing the roundabout.

If further negotiations result in substantial changes to the proposed agreement, Council will receive a further report prior to proceeding.
2. Delegate authority to Council's Chief Executive Officer, or his delegate, to prepare and enter into an agreement consistent with the key terms at 1(a) - (c).
3. Notify the Owner/Developer of this resolution.

Options

1. As recommended.

Implications: this is the preferred option. The proposed agreement will facilitate the timely delivery of the roundabout by the developer using the HAF funding that has been allocated to Council for the project. The key terms have been settled between Council and the owner/developer as outlined in this report. Council's Chief Executive Officer, or his delegate, will finalise and enter into an agreement consistent with these key terms. This will provide an added level of certainty for the owner/developer with regard to Council's intent to fund the costs of construction and enable work to start as early as possible on this important intersection.

DE21.110

2. Receive a further report to consider the final draft agreement before entering into it.

Implications: this is not recommended. It may delay the execution of an agreement between Council and the developer for the funding of the roundabout with a resulting delay to the delivery of this important intersection.

3. Make an alternate resolution.

Implications: this will depend on the nature of the alternate resolution.

4. Do not proceed with the recommendation.

Implications: this is not recommended. The delivery of this important intersection may be delayed if an agreement is not put in place to fund its construction by the owner/developer. The HAF funding has been allocated to Council for the purpose of delivering this project.

Background

In November 2019 Council was allocated \$2.5M by the NSW Government's Housing Acceleration Fund (HAF) to design and construct the new release areas roundabout on Moss Vale Road, Cambewarra, as shown in **Figure 1**. The roundabout is the first major planned intersection providing access into the Moss Vale Road North and South URA's. It will enable land to be released for housing in the new subdivisions in both URA's.

Council received initial access to \$0.5 million to complete the detailed design and final business case for the roundabout. Access to the remaining \$2 million (plus a possible contingency amount) for construction is yet to be confirmed by the NSW Government but a favourable decision is expected soon. The remaining funding will be subject to a further funding agreement between Council and the NSW Government.

The delivery of the new roundabout is a requirement of the development consent for the subdivision of stage 1 of Moss Vale Road South (SF10632) URA. As Moss Vale Road is a State controlled road, the owner/developer of this subdivision, Cambewarra Ventures Pty Ltd (CV), has entered into a Works Authorisation Deed (WAD) with Transport for NSW (TfNSW) to construct the roundabout.

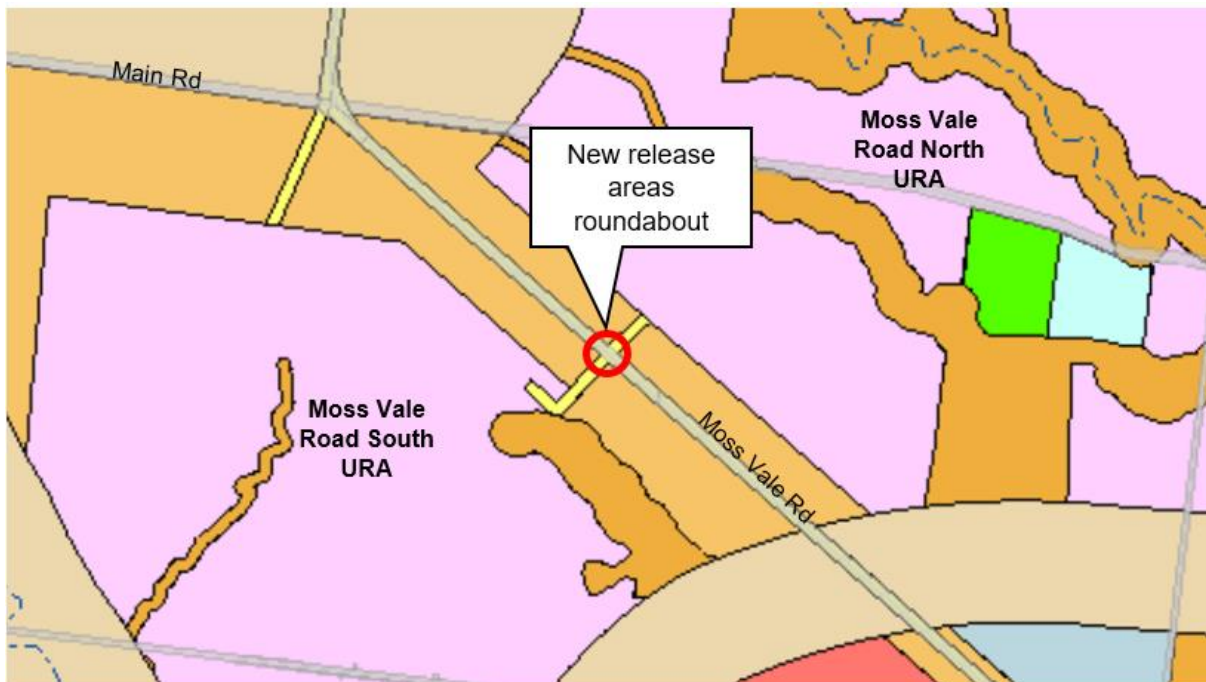


Figure 1: Location of the new roundabout in relation to Moss Vale Road North & South URAs

It is proposed to use the HAF funding to reimburse CV for the costs of constructing the roundabout via an appropriate agreement. The key terms of the proposed agreement which have been generally agreed between Council and CV are:

- a. The agreement is subject to Council receiving access to the remaining \$2M HAF funding (plus possible contingency) allocated to construction of the roundabout.
- b. Council will reimburse CV up to a maximum of \$2M (plus possible contingency). Council will not be liable for any costs in excess of this amount.
- c. If Council does not gain access to the remaining HAF funding the agreement with CV will be terminated and Council will not be required to make any contribution towards the developer's costs of constructing the roundabout. This is considered to be an unlikely scenario but needs to be addressed.

The draft agreement, which has been prepared with the assistance of Council's lawyers, also sets out:

- The manner in which CV may make claim for, and Council will reimburse, its costs of construction;
- Evidence to be submitted with claims to demonstrate that the relevant work has been completed in accordance with the WAD;
- Schedule of milestones;
- Circumstances in which Council may terminate the agreement and claw-back HAF monies paid to CV.

These provisions are important to ensure that Council can meet its obligations under the future funding agreement with the NSW Government.

CV has submitted a cost estimate and construction program for the work. The cost estimate has been independently reviewed and found to be reliable.

The owner/developer's capability and project profiles have been reviewed and there is confidence in the ability to deliver the project. It is noted that they recently delivered the new Illaroo Road roundabout, a comparable project, for Council on schedule and has undertaken

various other road projects for TfNSW. The actual construction of the roundabout will be managed by TfNSW via the WAD which adds another level of confidence.

Conclusion

The developer commenced work on the adjacent subdivision in June 2021 and is ready to commence work on the roundabout immediately, subject to Council gaining access to the remaining HAF funding. It is now recommended that Council delegate authority to the Chief Executive Officer, or his delegate, to finalise and enter into the proposed agreement to fund the construction of the roundabout by the owner/developer, consistent with the key terms outlined above. This will enable work to proceed with minimum delay once a decision on the HAF funding is received from the NSW Government.

Policy Implications

A public tender process under Council's Procurement Policy is not applicable in this instance because the development consent requires the owner/developer to deliver the roundabout. The arrangement is not unlike the various planning agreements and works in kind agreements entered into by Council for the delivery of infrastructure projects associated with development.

Financial Implications

Under the terms of the proposed agreement there will be no net financial impact on Council. Council will reimburse the owner/developer's costs of constructing the roundabout from the HAF funding allocated to Council. Any costs in excess of the HAF funding are to be borne by the owner/developer. This is appropriate given that development is generating the need for the new roundabout and it is on a State controlled road (i.e. not local infrastructure).

Risk Implications

The proposed agreement is essentially a funding agreement, not a construction contract. The actual construction of the roundabout will be managed by TfNSW via the WAD. As such the risks associated with the agreement are largely financial. Appropriate terms will be included in the proposed agreement to manage these risks:

- Council will not be liable for any costs in excess of the HAF funding (plus possible contingency) allocated for construction.
- Should Council not receive access to the HAF construction funding Council will be entitled to terminate the agreement with the owner/developer and will not be required to make any contribution towards the owner/developer's costs of constructing the roundabout.
- Council is not required to pay any claim by the owner/developer until such time as Council has received access to the HAF construction funding.
- Council will be entitled to terminate the agreement with the owner/developer and claw back HAF monies paid to it if the owner/developer defaults on the WAD or the WAD is terminated.

DE21.111 Proponent Initiated Planning Proposal Request - LEP Clause 7.25 Amendment - Lot 1 DP 1257338 - Moss Vale Road, Kangaroo Valley

HPERM Ref: D21/395673

Department: Strategic Planning

Approver: Gordon Clark, Director - City Futures

Reason for Report

Present a new proponent-initiated Planning Proposal (PP) request for initial consideration that seeks to amend Clause 7.25 (Additional Local Provision) of Shoalhaven Local Environmental Plan 2014 (LEP 2014) which applies to part of Lot 1 DP 1257338, Moss Vale Road, Kangaroo Valley.

The request seeks to allow the future multi dwelling housing lot (that is already permissible) to be Strata subdivided, so that the dwellings can be individually owned. No additional dwelling entitlements are sought.

The PP request was submitted by SET Consultants on behalf of the owner (Chris Treuen).

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the Planning Proposal (PP) request to amend Shoalhaven Local Environmental Plan 2014 (SLEP 2014) consistent with the explanation of provisions outlined in this report, primarily to permit Strata subdivision of the designated multi dwelling housing lot that was approved under LEP Clause 7.25, without increasing the number of dwellings.
2. Prepare and submit the required PP documentation to the NSW Department of Planning, Industry and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advance the matter as a 'minor' proponent-initiated Planning Proposal with fees charged in accordance with Council's adopted Fees and Charges.
4. Advise the proponent of this resolution.

Options

1. Proceed as recommended
Implications: Will allow the designated multi dwelling lot in the subdivision of Lot 1 DP 1257338 that was approved under the existing Clause 7.25 of LEP 2014, to be strata subdivided, facilitating a range of housing types without facilitating additional development capacity. This option is recommended.
2. Not proceed with the PP
Implications: The current wording of Clause 7.25 of LEP 2014 will be retained. Subdivision of the designated multi dwelling housing lot approved for Lot 1 DP 1257338 will not be able to be subdivided. This option will potentially limit or constrain the range of housing types provided in the locality and is therefore not preferred.

DE21.111

Background

The Subject Land

The subject land is part Lot 1 DP 1257338, Moss Vale Road, Kangaroo Valley. Lot 1 currently comprises 16.18 hectares (ha) and is located on the eastern side of Moss Vale Road, immediately north of the Kangaroo River at Kangaroo Valley. The subject land and its use zoning is shown in Figure 1.

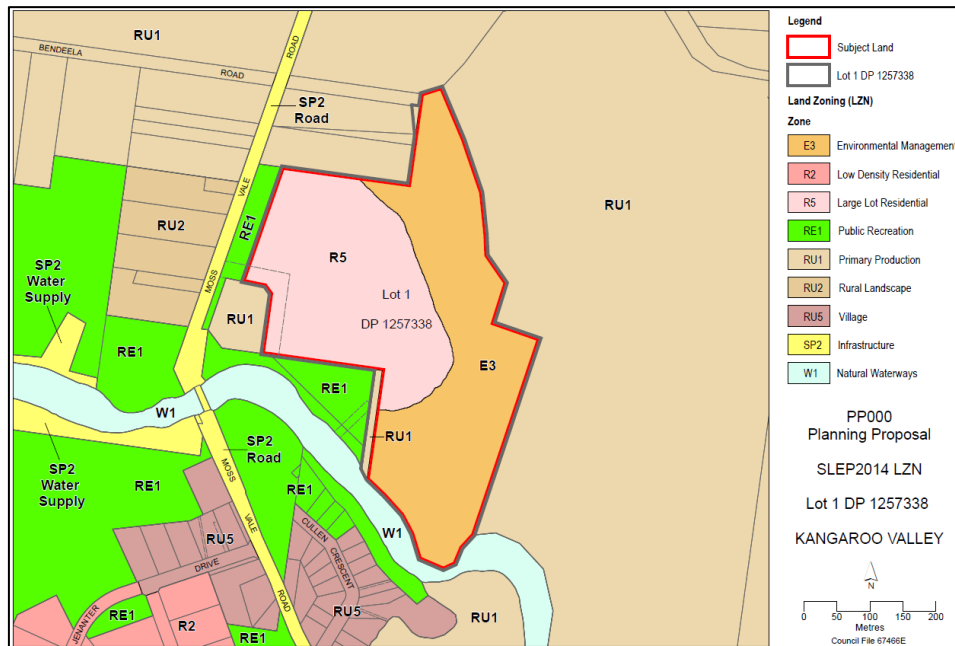


Figure 1. Land use zoning of the subject land and surrounds

The subject land is predominately zoned R5 Large Lot Residential and E3 Environmental Management, with two smaller areas zoned RU1 Primary Production. The Lot does not have direct frontage to Moss Vale Road. Access to Moss Vale Road is gained via a 25m-wide Right of Carriageway over the Council-owned Lot 16 DP 773481, which is zoned RE1 Public Recreation.

The subject land is the area to which Clause 7.25 of SLEP 2014 also applies – see Figure 2.

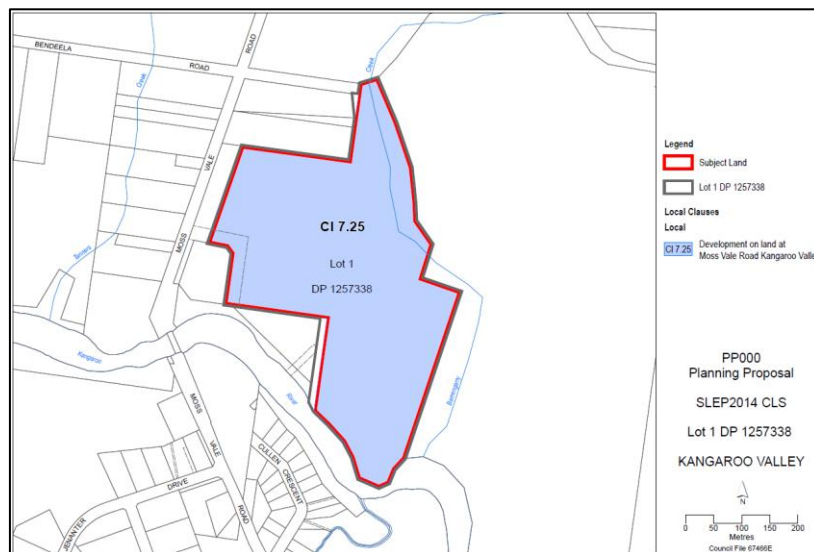


Figure 2. Extract LEP Clauses Map

(Note: Clause 7.25 applies to the former Lot 14 DP 773481)

DE21.111

Brief Planning History

The subject land was previously separated into two portions by a 10.06 m wide unformed private road (confirmed by Crown Lands) running in a north-south direction through the centre of the property. The road portion was consolidated with Lot 14 DP 773481 on 2 April 2020, the resulting Lot being Lot 1 DP1257338. The current and previous deposited plans relating to the subject land are shown in Figure 3 below.

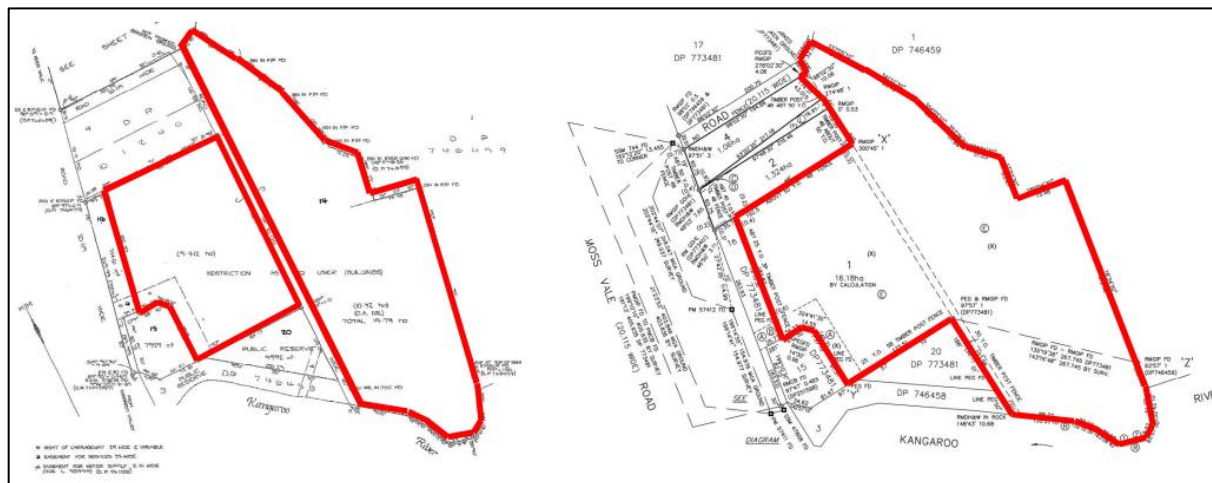


Figure 3. Extracts from Deposited Plans with red outline demonstrating Lot 14 DP 773481 (left) and Lot 1 DP 1257338 (right) (Source: SET Consultants PP)

On 6 December 2002, Council approved development of a Guest House on the subject land (then identified as Lot 14 DP 773481). A total of 15 Equivalent Tenements (ETs) were subsequently allocated under the Kangaroo Valley Sewerage Scheme. The Guest House did not proceed to construction and the consent was ultimately surrendered to facilitate an LEP amendment and development approval(s) outlined below.

In December 2013, Council supported submission of a proponent-initiated PP for Gateway determination. That PP sought to ensure that the allocation of 15 ETs is not exceeded while also providing a greater range of housing options in the locality. The PP resulted in Amendment No. 5 to LEP 2014 in August 2015, which inserted Clause 7.25 and added the land to the associated local clauses map overlay.

Clause 7.25 conditionally permits subdivision of the land into a maximum of 12 lots, one of which is intended for multi dwelling housing, comprising no more than six (6) dwellings. Clause 7.25 is copied below:

7.25 Development on land at Moss Vale Road, Kangaroo Valley

- (1) *This clause applies to land at Moss Vale Road, Kangaroo Valley, being Lot 14, DP 773481 (the original lot).*
- (2) *Despite any other provision of this Plan, development consent may be granted to subdivide the original lot to create other lots (the resulting lots) if—*
 - (a) *two of the resulting lots—*
 - (i) *will each contain land in Zone R5 Large Lot Residential that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
 - (ii) *will together contain all of the land in Zone E3 Environmental Management that was in the original lot, and*
 - (b) *all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.*
- (3) *Development consent must not be granted to the subdivision of land under subclause (2) unless the consent authority is satisfied that—*

DE21

- (a) one of the resulting lots referred to in paragraph (b) will contain multi dwelling housing that comprises no more than 6 dwellings, and
- (b) all other resulting lots will contain a single dwelling house, and
- (c) the subdivision will not result in more than 12 resulting lots.

On 23 December 2019, Council approved a Torrens Title subdivision (SF10697) of Lot 14 DP 773481 into nine (9) lots. Following the consolidation of Lot 14 DP 773481 with the road portion, to form Lot 1 DP 1257338, an application to modify the consent (DS20/1603) was approved on 27 April 2021, allowing a twelve (12) lot Torrens Title subdivision.

All building envelopes associated with that subdivision are located within the R5 – Large Lot Residential portion, limiting the impact upon E3 – Environmental Management zoned land. Access to the subject land from Moss Vale Road, is via a private road in a Right of Carriageway through the Council-owned Lot 16 DP 773481. A further modification for minor changes to the road and drainage design was approved on 18 August 2021 (DS21/1204).

In accordance with Clause 7.25 of SLEP 2014, Condition 78 of the modified Development Consent (SF10697) requires that a restriction-as-to-user be created under Section 88B of the Conveyancing Act such that:

“Future development of Lot 12 is to be multi dwelling housing only, comprising of no more than six (6) dwellings”. Further the stamped approved plan for the modified consent contains a note “Lot 12 is a designated multi dwelling site to contain up to 6 dwellings”.

An extract from the approved plans is provided below, with Lot 12, the designated multi dwelling site highlighted yellow.

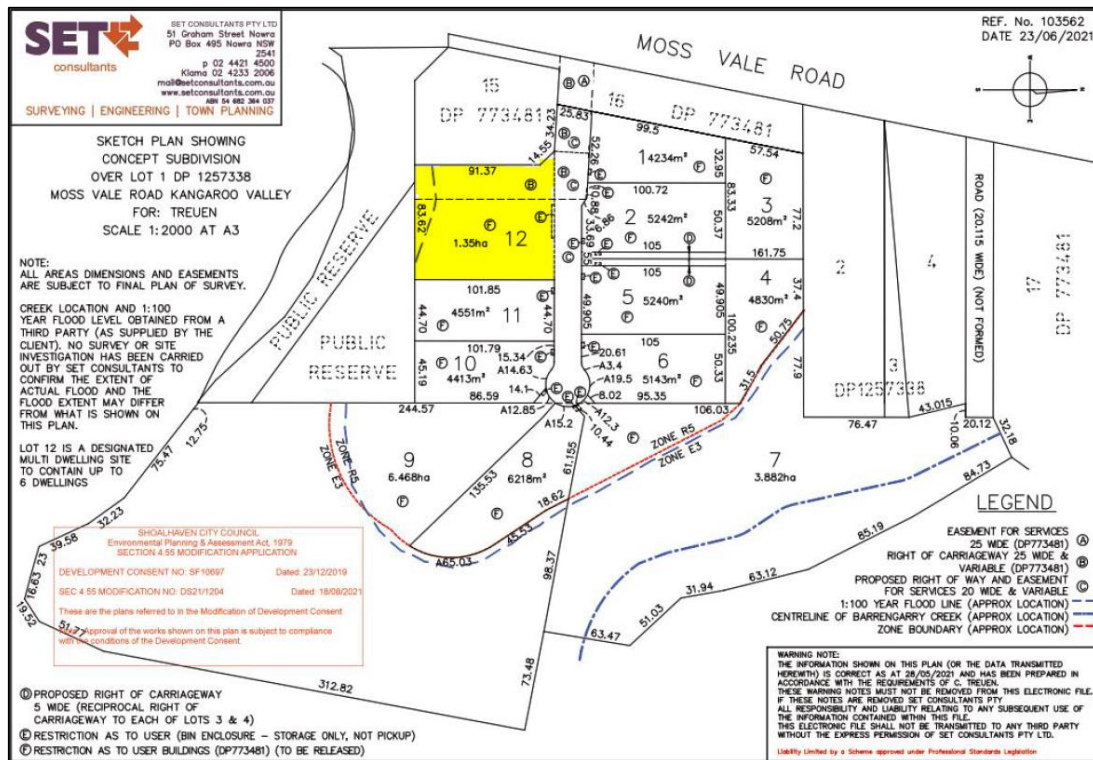


Figure 4. Extract from the stamped approved plans
(Note: designated multi dwelling site is highlighted yellow)

DE21.111

Planning Proposal (PP) Request

The proponent's PP request was formally received on 6 September 2021. The proponent's documentation can be viewed on Council's '[pre-gateway](#)' page on Council's website and includes:

- [Planning Proposal - Part Lot 1 DP 1257338, Moss Vale Road - Kangaroo Valley](#)
- [Site Map - Part Lot 1 DP 1257338, Moss Vale Road - Kangaroo Valley](#)
- [Planning Proposal Lodgement Form - Part Lot 1 DP 1257338, Moss Vale Road - Kangaroo Valley](#)

Requested Intended Outcome

The proponent's intended outcome is to enable the strata subdivision of future multi dwelling housing on the dedicated multi dwelling housing allotment (highlighted yellow in Figure 5).

The proponent's PP request specifically states that it "...does not seek to increase the dwelling yield permitted on the site".

The proponent's PP request suggests the following amendment to Clause 7.25 of SLEP 2014 to achieve the intended outcome:

- Delete 'and' at the end of Subclause (3)(b)
- Amend (3)(c) to read:
The subdivision will not result in more than 18 resulting lots comprising a maximum of 12 Torrens Title Lots and 6 Strata Title lots; and
- Add Clause 7.25(3)(d) as follows:
Only the Lot referred to in Subclause (3)(a) may be strata subdivided.

The PP request would not require any change to the associated Clauses Map in the LEP.

Given that multi dwelling housing is prohibited in the R5 zone, if the PP is progressed, it should also seek to expressly make multi dwelling housing permissible on the designated lot in the approved subdivision. This would remove any ambiguity regarding the permissibility of multi dwelling housing on the designated multi dwelling housing lot. As noted in the proponent's PP:

"Parliamentary Counsel may determine to make it expressly clear that the multi dwelling housing development required by Clause 7.25(3)(a) is permitted with development consent by adding further additional wording to Clause 7.25."

The proponent's PP report also notes:

"Whilst Clause 7.25 applies to Lot 14 DP 773481, as the subject land was previously known, it was determined that the existence of the development approval (as outlined below) negated the need to update the lot description."

This issue would be considered further if the PP proceeds.

Strategic Planning Overview

This PP seeks an amendment to Clause 7.25 of LEP 2014 to allow Strata subdivision of the designated multi dwelling lot approved under SF10697. This would allow any dwellings on the designated multi dwelling housing lot to be individually owned. The PP does not seek to increase the overall number of dwellings beyond what was intended through the original PP that resulted in Amendment No. 5 to LEP 2014.

The following is a preliminary strategic planning assessment of the proposal.

Illawarra Shoalhaven Regional Plan 2041

The PP is generally consistent with the Plan, particularly *Objective 19: Deliver housing that is more diverse and affordable*. The amendment would allow any future multi dwelling housing development to be Strata subdivided, providing a variety of housing types within the locality. This outcome reflects the intent of Regional Plan Objective 19 which acknowledges the need for smaller homes or multi dwelling housing.

Shoalhaven Local Environmental Plan 2014

The PP seeks to refine an existing Additional Local Provision under Clause 7.25 of SLEP 2014 without changing or increasing the number of dwellings, consistent with the previous proponent-initiated PP that resulted in Amendment No. 5 to LEP 2014.

Shoalhaven Local Strategic Planning Strategy (LSPS) 2020

The PP is generally consistent with the LSPS and specifically achieves the goals of Planning Priority 1: Providing homes to meet all needs and lifestyles. Allowing separate private ownership of the dwellings within the future multi dwelling development is consistent with the LSPS guidance, specifically “*providing a range of homes helps provide a choice of homes to match income levels*”.

The PP will not increase the intended number of dwellings on the subject land and is therefore not inconsistent with LSPS Direction 2: Natural and Built Environments and Lifestyles.

Planning Proposal (Rezoning) Guidelines 2018

Council’s PP guidelines provide for three (3) situations where Council “is more likely to support a PP request”. The third is where “Council is satisfied that the proposed amendment is minor and has sound justification”.

The PP seeks to enable Strata subdivision of the future multi dwelling housing development on the designated lot, without increasing the number of dwellings. Based on a preliminary assessment, the proposal is generally consistent with Council’s PP Guidelines. The PP would not require any specialist studies and is therefore classified as ‘minor’ under the PP guidelines.

NSW Guide to Preparing Planning Proposals

The NSW Government’s Guide to Preparing Planning Proposals provides an assessment framework for PPs. This framework requires the planning authority (Council) to consider several questions in determining the merit of a PP. These are considered below:

Q1. Is the PP a result of any strategic study or report?

The PP is not the result of a strategic study or report. The subject land is already appropriately zoned, the PP is minor and is not of a kind that would generally be identified in a broad strategic planning process.

Q2. Is the PP the best means of achieving the intended outcome or is there a better way?

The proposed amendment to Clause 7.25 of LEP 2014 is the only way to allow the future multi dwelling lot to be subdivided. As previously noted, multi dwelling housing is prohibited in the R5 – Large Lot Residential zone and the PP would also provide an opportunity to expressly make multi dwelling housing permissible on the designated multi dwelling housing lot.

The PP is the result of a pre-lodgement meeting advice and feedback from Council staff regarding necessary processes to enable private ownership within the multi dwelling housing component to be achieved through Strata subdivision.

Q3. Is the PP consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategy)?

The PP is generally consistent with the Regional Plan as it will allow a variety of housing types to be offered within the locality without increase the number of dwellings allowable on the subject land.

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

As previously noted in this report, the PP is generally consistent with the LSPS.

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

The PP is minor and the proposed amendment is not in conflict with the applicable SEPP (Sydney Drinking Water Catchment) 2011. The PP does not seek to create additional dwelling entitlements beyond what is provided for under Clause 7.25 of LEP 2014. Notwithstanding, the proposal would be referred to Water NSW for comment subject to receiving a favourable Gateway determination from DPIE.

Q6. Is the PP consistent with applicable Ministerial Directions?

The PP is not inconsistent with any Ministerial Direction. The PP has been assessed against Ministerial Directions with the following comments made:

Direction 2.1 Environmental Protection Zones – The PP does not reduce any environmental protection standards that apply to this land.

Direction 2.3 Heritage Conservation – The subject land is not listed as having heritage significance and no Aboriginal sites are recorded or declared in or near the site. The PP will not result in any additional impacts upon, or hinder the conservation of, heritage items.

Direction 3.1 Residential Zones – The PP does not seek to alter the permissible residential density of the land but will increase the variety of housing types available for ownership within this locality.

Direction 4.4 Planning for Bushfire Protection – The PP affects land identified as bushfire prone but does not seek to alter the permissible residential density of the land. The NSW RFS would be consulted prior to community consultation consistent with this Direction.

Direction 5.2 Sydney Drinking Water Catchment – The PP affects land within the Sydney Drinking Water Catchment. However, the PP will not impact the resulting physical development and will therefore not impact negatively on the water quality. Water NSW would be consulted subject to receiving a favourable Gateway determination.

Direction 5.10 Implementation of Regional Plans – As outlined previously in this report, the PP is generally consistent with the Regional Plan.

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The PP will not result in a change to the physical development that occurs upon the subject land. No adverse biodiversity impacts are anticipated.

Q8. Are there any other likely environmental effects as a result of the PP and how are they proposal to be managed.

No adverse environmental impacts are anticipated.

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

The PP seeks to enable delivery of a range of housing types in the locality. Strata subdivision will allow private ownership, through owner-occupiers or leasing arrangements, and likely provide positive social and economic outcomes for the community. No adverse social or economic effects are anticipated.

Q10. Is there adequate public infrastructure for the PP?

The PP will not alter the physical development occurring on the subject land and therefore not give rise to any additional infrastructure needs. The PP will not increase the dwelling yield.

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

No consultation has been undertaken at this early stage. The relevant agencies, including, but not limited to Shoalhaven Water, NSW RFS and Water NSW will be consulted should the PP progress.

Conclusion

The request is a minor matter and warrants support given that it largely seeks to further enable an existing agreed planning outcome.

Community Engagement

Adjoining landowners, the Kangaroo Valley Chamber of Tourism & Commerce and the Kangaroo Valley Community Association were advised of receipt of the PP request.

Should the PP receive a favourable Gateway determination it will be formally publicly exhibited at the appropriate stage.

Policy Implications

The PP is generally consistent with Council's Planning Proposal (Rezoning) Guidelines.

Financial Implications

The PP is proposed to be managed as a minor, proponent funded PP, to be funded by the proponent on a 100% cost recovery basis.

DE21.112 Proposed Coastal Amendment - Shoalhaven DCP 2014 Amendment (DCP 2014.39)

HPERM Ref: D21/337989

Department: Strategic Planning

Approver: Gordon Clark, Director - City Futures

Attachments: 1. DCP Amendment Package (under separate cover) [⇒](#)

Reason for Report

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

- Chapter N12: Culburra Beach – The Marina Area.
- Chapter G6: Coastal Management Area.
- Chapter V2: Building Lines.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse and proceed to exhibit the draft Amendments to the following chapters of Shoalhaven Development Control Plan 2014 as outlined in Attachment 1, for a period of at least 28 days as per legislative requirements:
 - a. Chapter N12: Culburra Beach – The Marina Area.
 - b. Chapter G6: Coastal Management Area.
 - c. Chapter V2: Building Lines.
2. Receive a further report on the draft Amendment following the conclusion of the public exhibition period to consider feedback received and enable finalisation of the Amendment.
3. Extend the review date of POL20/21 'DCP Chapter N12: Culburra Beach, The Marina Area – Interim Policy,' to 2 July 2022, noting it will be rescinded following the adoption and finalisation of the draft Amendment.
4. Notify the following key stakeholders (including CCBs and Development Industry Representatives) of the exhibition arrangements in due course:
 - a. Development Industry Representatives and CCBs.
 - b. All affected landowners of Chapter N12: Culburra Beach – The Marina Area.
 - c. The landowners directly affected by deletion or substantial amendment to a Chapter V2 Supporting Map.

Options

1. As recommended.

Implications: This is the preferred option as it implements the intention of an earlier resolution (MIN19.465) and ensures the Chapters are updated and streamlined, which will assist in the preparation and assessment of development applications.

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Additionally, it will extend the operation of the Interim Policy (POL20/21) to enable its continued operation until the adoption and finalisation of the Amendment.

2. Adopt an alternative recommendation.

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

3. Not adopt the recommendation.

Implications: Could stop the implementation of more appropriate, best practice and better structured provisions in the above-mentioned chapters, that will improve their function and useability. The Interim Policy (POL20/21) would also not be extended, which clarifies Council's intent regarding the specified lines referred to within the existing Chapter N12.

Background

Chapter N12: Culburra Beach – The Marina Area

The content in Chapter N12 was transferred from former DCP 48 – Culburra Beach, as part of the 2014 citywide DCP process. There have been no amendments to the Chapter since Shoalhaven DCP 2014 became effective in 2014. The former DCP 48 was first adopted in the early 1990s.

Council resolved (MIN19.465) on 02 July 2019 to:

1. *Endorse the preparation of an amendment to Chapter N12: Culburra Beach – The Marina of Shoalhaven Development Control Plan 2014.*
2. *Receive a further report on the draft Amendment prior to public exhibition.*
3. *Adopt the 'Interim' Policy Position that the Maps at Attachment 1 represent Council's ongoing strategic intent in terms of building lines, erosion setback lines and 20m vegetation buffer lines for The Marina area and apply the Interim Policy Position until the lines have been reviewed, considered and finalised as part of the amendment to DCP Chapter N12.*
4. *Advise key stakeholders, including relevant industry representatives and landowners, of this decision.*

A complete review of Chapter N12 has now been undertaken and a draft Chapter prepared. The proposed amendment to Chapter N12 is consistent with Council's housekeeping approach to amending DCP chapters and ensuring Chapters are effective planning tools and operating in the appropriate manner.

As part of the preparation of the amendment to Chapter N12, an independent study was undertaken by Water Technology (an environmental consultant) to provide contemporary rigour regarding dune vegetation. The study recommended the following key changes:

- Additional provisions should be inserted to ensure that no invasive species are planted within the "2019 Dune Vegetation Zone," and that any revegetation within this zone is comprised of native dune vegetation that is listed in Section 5.3.2 of Chapter G6 and is further guided by what is currently growing well and providing desirable stability and ecological function.
- A note box should be provided below Section 5.14 of Chapter N12 that informs the community of the seriousness of dumping plant material within or even adjacent to the foreshore reserve.

- Section 5.14 of Chapter N12 could offer stronger wording against the creation of informal beach access track through the dune system on private properties. This is required to prevent degradation of native dune vegetation and maintain the resilience of the dune system.

The findings and recommendations of the study have been adapted and included within draft Chapter N12, provided at **Attachment 1** and a summary of the changes proposed is provided in **Table 1**, below. Further detail regarding the proposed changes is available in the table of changes at the beginning of the Chapter.

A copy of the Water Technology report can be provided to Councillors upon request, if required.

Table 1: Summary of key changes to Chapter G6.

Chapter N12 Culburra Beach – The Marina Area
<ul style="list-style-type: none"> • Editorial throughout, including – <ul style="list-style-type: none"> ○ Updates to the numbering of performance criteria and acceptable solutions to be sequential throughout the document. ○ Transfer the content of a number of existing acceptable solutions to note boxes. ○ Refined wording and adapted content of existing performance criteria and acceptable solutions. ○ Rationalised provisions to remove duplication and redundant terminology/information. • Insertion of background information surrounding the proposed 2019 Dune Vegetation Zone and their application. • Insertion of a table summarising existing setbacks, including references to other relevant DCP chapters, to enhance readability and reduce duplication. • Insertion of a collage of invasive species to assist readers with identifying invasive species.
Chapter N12 Culburra Beach – The Marina Area: Supporting Maps 1
<ul style="list-style-type: none"> • Insertion of 2019 Dune Vegetation Zone maps to provide visual identification of the 2019 Dune Vegetation Zone along The Marina and the land that is to remain vegetated.

Chapter G6: Coastal Management Area

The amendment package also includes small additions to Chapter G6, which includes:

- Insertion of an acceptable solution requiring all new development in Precinct 2 and seaward of the 2050 zone of reduced foundation capacity (ZRFC) to include a coastal engineering report that has been prepared by a suitably qualified person so that the coastal hazard risk is properly addressed and mitigated for these developments.
- Insertion of an acceptable solution addressing drop edge beams and retaining walls, intended to promote site responsive designs of buildings and structures.

A copy of draft Chapter G6 is provided at **Attachment 1**. Further detail regarding the proposed changes can be seen in the table of changes at the beginning of the Chapter.

Chapter V2: Building Lines

As per Part 3 of the 2019 resolution (MIN19.465), Council adopted [POL20/21](#): Interim Policy – Chapter N12: Culburra Beach, The Marina Area Building Setbacks, Vegetation Buffers and Building Lines as its interim policy position. The relevant ‘lines’ detailed in POL20/21 were transferred from former DCP 48 and remain Council’s strategic intent for the subject land and have been rigorously applied throughout the area to date.

In response to the Water Technology report, the building lines along The Marina have been transferred to DCP Chapter V2 Building Lines: Supporting Maps 1, provided at **Attachment 1**.

The proposed amendment has also considered general housekeeping matters relating to layout and formatting of the Chapter, and ongoing relevance of building lines in certain areas.

A copy of draft Chapter V2 is provided at **Attachment 1** with a summary of the changes to the draft Chapter N12 found at **Table 2**, below. Further detail regarding the proposed changes can be seen in the table of changes at the beginning of the Chapter.

Table 2: Summary of key changes to Chapter V2

Chapter V2 Building Lines
<ul style="list-style-type: none"> • Editorial throughout, including – <ul style="list-style-type: none"> ○ Reordered existing sections and provisions to improve user friendliness. ○ Transferred the content of a number of existing acceptable solutions to note boxes, as appropriate. ○ Rationalised provisions to remove duplication and redundant terminology/information. • Reformat provisions as Objectives, Performance Criteria and Acceptable Solutions, for consistency with the broader DCP approach. • Insertion in note box, specifically identifying the supporting maps intended to provide greater clarification for readers.
Chapter V2 Building Lines: Supporting Maps 1
<ul style="list-style-type: none"> • Throughout – <ul style="list-style-type: none"> ○ Updates to the names of building lines, to include descriptive words intended to improve user readability, such as references to 'Foreshore Building Line,' 'Eastern Building Line' and building lines specific to streets. ○ Use of varied colours to differentiate between building lines, to improve clarity and useability. ○ Highlighted the land that is not to be developed on, to clearly present the land affected by the building line and improve user friendliness. • Removed the following maps – <ul style="list-style-type: none"> ○ Currarong Map 1. ○ Kangaroo Valley Map 2. ○ Ulladulla Map 1. • Amended the following maps – <ul style="list-style-type: none"> ○ Greenwell Point Map 1. ○ Kangaroo Valley Map 3.

Interim Policy Position

POL20/21, as detailed above, was adopted as an 'Interim Policy Position' to be in place until the relevant lines have been reviewed, considered and finalised as part of an amendment to Chapter N12. It is proposed to extend the policy until July 2022, noting that the Coastal Amendment is likely to be finalised prior to June 2022, and the policy will be repealed following the adoption and finalisation of the amendment.

Community Engagement

Subject to the outcome of this report, the draft Amendment will be publicly exhibited for at least 28 days in accordance with legislative requirements. Documentation will be available for viewing on Council's website. Key stakeholders will be directly notified as outlined in the recommendation.

Policy Implications

The draft Coastal Amendment seeks to address operational issues, gaps in policy or matters that need clarification that have been identified since the chapters became effective on 22 October 2014. Importantly, the Amendment will look to crystallise Council's building lines, and 2019 Dune Vegetation Zone along The Marina in the Culburra Beach Area.

It is intended that POL20/21 will be rescinded following the adoption and finalisation of the Shoalhaven DCP 2014 Coastal Chapters Amendment.

Financial Implications

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

DE21.113 Jerberra & Nebraska Estates - Draft Policy for the Voluntary Acquisition of 'Residual' E2 Land

HPERM Ref: D21/352167

Department: Strategic Planning

Approver: Gordon Clark, Director - City Futures

Attachments:

1. Draft Policy - Jerberra & Nebraska Estates - Voluntary Acquisition of Residual E2 Environmental Conservation Land (under separate cover) ➡
2. Jerberra Estate Map - Residual E2 Land and Developable Council Land (under separate cover) ➡
3. Nebraska Estate Map - Residual E2 Land and Developable Council Land (under separate cover) ➡
4. Strategic Valuation - Jerberra Estate (under separate cover) ➡
5. Strategic Valuation - Nebraska Estate (under separate cover) ➡
6. Targeted Landowner Survey Form (under separate cover) ➡
7. Summary report on community engagement (under separate cover) ➡
8. External & Internal Consultation Summary (under separate cover) ➡

Reason for Report

Provide the following to Council:

- Information generally about the feasibility of the proposed policy for the voluntary acquisition of 'Residual' Environmental Conservation E2 Land (Residual E2 Land) in the Jerberra and Nebraska Estates;
- Strategic independent valuation advice for consideration as background to and in support of the proposed policy;
- Information about the likely long term management costs of the residual E2 land in both Estates;
- Feedback on the outcomes of the community engagement process, specifically the targeted survey of Residual E2 landowners;
- Feedback on the external and internal consultation undertaken and comments received on the draft policy; and to
- Seek the adoption of the attached draft *Policy – Voluntary Acquisition – Residual E2 Environmental Conservation Land – Jerberra & Nebraska Estates* (Attachment 1).

Recommendation

That Council:

1. Proceed to:
 - a. Adopt the draft Policy for the Voluntary Acquisition of 'Residual' E2 Land in the Jerberra & Nebraska Estates with immediate effect for the Jerberra Estate (Attachment 1);
 - b. Classify all land acquired under the Policy as Community Land – Natural Area – Bushland under s31 & s36 of the *Local Government Act 1919* and s101 of the *NSW Local Government (General) Regulation 2021*;
 - c. Meet reasonable conveyancing costs (valuation and solicitors fees) directly related

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- to transfer of Residual E2 Land to Council but not including any legal costs incurred by the vendor in pursuit of dispute resolution;
2. Endorse the allocation of net profits from the sale of Council's developable land, as identified on the maps at Attachments 2 and 3, to the Jerberra and Nebraska Estates Property Reserve to fund purchases of the E2 Land and management activities as outlined in the Policy;
 3. Receive for information, the:
 - a. Strategic independent valuation reports for the relevant land in Jerberra & Nebraska Estates prepared by Opteon P/L for information (Attachments 4 & 5);
 - b. Summary report on Community Engagement (Attachment 7);
 4. Note that:
 - a. The Policy will also only apply to land in the Nebraska Estate, St Georges Basin if/when the Planning Proposal (LP145.1) for the Estate has been finalised and the land rezoned, at which point the Policy and Figure 3 in it will need to be updated to reflect the final outcome;
 - b. The independent strategic valuation advice (Recommendation 3a) is valid at the date of valuation only and that each proposed sale to/by Council will require an independent valuation prepared not more than 6 months prior to the date of offer;
 - c. Subject to internal Council discussion, Standard Operating Procedures (SOPs) and/or Work Instructions may need to be developed to support implementation of the Policy.
 - d. All Jerberra and Nebraska Estates landowners who either responded to the targeted survey or provided comments on the proposed Policy will be advised of Council's decision.

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Options

1. As recommended.

Implications: This is the preferred option.

Valuation advice indicates the draft policy is financially viable. That is, the cost-neutral voluntary acquisition of the 'residual E2 land' is achievable as at the date of valuation and, even more so if the market continues to rise before reaching a plateau.

Consultation with landowners has also demonstrated that there is an interest in the sale of Residual E2 Land particularly in the Jerberra Estate where the planning controls have been finalised and certified under clause 34A of the *Biodiversity Conservation (Savings & Transitional) Regulation 2017* (clause 34A certification). It is anticipated that landowner interest in the sale of Residual E2 Land in the Nebraska Estate will potentially increase in time if/when the land is rezoned. The intent of the draft policy is also supported by City Development (Environmental Services).

The ability to secure a 'Clause 34A' biodiversity savings provision is critical to progressing the Nebraska Estate Planning Proposal (PP). To be able to achieve this, long term environmental outcomes need to be secured for the environmentally sensitive land. Much of the land in Nebraska Estate that is likely to be rezoned to E2 Environmental Conservation will be unable to be incorporated into a larger development parcel, i.e. there will be a larger proportion of 'residual E2 land' in this Estate. Hence, rezoning the land to E2 alone will not resolve its future tenure and management and there is a need for Council to take a more proactive approach to secure Clause 34A certification.

In summary, the draft policy, if adopted, would assist Council to:

- Begin the process to resolve the fragmented ownership of Residual E2 Land in Jerberra & Nebraska Estates by the voluntary acquisition of properties;
- Manage the long term future and conservation of the Residual E2 Land;
- Immediately begin a process of engagement with those Jerberra landowners who have shown a high level of interest in selling their land;
- Demonstrate Council's commitment to proactively acquire and manage the land thereby providing the certainty needed to qualify for clause 34A certification of the future planning controls for the Nebraska Estate.

Given that a new Gateway determination is required for the Nebraska Estate PP and the subsequent rezoning process will need to be concluded (including formal exhibition), to remove any risk, the voluntary acquisition of any potential residual E2 land in this Estate will not be considered or occur until the rezoning is completed.

It is, however, also critical that the draft policy include provisions for Nebraska for the reasons outlined above. It is acknowledged that if/when Nebraska is rezoned, the Policy and Figure 3 in it will need to be updated to respond to the change in the planning controls.

As voluntary sales to Council are successfully finalised in Jerberra Estate, other landowners in both Jerberra & Nebraska may also respond positively to the policy, if adopted.

2. Resolve to adopt the draft policy for Jerberra Estate only

Implications: Not supported.

Existing policy does not allow for the proactive acquisition of land in paper subdivisions and therefore does not work towards resolving conservation and long term management of Residual E2 Land. Therefore, adopting the policy for Jerberra Estate alone would not work to progress and finalise PP for Nebraska.

3. Resolve to adopt the draft policy for Nebraska Estate only.

Implications: Not supported.

This option was considered by Council on 1 December 2020 and not supported. Adopting the draft policy would be a significant step towards progressing and finalising the PP and future planning controls for Nebraska. However, as per Option 1, some owners of Residual E2 Land in Jerberra have already indicated their willingness to sell during the community engagement process. Expectations have been raised that the draft policy, if adopted, could finally release certain landowners from the burden of owning and managing land that does not have development potential.

4. Adopt the draft policy with changes

Implications: This option would depend on the proposed changes

Minor amendments to the policy could be made by an amendment to the recommendation. However, if additional work is required to examine issues raised, a further report to Council may be necessary and this could not be brought forward until 2022 after the Local Government elections. A delay in adopting the policy would further delay exhibition and progression of the Nebraska PP.

5. Not agree to adopt the policy to proactively acquire Residual E2 Land

Implications: Not supported

Current policy provides for the transfer of land to Council in ‘paper subdivisions’ in lieu of unpaid rates and charges, if requested by the owner. This policy, however, is not a proactive voluntary acquisition policy and does not provide the level of certainty required to qualify for clause 34A certification for the Nebraska Estate.

This option would not progress the Nebraska PP nor would it satisfy the expectations of some Residual E2 landowners in Jerberra who have indicated interest in selling to Council.

Background

At its meeting of 1 December 2020, Council considered a [report](#) (DE20.128) and resolved ‘in principle’ to the development of a new Policy for the voluntary acquisition of Residual E2 Land in the Jerberra & Nebraska Estates, to be funded by net profits from the sale of developable Council land (MIN20.885). The Residual E2 Land and Developable Council land is identified on the attached maps for Jerberra Estate (**Attachment 2**) and Nebraska Estate (**Attachment 3**).

A biodiversity savings order under clause 34A of the *Biodiversity Conservation (Savings & Transitional) Regulation 2017* (clause 34A certification) is critical to the feasibility of the PP for Nebraska Estate. Indications from the Biodiversity Conservation Division (BCD) of the NSW Department of Planning, Industry & Environment (DPIE) are that clause 34A certification for Nebraska hinges on there being a commitment to proactively acquire and manage the Residual E2 Land that will not otherwise be managed through development consents.

The draft policy (**Attachment 1**) for the voluntary acquisition of ‘Residual E2 Land’ has the support of BCD. Voluntary acquisition is the transfer of land between a willing seller and a willing buyer which is not possible under current policy for existing or former paper subdivisions. If adopted, the Policy will help to bring this long running PP to a timely conclusion.

As an input into consideration of the costs/benefits and overall financial feasibility of the proposed policy, independent valuation advice was obtained, including a valuation of the developable land proposed to be sold and the Residual E2 Land proposed to be voluntarily acquired. The Valuation Reports are provided at **Attachment 4** (Jerberra) and **Attachment 5** (Nebraska).

Whilst the valuation work undertaken, consultation with affected landowners on the proposed policy was initiated via Council’s [‘Get Involved’ Project webpage](#), including a targeted survey (**Attachment 6**). Responses received indicate sufficient interest amongst Residual E2 landowners for the policy to be viable with immediate effect for Jerberra Estate where the planning controls were finalised in 2014. Lesser interest was shown by Nebraska Estate landowners at this point given that the PP has not yet been exhibited. Some landowners appear to remain optimistic that they will receive a dwelling entitlement despite the land’s known environmental values and constraints. Additional detail on the survey outcomes is provided in the Community Engagement section of this report and a summary of the survey outcomes and comments received during the community engagement is provided at **Attachment 7**.

The valuation advice provides market evidence to support the view that net profits from the sale of developable Council land would be greater than or equal to the cost of voluntary acquisition; that the financial feasibility of the voluntary acquisition project (the policy) would increase over time and that the impact of the policy would be cost-neutral.

Internally, City Development (Environmental Services) supports the draft policy and has indicated that on-going maintenance costs are not excessive. City Performance (Finance) has provided advice about the functionality of the financial arrangements.

Having regard to the above; the generally supportive community feedback (**Attachment 7**); support from the DPIE(BCD); and internal stakeholders, as outlined in this report, adoption of the draft policy is recommended.

Council decision

At its meeting of 1 December 2020, Council resolved (MIN20.885) to:

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;*
 - b. *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 based on 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 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;*
 - b. *total unimproved land value of the undevelopable E2 land (existing and proposed); and*
 - c. *the annual cost of maintaining land to the Council.*

Estates - Current Status

Jerberra Estate

The Jerberra Estate was rezoned in 2014 prior to commencement of the *Biodiversity Conservation Act 2016* (BC Act) and the new planning controls have been recognised by a Clause 34A savings provision meaning that development applications (DA) are being assessed under the legislation that applied prior to commencement of the BC Act and a

Biodiversity Conservation Development Assessment (BCAR) is not required to accompany individual DA's.

City Development (Compliance) continues to work with the owners of Residual E2 Land to resolve unauthorised structures.

However, the long-term tenure and future management of the Residual E2 land remains unresolved.

Nebraska Estate

The Nebraska Estate PP is one of the 'Legacy' PPs for which the Gateway determination was terminated by DPIE on 15 December 2020. At the time support was noted for the resubmission of the PP for this Estate at the appropriate point.

Council has been in ongoing discussions with DPIE(BCD) to establish whether the proposed planning controls for the Estate will also qualify for the clause 34A biodiversity savings provision. Clause 34A certification of the future planning controls will depend heavily on being able to secure long term environmental outcomes for the environmentally sensitive land.

The proposed policy, if adopted, will help to address the eligibility criteria in the Clause 34A biodiversity savings provision which, in turn, will help bring the PP to a timely conclusion. The current Conceptual Subdivision and Development Plan (**Attachment 3**) was adopted by Council in April 2016, as such it should be noted that both the bushfire and Aboriginal cultural heritage assessments will need to be reviewed and potentially updated prior to making a new Gateway request. This is necessary due to the passage of time and the likely timeframe (1-2 years) that will be allowed for ultimate completion of the LEP amendment.

Independent Valuation Advice

Opteon Solutions was engaged to provide independent valuation advice for strategic planning purposes. Separate reports were prepared for the Jerberra & Nebraska Estates. The valuations are current at the Date of Valuation only⁽¹⁾.

The value of the Residual E2 Land (privately owned) and developable Council land in each Estate is as follows:

Jerberra Estate:

Residual E2 Land (14 lots) - Total value:	\$920,500.
Council land ⁽²⁾ (4 lots) – Total value:	\$1,560,000.
<u>Nebraska Estate:</u> Residual E2 Land (33 lots) – Total value:	\$1,915,000.
Council land ⁽³⁾ (6 lots) – Total value:	\$1,960,000.

Notes:

⁽¹⁾ Date of the Valuation is 4 August 2021.

⁽²⁾ Land that Council owns zoned E4 Environmental Living under the SLEP (Jerberra Estate) 2014 (**Attachment 2**) identified with a building envelope or able to be consolidated into a development parcel in DCP 2014, Chapter N20 – Jerberra Estate and classified as 'Operational' Land under the *Local Government Act 1993*.

⁽³⁾ Land that Council owns with development potential as identified in the Conceptual Subdivision and Development Plan Option 1.v2 (**Attachment 3**).

In addition to the above values, that are independently itemised in the relevant report, the valuer has provided the following additional pertinent advice in relation to the potential market movement of constrained Residual E2 Land:

"Potential Market Movement of Constrained Land

I have been asked to comment on the market movement of Constrained Land in comparison to unconstrained land. In my experience, constrained land often does not

move in line with nearby developable land unless the way the land is being bought as a percentage of the nearby unconstrained land. An example of this would be a special uses site that offers good quality land so a purchaser would look at the site as a likely spot rezoning opportunity less a discount for profit/risk/cost. The starting point when considering a site of this nature would be the unconstrained land value and work back on a top down basis.

The E2 land being the subject of this report does not fall into this category and is likely to stay more steady than the other developable properties. Main reasons for this are:

- *The land is heavily constrained physically and wouldn't be viewed as a potential spot rezoning opportunity,*
- *The market for this type of property is extremely narrow which means less competition potentially pushing prices up,*
- *The purchaser would have to be a cash buyer which further narrows the market due to lending policies for mortgage.*

This provides some positive impacts to the overall feasibility of the project over time. As the market value of the developable lots held by Council increase in value, a similar increase would not be evident in E2 land within the same Estate. This has the effect of increasing financial feasibility of the acquisition project as time lapses and the market for land in this location strengthens."

A key finding of the above valuation advice is that, as the value of developable land held by Council increases over time, the financial feasibility of the acquisition project would also increase over time as the market strengthens in Nebraska Estate, in the same way as it has in the Jerberra Estate since the land was rezoned. A clear example of the rising market at Jerberra Estate between April 2021 when the land was inspected and August 2021 when the valuation report was finalised, is the recent sale of Lots 132 and 133 Inglewood (now Lot 1, DP 1275400) which sold on 1 September 2021 for approximately \$900,000. This compares favourably with valuations of \$450-470,000 for Council's developable land in the same Estate.

Community Engagement

Consultation with affected landowners was undertaken via Council's 'Get Involved' Project webpage: <https://getinvolved.shoalhaven.nsw.gov.au/jerberra-nebraska-estates>. A survey (**Attachment 6**) targeting the owners of the residual E2 land (potential residual E2 land in Nebraska) to gauge their level of interest in selling their land to Council should the policy be adopted. Comments on the proposed policy were also sought from indirectly affected landowners in both Estates.

Details are summarised below. A complete analysis of the survey and responses to all comments and questions is at **Attachment 7**.

In Summary – Jerberra Estate

A total of 8 surveys were returned from landowners in Jerberra. Seven (7) of these were from the owners of Residual E2 properties, representing a 50% response rate (7/14).

Five (5/14) or (36%) indicated that they were 'likely' or 'highly likely' to sell their land to Council. Considering the unsolicited nature of the survey, this is a positive response and good indication of support for the proposed policy. One (1) response was received from an unaffected landowner who provided general comments on the proposed policy.

One (1) 'unlikely' to sell response without comment was received (Responder 1 – Lot 150) and one (1) 'highly unlikely' response was also received (Responder 4 - Lot 153) reflecting

the reality that some residual E2 land will remain in private ownership for the foreseeable future.

In Summary – Nebraska Estate

A total of 8 surveys were also returned from landowners in Nebraska. Six (6) surveys were returned from 32 potential E2 properties in Nebraska, a response rate of 16%. These were equally divided between 'likely/highly likely' to sell and 'highly unlikely' to sell.

One (Responder 16) was from the owner of land with an approved dwelling where no further development is sought. Conservation obligations for this land are covered by conditions of development consent and a conservation agreement. The owner indicated 'in-principle' support for the policy subject to detailed provisions which have been considered and responded to in **Attachment 7**.

A second (Responder 14) was an expression of interest (EOI) from the owner of land that is not identified as potential Residual E2 Land. The PP currently shows that Lot 4, Section J would be able to be consolidated into a development parcel if/when the land is rezoned and, if so, it would not be eligible for acquisition under the proposed policy. However, the PP could change before it is finalised and the EOI in sale of the land to Council has been noted.

Comment

Notwithstanding the financial viability of the project, landowner support for the policy is also fundamental to making it work. The responses received indicate an appetite amongst Residual E2 landowners in Jerberra Estate to sell to Council. Interest in, and support for the policy from Nebraska landowners was not as strong. This is likely to be due to the fact that the PP is yet to be finalised and owners may continue to hope for a favourable zoning/development outcome. It is anticipated that landowner interest in the sale of Residual E2 Land in Nebraska would increase if/when the land is rezoned and there is certainty about future development potential. As voluntary sales to Council are completed in Jerberra Estate, additional landowners, in both Jerberra & Nebraska Estate, may also respond positively to the policy.

External and Internal Engagement

The Department of Environment, Industry & Planning – Biodiversity Conservation Division has been consulted on the draft policy. Details are included at Attachment 8.

Attachment 8 also includes the outcome of internal consultation with City Performance Directorate (Finance Department), City Development Directorate (Environmental Services) and the City Services Direction (Property Services).

Policy Implications

The draft Policy represents an innovative proactive approach to the management of Residual E2 Environmental Conservation Land in Jerberra & Nebraska Estates if/when the land is rezoned. The resources of four Directorates would be engaged in implementation. In the interests of efficiency and subject to internal discussion, the Directorates may seek to collaborate on the development of Standard Operating Procedures (SOPs) and/or Work Instructions (WIs) to support implementation of the policy, if it is agreed that this would be beneficial.

Risk Implications

Take-up

There is a risk that landowners may hesitate to sell Residual E2 Land to Council in the mistaken belief that their land will eventually be rezoned for development. This mind-set has

diminished in Jerberra Estate where the planning controls were finalised in 2014. The response rate to the targeted survey in Jerberra Estate has demonstrated that this is low risk as 5/14 (36%) of Residual E2 Landowners have indicated they are likely or highly likely to sell their land to Council. There was significantly less interest shown in the survey from the owners of potential Residual E2 Land in Nebraska Estate. However, this can be explained by the fact that the Planning Proposal is still not finalised and may change. As noted above, as sales to Council are completed a greater number of landowners, in both Jerberra & Nebraska Estates, may be persuaded to sell their land to Council to end the rates and management obligations associated with continuing ownership of the land.

It is anticipated that, if the policy is adopted, acquisitions could take many years. It should be acknowledged that 100% take-up in either Estate would be an extraordinary outcome, but will continue to be worked on through time.

Valuation

There is a risk that landowners will decline to sell their land due to unreasonable expectations about its value. Landowners may consider their land should be valued as if it has development potential rather than for the constrained Residual E2 land that it is. The strategic valuations apply the “direct comparison” methodology and provide a contemporary base line valuation for Council and landowners. As the landowner will be expected to engage a valuer at the time of offer (at full cost to Council) it is anticipated they should have confidence that the valuation they obtain is independent, fair and reasonable. As the acquisition policy is voluntary (willing seller/willing buyer) sales would be negotiated like any other real estate transaction and either party would have the option to withdraw prior to contract or under the terms of the contract if they wished to do so.

Insufficient funds

There is a small risk that the net profits from the sale of Council land could be insufficient to purchase land as/when it becomes available. However, the establishment of the internal reserve (*Jerberra and Nebraska Estates Property Reserve*) and the ability to also borrow from the *Property Reserve* in the event of a shortfall, mitigates this risk.

Further, the independent valuation advice supports the view that in a rising residential land market the net profits from the sale of Council land would be sufficient to both purchase the available Residual E2 Land and to fund the long-term maintenance.

DE21.114 Planning Proposal Request - Willinga Park Equestrian Centre, Bawley Point

HPERM Ref: D21/376528

Department: Strategic Planning

Approver: Gordon Clark, Director - City Futures

Attachments: 1. Community Engagement Summary [↓](#)
2. Summary of Submissions - PreGateway (under separate cover) [⇒](#)

Reason for Report

Present the proponent-initiated Planning Proposal (PP) request relating to the Willinga Park Equestrian Centre (Willinga Park) at Bawley Point for initial consideration and direction. The request seeks site specific amendments to *Shoalhaven Local Environmental Plan 2014* (LEP 2014) to permit:

- ‘function centre’ as an additional permitted use in the RU2 Rural Landscape Zone on the site; and to also
- Make functions of less than 351 attendees (excluding staff) ‘development without consent’ (exempt development).

The proponent-initiated PP request was submitted by BBC Planning on behalf of the landowner, Capital Property Corporation.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support progressing a Planning Proposal (PP) to amend *Shoalhaven Local Environmental Plan (SLEP) 2014* (SLEP 2014) to make ‘function centre’ an additional permissible use (with consent) within the RU2 Rural Landscape Zone on the subject land (Lot 21 DP 1217069 and Lot 33 DP 1259627, being 132 and 123 Forster Drive, Bawley Point) to allow a broader range of functions / events (unrelated to equine activities) at Willinga Park.
2. Not support the proponent’s request to amend SLEP 2014 to make functions involving less than 351 attendees (excluding staff) ‘development without consent’.
3. Prepare the PP and submit to the NSW Department of Planning, Infrastructure and Environment (DPIE) for Gateway determination, in accordance with Part 1.
4. Subject to receiving a favourable Gateway determination, undertake government agency consultation and complete any supporting technical investigations (if required) and publicly exhibit the PP.
5. Receive a report on the outcome of the public exhibition of the PP.
6. Advise the proponent and those who made a submission of this decision.

DE21.114

Options

1. As Recommended

Implications

This option supports the proponent's key request to broaden/diversify the range of events/functions held within the existing facilities at Willinga Park. The PP would seek to make '*function centre*' an additional permissible use within the RU2 Rural Landscape zoned land at the site. This would allow Willinga Park to host a wider range of events/functions (unrelated to equine activities) subject to development approval.

Should the PP ultimately be finalised, impacts arising from the additional functions would be appropriately assessed within the existing legislative planning framework at development application (DA) stage and be managed via development consent conditions. The proponent could seek to modify the existing events approval (DA18/1237) or apply for separate approval(s).

This approach ensures that the PP, if supported, would be relatively straightforward and transparent, as development consent would still be required for any overall expansion of functions, events and conferences held at the site. This option is also supported by comments received from the City Development Directorate (Development & Environmental Services).

2. Progress a PP that seeks to make '*function centre*' an additional permissible use (with consent) in the RU2 Rural Landscape Zone **and also** make functions / events of a defined scale (<351 attendees (excluding staff)) '*development without consent*'.

This option is not recommended.

Implications

This option would mean that development approval for events hosting up to 350 people (excluding staff) would not be required. Hence, the potential impacts would need to be assessed as part of the PP process (i.e. additional supporting studies) making it more complex than Option 1.

'*Development without consent*' in the RU2 zone is currently generally limited to the very broad uses of extensive agriculture, forestry or limited use of home occupations. This option is not favoured by City Development who have emphasised the need for amenity impacts to be assessed through the DA process.

Should Council wish to support this component of the request, the potential inconsistency with Ministerial Planning *Direction 6.3 – Site Specific Provisions* would need to be justified.

Doubt also exists as to whether DPIE and/or Parliamentary Counsel would support a PP to introduce a specific development standard (<350 attendees). It is even more doubtful that any tailored numerical standards (for example) could be imposed in relation to the location (within the property) number, timing and frequency of events given the limitations of the Standard Instrument LEP format.

3. Not support the PP request.

This option is not recommended.

Implications

This option would continue to limit the range of events/functions that could be considered at Willinga Park to approved, ancillary, and currently permissible events. If the PP is not progressed the opportunity to provide additional benefits to the local economy could be lost.

If Council decides not to progress the PP, the proponent could request a pre-gateway review of Council's decision.

Subject land

The PP request relates to the property generally known as 'Willinga Park': Lot 21 DP 1217069 and Lot 33 DP 1259627, 132 and 123 Forster Drive, Bawley Point - see *Figure 1 Subject Land Map*. Lot 21 is located north-west of Forster Drive and Lot 33 is located south-west of Forster Drive. Access to the subject land is via Forster Drive.

The subject land has an area of approximately 168 ha and is largely zoned *RU2 Rural Landscape*, with a small area adjacent to Willinga Lake in the north zoned *E2 Environmental Conservation* under LEP 2014 (*Figure 2: Zoning Map*).

The PP request only applies to the developed areas of Willinga Park. It does not apply to the neighbouring properties or the wider landholdings of Capital Property Corporation Pty Ltd or Willinga Park Pty Ltd or Willinga Accommodation Pty Ltd. The request also does not currently apply to Lot 1 DP 1186575, which is a triangular lot of land between Lots 21 and 33 containing the manager's residence.

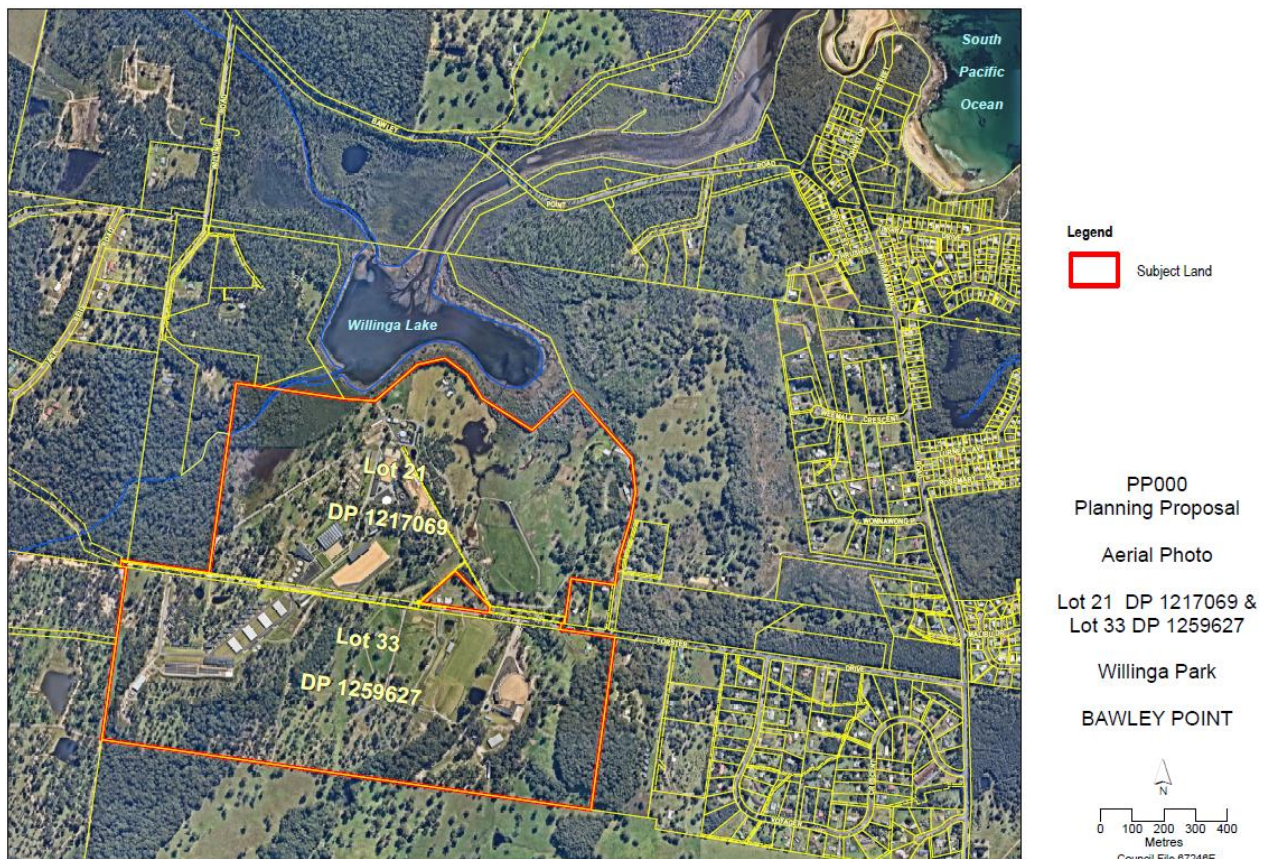


Figure 1: Subject Land Map

DE21.114

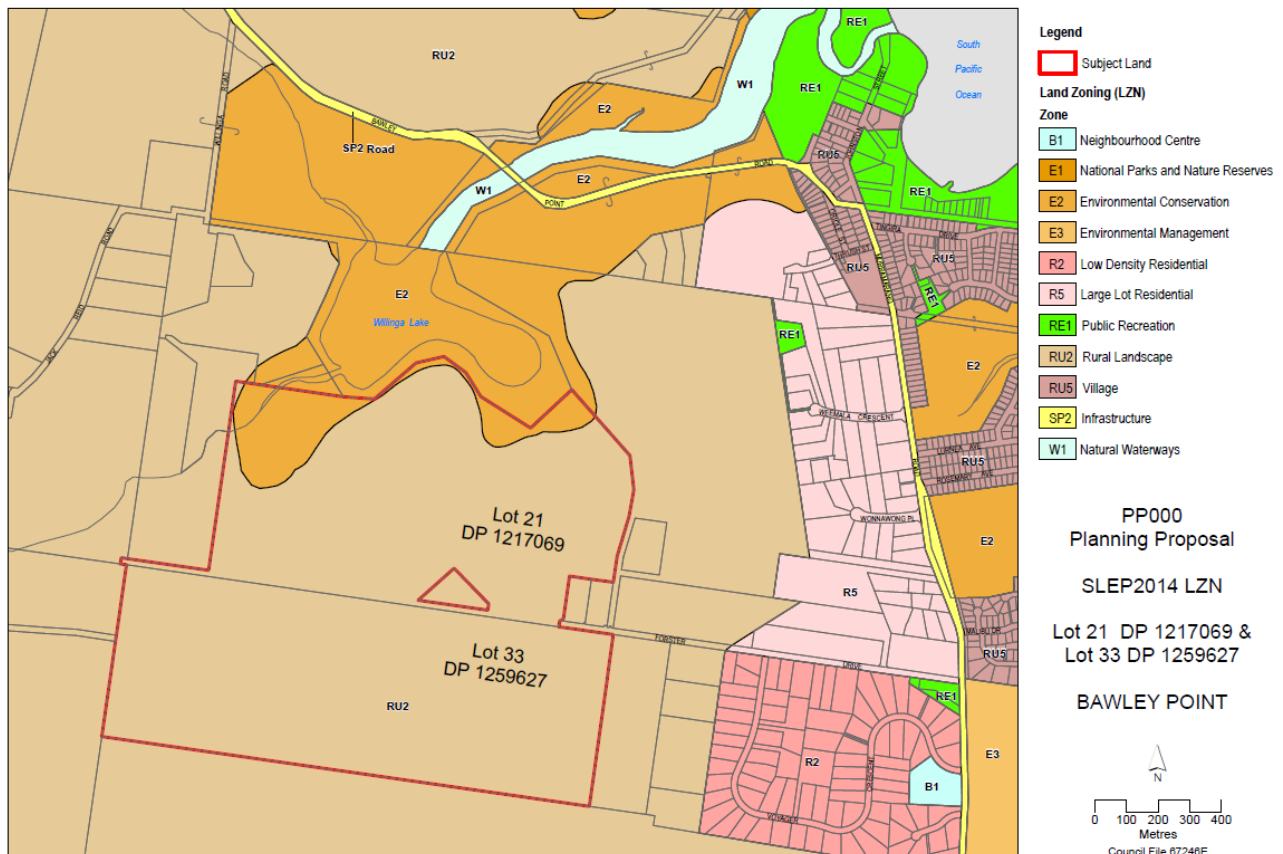


Figure 2: Zoning Map

Background

Council received a proponent initiated Planning Proposal (PP) request for Willinga Park on 29 April 2021 from by BBC Consulting Planners on behalf of the landowner, Capital Property Corporation. The submitted Planning Proposal documentation is accessible on Council's [Planning Proposals - Pre-Gateway webpage](#).

Willinga Park - Planning and Development History

Willinga Park has an extensive planning and development history spanning more than 30 years since the approval of a tourist facility in 1988. See page 10-11 of the PP request for a chronology of development approvals.

The proponent's request states that Willinga Park is constructed to a 'world class' high standard and has existing approval to accommodate a large numbers of guests at certain events. Current approvals allow events up to 32 times a year (up to 5,000 people 20 times a year, plus up to 3,000 people 12 times a year) depending upon the defined category of the event as per approval DA18/1237 (27 August 2019) and modified by DS19/1522 (2 June 2020).

Planning Proposal Request

The PP application seeks a site-specific amendment to LEP 2014 to amend *Schedule 1 – Additional permitted uses* to make a 'function centre' permissible (with consent) in the RU2 zoned part of the property (where the existing facilities are located) and an associated amendment to the *clauses map*. 'Function centres' are currently generally prohibited in the RU2 zone City wide.

As noted in the proponent's PP report, diversifying the range of activities permitted on the site has the potential to boost profitability/financial sustainability by making better use of the existing facilities constructed on the land. The report also identifies the likely and most

common type of functions to be held at Willinga Park as follows: Weddings; Awards Dinners; Government Disaster Emergency Response; Community Gatherings; Equine Related Functions/Training; (Yoga) Retreats; Workshops; Tradeshows; Forums; Sport Functions; Birthday Parties; Presentation Nights; Product Launches; and Concerts.

The PP request also seeks a further site-specific amendment to LEP 2014 that would allow functions attended by less than 351 people, excluding staff, to be permitted as '*development without consent*' (essentially exempt development). It is stated that smaller 'functions', in relative terms, will be easily accommodated on site and therefore should be able to proceed without additional approvals. Currently '*Development without consent*' generally in the RU2 zone is limited to the very broad uses of 'extensive agriculture' and 'forestry' and the limited use of 'home occupations'.

Comment

Willinga Park provides and maintains high quality on-site infrastructure to cater for a range of equine events under DA18/1237 (as modified) including relatively infrequent large events. The benefits to the local and regional economy and tourism are recognised and acknowledged. As such there is merit in ensuring a more stable planning provision for events on this site.

It is important however, to be able to ensure that the potential impacts from allowing relatively smaller more frequent functions (possibly unrelated to equine activities) on the Bawley Point community are appropriately assessed and managed. The cumulative and ongoing potential impacts of the broad range of possible functions requested to be permitted without Council approval or possible operating conditions have not been justified as likely to have sufficiently minor impact in the local context as envisaged by the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The '*development without consent*' pathway under EP&A Act is generally for development that does not require the submission of a development application and is reserved for low-impact or routine activities such as home businesses in a residential zone, environmental protection works in an environmental conservation zone, or markets in a public recreation zone. Some of these developments (or activities) may, however, still need a licence, permit or other approval from a public authority and may need to undergo an environmental assessment before that approval can be given. The EP&A Act notes that: 'Environmental assessment of the development may nevertheless be required under Division 5.1 – Environmental Impact'.

Given the proximity of the site (and associated access roads) to residences at Bawley Point, support for the second component of the proponent's proposal would mean that impacts from a range of frequent events involving up to 350 people (excluding staff) would have to be appropriately / broadly assessed as part of the Planning Proposal process.

If the proponent's second proposed '*development without consent*' provision is not supported, the concerns in relation to traffic, access, noise and lighting including cumulative impacts, raised during the preliminary community consultation would be considered at development application stage. This could be either as a modification to the existing events approval under DA18/1237 and DS19/1522 or a new development application(s) under the first part of the PP request if ultimately supported.

In this regard the proponents PP request notes that:

"... if Council considers that for any reason the inclusion of a "without consent" entitlement for functions of less than 351 persons (excluding staff) is so procedurally or technically problematic that it will diminish its prospects of success, then to the extent that the planning proposal seeks such functions to be permissible without consent, the Planning Proposal can be adjusted to exclude that component"

The requested '*development without consent*' provision also has the potential to be inconsistent with Ministerial Planning Direction 6.3 - Site Specific Provisions. As such If it is ultimately supported, the inconsistency in this regard will need to be justified (and approved by DPIE).

Strategic Planning Overview

The following is a preliminary strategic planning assessment of the part of the request to make 'function centre' a permissible use (requiring a development application) at Willinga Park.

Illawarra Shoalhaven Regional Plan 2041

The PP is generally consistent with the Plan, particularly *Objective 5: Create a diverse visitor economy*. The amendment would potentially broaden and diversify the range of uses permitted at Willinga Park, increasing overall visitor numbers and supporting the local economy. This outcome reflects the intent of Objective 5 of the Plan which acknowledges the importance of visitors to generate employment opportunities in Shoalhaven.

Shoalhaven Local Environmental Plan 2014

The PP seeks to add 'function centre' as an additional permissible use on the subject land via Schedule 1 – Additional permitted uses and the clauses map. Whilst 'function centres' are currently prohibited in the RU2 Rural Landscape Zone, the proposed amendment would work to make better use of the existing facilities constructed on the land and improve its long-term viability. Through the process to prepare LEP 2014 it was noted that 'function centres' were a new use that emerged with the NSW Standard LEP Instrument and were mandated in certain Business Zones. Council did not opt to add the use as permissible in other zones at that point, noting that it could be considered separately in the future, for example in appropriate site specific or area circumstances.

The request to permit a defined scale of functions as '*development without consent*' is not supported for reasons explained previously.

Shoalhaven Local Strategic Planning Strategy (LSPS) 2020

The PP is generally consistent with the LSPS and specifically the goals of Planning Priority 7 (PP7): Promoting a responsible visitor economy and Planning Priority 16: Promoting events and public art. Willinga Park is recognised as an existing event venue with '*opportunity*'. The LSPS also outlines future actions required to "balance the support of tourism activity and manage impacts on communities ...".

The PP will facilitate better and more consistent use of the existing buildings constructed on the land. Not pursuing the proponent's request for '*development without consent*' will ensure that all impacts from the resulting additional use will be properly assessed through the existing legislative framework and DA process.

Planning Proposal (Rezoning) Guidelines 2018

Council's PP guidelines provide for three (3) situations where Council "is more likely to support a PP request". The first is where "The proposed amendment is supported by an adopted/endorsed Council or State Government strategy or plan such as the Illawarra Shoalhaven Regional Plan". The proposed amendment to add the use of 'function centre' to Schedule 1 is considered to be justified within the broad strategic planning framework for Shoalhaven.

If a 'development without consent' provision is not pursued, the PP will most likely not require any specialist studies and would therefore also be classified as 'minor' under the PP guidelines.

Shoalhaven Destination Management Plan 2018-2023

Willinga Park is recognised in the Shoalhaven Destination Management Plan 2018-2023 under the heading “1.13.3 Event sites and infrastructure”. The Plan states that Willinga Park Equestrian Centre may provide excellent event opportunities in the future and [...] the most appropriate approach is to focus on those venues that are scalable to host substantive events.

Further, Section 2.9 “Action Plan to Support Events” contains the following strategy and action: *“Work with industry to identify gaps and develop, support and grow events to meet customer demand opportunities. Work with key event locations to maximise tourism impacts e.g.: Willinga Park.....”* This is identified as an ongoing high priority.

The PP is consistent with strategies and actions identified in the Destination Management Plan.

NSW Guide to Preparing Planning Proposals

The NSW Government’s Guide to Preparing Planning Proposals provides an assessment framework for PPs. This framework requires the planning authority (Council) to consider several questions in determining the merit of a PP. These are considered below:

Q1. Is the PP a result of any strategic study or report?

The PP is not the result of a strategic study or report but it is considered to be consistent with Council’s strategic planning framework. The PP (part 1) is minor and is not of a kind that would generally be identified in a broad strategic planning process.

Q2. Is the PP the best means of achieving the intended outcome or is there a better way?

The proposed amendment to Schedule 1 – Additional permitted uses and the clauses map of LEP 2014 is the only way to allow the existing facilities and buildings on the specific site to be used for the range of functions identified. As previously noted, ‘function centres’ are generally prohibited and intended to remain so in the RU2 Rural Landscape zone.

Q3. Is the PP consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategy)?

The PP is generally consistent with the Illawarra Shoalhaven Regional Plan, the Shoalhaven Local Strategic Planning Strategy and the Shoalhaven Destination Management Plan as it will ultimately result in the diversification of the range of functions and events permitted at the existing Willinga Park facility.

Q4. Is the PP consistent with a Council’s local strategy or other local strategic plan?

As previously noted, the PP is generally consistent with the LSPS and the Destination Management Plan.

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

The existing applicable SEPP’s are as follows:

Coastal Management 2018

Exempt and Complying Development Codes 2008

Koala Habitat Protection 2021

Primary Production and Rural Development 2019

The PP is not viewed as being inconsistent with these SEPP’s

Agritourism – the NSW State Government is currently considering a suite of planning changes to support the recovery and resilience of farm businesses and regional economies. A new definition for ‘farm events’ is proposed and fast-track approval pathways for some types of agritourism are likely to be introduced via the Exempt and Complying Development

Codes SEPP, subject to certain development standards being met. The PP is minor, and the proposed amendment is consistent with the applicable SEPPs. It is also not inconsistent with the planning changes proposed to enable opportunities for sustainable tourism, in particular agritourism.

Q6. Is the PP consistent with applicable Ministerial Directions?

No inconsistencies have been identified with any Ministerial Directions at this stage. The relevant Directions include the following:

Direction 1.2 Rural Zones – The PP is not seeking to rezone the land or introduce provisions that will increase the permissible density of development.

Direction 1.5 Rural Lands – The PP does not propose any change to the minimum lot size applying to this land and the proponent's intention is to utilise the existing facilities at Willinga Park.

Direction 2.1 Environmental Protection Zones – Part of the subject land is zoned E2 – Environmental Conservation. However, the PP is not seeking to reduce any environmental protection standards that apply to this land. The proposal seeks to utilise the existing facilities at Willinga Park (which are located within the RU2 zoned land) to host a wider range of events, functions, conferences and the like.

Direction 2.2 Coastal Management – Part of the subject Land (Lot 21) has frontage to Willinga Lake. Part of the subject land is mapped as Coastal Wetlands, Proximity Area for Coastal Wetlands, Coastal Use Area, and Coastal Environment Area. The proposal seeks to utilise the existing facilities at Willinga Park to host a wider range of events, functions, conferences and the like.

Direction 2.3 Heritage Conservation – The proposal seeks to utilise the existing facilities at Willinga Park (which are located within the RU2 zoned land).

Direction 4.1 – Acid Sulfate Soils – Part of the subject land is mapped as having probability of containing acid sulfate soils. However, the PP is for the purpose of adding a use, does not propose to introduce controls to regulate works in the acid sulfate soils and is of minor significance.

Direction 4.3 – Flooding – There is no adopted flood study in this locality. In any case, the proposal seeks to utilise the existing facilities at Willinga Park which are located on more elevated land. It is noted that the existing events approval (DA18/1237) includes an Emergency Plan and a Bushfire Emergency Management and Evacuation Plan. The SES will be consulted if the PP progresses.

Direction 4.4 – Planning for Bushfire Protection – The PP affects land identified as bushfire prone but does not seek to permit residential use of the land. The NSW RFS would be consulted prior to community consultation consistent with this Direction. It is noted that the existing events approval (DA18/1237) includes the following documents:

- Emergency Plan
- Bushfire Emergency Management and Evacuation Plan
- Event Plan of Management

Direction 5.10 – Implementation of Regional Plans – As outlined previously in this report, the PP is generally consistent with the Illawarra Shoalhaven Regional Plan 2041.

Direction 6.3 – Site specific provisions - This direction restricts planning authorities from imposing development standards against any permitted land use within LEPs. The PP request to allow defined use as 'development without consent' would potentially be inconsistent with this direction.

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The PP seeks to enable the existing facilities to be used for a wider range of functions / events. No direct adverse biodiversity impacts are anticipated.

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

Potential environmental impacts arising from making a function centre permissible could include noise and light pollution associated with the additional events/functions. Any such impacts would be assessed if/when a development application is submitted for assessment.

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

The PP seeks to broaden the range of uses permitted on the subject land, thereby potentially increasing the number of visitors to the area and adding value to the local economy. Any potential adverse social impacts associated with traffic, noise and light pollution would be best assessed if / when a development application is lodged to increase the overall number of events held at the site.

Q10. Is there adequate public infrastructure for the PP?

The PP will allow the existing facilities and infrastructure to be utilised for a wider range of functions and events. It does not seek to alter the physical development occurring on the subject land and is not expected to give rise to any additional infrastructure needs. The PP is adding a permitted use to the subject land. However, development approval to activate the use will be required.

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

The relevant agencies, including, but not limited to NSW RFS, SES, EPA and NSW Police will be consulted should the PP progress.

Community Engagement

Preliminary community engagement was carried out in accordance with [Council's Planning Proposal \(Rezoning\) Guidelines](#).

Preliminary written notification advice was sent to directly adjoining neighbours and all properties with access from Forster Drive (87); the Bawley Point and Kioloa Community Association CCB (BPKCA); Murramarang Men's Shed and Batemans Bay Aboriginal Land Council on 25 June 2021.

Council staff presented information on the PP to a special meeting of the BPKCA (at their request) on Sunday, 1 August via an audio-visual link (due to Covid-19 restrictions). Approximately 40 community members attended.

Council staff have responded to a considerable number of email and phone enquiries from community members. A full community engagement report is provided as **Attachment 1**.

Preliminary Community feedback

As a result of the preliminary notification, eighty-eight (88) submissions were received:

- 37 support Willinga Park (and, by inference, support the PP request);
- 49 objections to the PP request; and

- Two (2) neutral (requests to monitor water quality and provide traffic calming measures independent of the PP).

The main issues of concern raised related to:

- Traffic impacts and concerns (56% of submissions)
- Noise (45% of submissions)
- Character impacts (36% of submissions)
- Amenity/lifestyle impacts (31% of submissions)
- Events without consent - (24% of the submissions) - concerns about any future 'without consent' / 'exempt development' event provisions

Note: there is a significant degree of crossover in respect of some community concerns (e.g. traffic) with impacts arising from construction activities at Willinga Park, which have been ongoing over a number of years.

Themes raised in submissions of support included:

- Entertainment (28% of submissions)
- High quality architecture (23% of submissions) - should be better utilised.
- Community benefits (22% of submissions) e.g. community-based events and open days, philanthropic work of the landowner etc.
- Jobs (22% of submissions) - ongoing and as a result of construction, support for local businesses, multiplier effect etc.
- Equestrian facilities – (15% of submissions) diversification of the site to support the equestrian goals over the long term.

A detailed submissions table is provided in **Attachment 2**.

Should the PP progress and receive a favourable Gateway determination from DPIE, formal community consultation will occur when the PP is publicly exhibited in accordance with legislative requirements/Gateway determination and Council's guidelines.

Given the high level of community interest in this project, a 'Get Involved' page will be established to facilitate community engagement should the PP request be supported by Council and proceed.

Internal Council Feedback

Comments were received from the following parts of Council:

Floodplain and stormwater management – generally not opposed subject to further assessment at development application stage. Note: further assessment may be required if the proposal to allow defined development as '*development without consent*' is supported.

City Development (Development Services and Environmental Services) – supports the proposal to add the use of '*function centre*' but has expressed concerns about, and does not support the proposal to add a development standard to a land use table to permit defined functions involving <351 attendees (excluding staff) as '*development without consent*'.

City Futures (Tourism) – Supports the PP.

Policy Implications

As discussed, Willinga Park is an existing unique, world class equestrian centre and there is sound strategic justification for the proposed amendment to the LEP 2014 to make 'function centres' permissible, to allow a broader range of events/functions/conferences to be held there.

Any proposed 'without consent' provision, however, should also be considered in context of community concerns about the growth of events locations/venues (weddings etc) generally in existing rural zoned areas of Shoalhaven (particularly the northern part of the City).

At present locations/venues have utilised the provisions of Clause 2.8 Temporary use of land of the LEP 2014 to obtain development approvals for events. A review of Clause 2.8 was considered by Council on 7 April 2021. In response, Council resolved in part to:

"Monitor the outcome of both the Destination Sydney Surrounds South work in this regard and the relevant NSW Council Planning Proposals regarding function centres in rural areas and staff report back to Council at the appropriate point regarding opportunities that arise for Shoalhaven."

Financial Implications

The PP is proposed to be managed as a minor, proponent funded PP, to be funded by the proponent on a 100% cost recovery basis in accordance with Council Guidelines.

Community Engagement Summary

The PP request is at the Pre-Gateway stage and public exhibition is not legally required during this preliminary assessment phase. However, Shoalhaven Council's Planning Proposal Guidelines recommend targeted early community notification. A limited notification process was carried out in accordance with these guidelines between June - August 2021, discussed further below.

As a result of the preliminary notification, 88 submissions were received:

- **37 support** Willinga Park (and, by inference, support the PP request);
- **49 objections** to the PP request; and
- **Two (2) neutral** (requests to monitor water quality and provide traffic calming measures independent of the PP).

The majority of submissions (n: 67 / 76%) received came from landowners and residents in Bawley Point, revealing that the local community is divided on the PP request. This indicates Willinga Park benefits the local community, but also has impacts which concern some residents.

Early feedback received from the preliminary notification period is summarised below. Copies of all submissions can be provided to Councillors on request. Fifteen (15) late submissions were received, of these 14 are objections and one (1) is in support. These are not included in the submissions summary.

Community Feedback - Summary of Main Themes

The main themes relayed in the preliminary feedback on the proposal related to:

- **Traffic impacts and concerns** – Over half the submissions were seriously concerned that the proposal would create and exacerbate traffic problems in, and through, Bawley Point. (56% of submissions).
- **Noise** – the second-most common issue raised related to event noise (music, patrons, amplified noise) and traffic noise (45% of submissions).
- **Character impacts** – 36% of submissions stated allowing further expansion of Willinga Park operations will negatively impact on the small rural and tranquil coastal village character of Bawley Point.
- **Amenity/lifestyle impacts** – related to the above point, 31% of people felt that the proposal would impact adversely on the lifestyle they enjoy in Bawley Point, that is they moved to the area for its slower pace, village character, quiet/safer roads, connected community, lack of larger-scale development and relative isolation, which many feel may be affected by continued growth at Willinga Park.
- **Events without consent** - Almost a quarter (24%) of the submissions expressed concerns about any future 'without consent' / 'exempt development' event provisions. Most objections did not want Willinga Park to be able to operate events in the absence of any planning framework or without conditions of consent that allow for management of impacts.

Other common themes included:

- degraded road condition and increased need for maintenance due to excess traffic
- heavy vehicle noise, congestion, damage to roads and safety implications

- community and social impacts, as some people with objections argued that the benefits of Willinga Park did not flow on to the community (beyond those who work at the facility) and that negative impacts outweigh positive.
- wildlife impacts (e.g. increased roadkill and light pollution)
- method of expansion – many people noted that Willinga Park has developed in a piecemeal manner, with many modifications to development approvals, prolonging impacts of construction and no overarching plan to guide or limit growth. This track record of incremental growth was viewed by many as 'death by a thousand cuts' and finding planning loopholes to expand operations. The cumulative impacts resulting from the PP request (additional growth in functions and events) were of particular concern.

Less common themes included:

- traffic and pedestrian safety
- inappropriate scale of development
- inconsistency with planning controls and non-rural nature of the proposed uses
- water quality concerns and environmental impacts
- precedent
- construction impacts
- transparency of planning processes adversely affected by 'without consent' / 'exempt development' provisions
- light pollution associated with operations

Many of these submissions worried that any additional capacity for events at Willinga Park would exacerbate existing issues.

Submissions in Support

A considerable number of submissions expressed support for Willinga Park. The main themes of these submissions included:

- **Entertainment** – 28% of submissions stated they appreciate the entertainment options that Willinga Park provides and supported the expansion of these opportunities.
- **High quality architecture** – 23% of submissions recognise that Willinga Park is very well-appointed with facilities and the quality of construction is high and should be better utilised.
- **Community benefits** – Over a fifth of the submissions (22%) stated that Willinga Park has provided a raft of community benefits, and is available for community-based events and open days. The philanthropic work of the landowner in the local community was also noted – contributions to the Gantry rebuilding and the local Mens Shed in particular.
- **Jobs** – 22% of submissions highlighted the jobs created at Willinga Park, both ongoing and as a result of construction. The facility also supports local businesses and creates job opportunities elsewhere in the local area and region through a multiplier effect.
- **Equestrian facilities** – the international-standard of the equestrian facilities on the site was also mentioned in 15% of submissions). Some submissions supported diversification of the site to support the equestrian goals over the long term.

Traffic impacts are an area of common ground emerging from the submissions. Some of the submissions of support recognised that Willinga Park has traffic impacts that need to be investigated further and managed, and some objections recognised Willinga Park's economic and entertainment contributions (and did not object to Willinga Park in general) but objected to the PP request due to compounding traffic impacts. 18% of submissions called for alternate road access to be provided to Willinga Park to reduce traffic congestion and safety and amenity impacts on locals.

Preliminary notification methods

Written notification was sent to landowners (n: 87 representing directly adjoining neighbours and all properties with access from Forster Drive); the Bawley Point and Kioloa Community Association (CCB); Murramarang Mens Shed and Batemans Bay Aboriginal Land Council on 25 June 2021. This letter outlined the PP request and requested any comments by 6 August 2021. A copy of the proponent's Planning Proposal request was provided on Council's [Pre-Gateway exhibition webpage](#) and a public notice published on Council's website.

Significant community interest emerged, with Council staff presenting information on the PP request and PP process at the BPKCA special meeting on Sunday 1 August from 3.30pm (staff presented and answered questions via audio-visual link due to Covid-19 restrictions). Approximately 40 community members attended the information session. At this session, it was agreed to extend the period for submissions for an additional two weeks.

Council staff have been available to answer phone and email enquiries on the PP request, with notable interest from community members. Conservatively, it is estimated that more than 20 phone calls have been answered regarding the PP request.

The preliminary public notification of the PP request was limited in scope, consistent with the *Shoalhaven Planning Proposal Guidelines*. The Pre-Gateway phase of a PP is preliminary in nature and public notification is also preliminary and targeted, usually to direct neighbours and the local Community Consultative Boards (CCBs). Timeframes to report PP requests to Council for a resolution (target is to report within 90 days of receipt of a request) also affect the ability of Council to undertake comprehensive community engagement activities at this early stage.

Next steps – Community Engagement/Public Exhibition

It is important to note, that if the PP is supported, public exhibition of the PP is required and community engagement would involve wider distribution of information. All persons who made a submission during this preliminary phase (including late submissions) will be updated at key milestones and information will be uploaded to a project specific webpage, on Council's 'Get Involved' web-based engagement platform, should Council resolve to proceed with a PP.

DE21.115 NSW Standard Instrument Local Environmental Plan - Special Flood Considerations Clause - 'Opt-in' Opportunity

HPERM Ref: D21/395672

Department: Strategic Planning

Approver: Gordon Clark, Director - City Futures

Reason for Report

Obtain endorsement to 'opt-in' to adopt the new optional NSW Standard Instrument Local Environmental Plan (LEP) 'Special Flood Considerations' clause in Shoalhaven LEP 2014 and to advise of the other options that are available.

Recommendation (Item to be determined under delegated authority)

That Council opt-in to adopt the Standard Instrument 'Special Flood Considerations' clause and specify that 'sensitive and hazardous development' to which the clause applies includes the following land uses: correctional centres, early education and care facilities, educational establishments, emergency services facilities, group homes, hospitals, respite day care centres, seniors housing, hazardous industries, hazardous storage establishments.

Options

1. As recommended.

Implications: This option is preferred as it will allow Council to opt-in to the Special Flood Considerations clause process which would ultimately be inserted into Shoalhaven Local Environmental Plan (SLEP) 2014. The clause would apply to the specified land uses outlined in this report, most of which currently have development controls in Shoalhaven Development Control Plan (DCP) Chapter G9: Development on Flood Prone Land on land between the flood planning area (FPA) and probable maximum flood (PMF). Hazardous industries and hazardous storage establishments currently do not have development controls in the DCP Chapter G9 when proposed on land between the FPA and PMF and a corresponding amendment to the DCP may be required in the future.

2. As per Option 1, but do not include hazardous industries and hazardous storage establishments.

Implications: The Special Flood Considerations clause would be adopted in Shoalhaven Local Environmental Plan (SLEP) 2014 and apply only to land uses for which there are currently development controls in Shoalhaven Development Control Plan (DCP) Chapter G9 on land between the flood planning area (FPA) and probable maximum flood (PMF). This option, whilst not preferred, will still allow Council to proceed with the Special Flood Considerations clause. Although hazardous industries and hazardous storage establishments currently do not have relevant controls in the DCP there is merit in taking the opportunity to add legislative rigour to any assessment involving these land uses by applying the Special Flood Considerations clause.

3. Adopt the Special Flood Considerations clause and specify that 'sensitive and hazardous development' includes a different combination of land uses by selecting from those available on the list.

DE21.115

Implications: This would depend on what land uses are specified.

4. Adopt the Special Flood Considerations clause and specify that 'sensitive and hazardous development' includes all the land uses available from the list.

Implications: This would differ from what is already covered in the DCP and a corresponding amendment to the DCP may also be required. The clause may also place unwelcome restrictions on certain development types in Shoalhaven, particularly in relation to existing caravan parks, sewerage systems and water supply systems (not exclusively).

5. Do not adopt the Special Flood Considerations clause.

Implications: Whilst this option is not preferred, DCP controls (where available) will continue to apply to identified land uses. Council may be able to adopt the clause as part of a planning proposal at a later stage if desired.

Background

The NSW Government is working to improve the safety and resilience of current and future communities in relation to flooding.

In this regard, a draft flood prone land planning package was exhibited from 30 April to 25 June 2020 and Council provided a submission at the time (Council report 23 June 2020).

The finalised flood-prone land planning package commenced on 14 July 2021. The package provides advice to councils on considering flooding in land-use planning and includes the following:

- A revised [9.1 local planning direction on flooding](#).
- A new [planning circular on flooding ps21-006](#).
- A new [guideline: considering flooding in land use planning](#).
- [Standard instrument \(local environmental plans\) amendment \(flood planning\) order 2021](#).
- [Environmental planning and assessment amendment \(flood planning\) regulation 2021](#).
- [State environmental planning policy amendment \(flood planning\) 2021](#).

Further information and associated materials can also be viewed [here](#).

The Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021 (the Order) introduced two clauses into the NSW Standard Instrument LEP:

- A **mandatory** clause: 5.21 Flood Planning (note: LEP 2014 has already been amended to include this clause which replaced the former Clause 7.3 Flood planning), and;
- An **optional** clause: 5.22 Special Flood Considerations.

The Order, including the Special Flood Considerations clause, can be viewed [here](#):

Following the 2020 exhibition period, Councils were invited to express their interest in adopting the optional Special Flood Considerations clause. Council expressed interest in

adopting the clause subject to further consideration, including liaison with the Department of Planning, Industry and Environment (DPIE), to determine its appropriateness in terms of the existing LEP 2014.

DPIE has advised it will undertake targeted engagement with Council over the coming weeks and months regarding the development of the SEPP amendment required to implement the clause, including the timeframes, implementation process and approvals, as well as gathering the necessary information to prepare the SEPP amendment. The package to update Council's LEPs with clause 5.22 is not anticipated to be completed before the end of March 2022.

DPIE has now requested formal Council endorsement to adopt the Special Flood Considerations clause (if desired) prior to the caretaker period commencing.

About the Special Flood Considerations Clause

The clause was created to apply controls specifically to land located between the flood planning area (FPA) and the probable maximum flood (PMF) as noted in the Guideline:

Special flood considerations (SFC) are particular flood risk considerations that a consent authority must be satisfied with before granting consent to certain types of development that have been identified by councils and the state government as having a higher risk to life and warranting the consideration of the impacts of rarer flood events on land located outside the FPA. These types of development require special flood considerations relating to the management of risk to life and the risk of hazardous industry/hazardous storage establishments to the community and the environment in the event of a flood.

These special flood considerations include that the development:

- 1. will not affect the safe occupation of and efficient evacuation of people in the event of a flood, and*
- 2. incorporates appropriate measures to manage risk to life from flood, and*
- 3. will not adversely affect the environment in the event of a flood.*

The adoption of the clause is considered to be beneficial in providing legislative weight to development controls aimed at reducing flood risk for sensitive and hazardous development types. However, the adoption of the clause is optional and, if adopted, Councils have some ability to determine which land uses the clause should be applied to.

The clause will apply in two ways:

Firstly - to sensitive and hazardous development (to be defined in the clause) on land between the FPA and PMF (as determined by Council's existing flood mapping).

Secondly - also applies to land the consent authority considers to be land that, in the event of a flood, may: (i) cause a particular risk to life, and (ii) require the evacuation of people or other safety considerations. It is understood that there is a degree of discretion for councils to determine when and where the clause applies under this second provision. Essentially, is it expected that the utilisation of the second provision would only occur in extraordinary, site specific circumstances and is unlikely to result in any undue restrictions on development in Shoalhaven.

'Sensitive and hazardous development' can be defined as being any of the land uses in the following list (provided in the standard instrument clause), as chosen by Council:

- Boarding houses,
- Caravan parks,
- Correctional centres,
- Early education and care facilities,
- Eco-tourist facilities,

- Educational establishments,
- Emergency services facilities,
- Group homes,
- Hazardous industries,
- Hazardous storage establishments,
- Hospitals,
- Hostels,
- Information and education facilities,
- Respite day care centres,
- Seniors housing,
- Sewerage systems,
- Tourist and visitor accommodation,
- Water supply systems.

Several of these land uses are already subject to development controls in Shoalhaven Development Control Plan (DCP) 2014 when proposed on land between the FPA and PMF, so applying the clause to these land uses would be a relatively straightforward strengthening of those controls. Applying the clause to those land uses that are not covered in the DCP may necessitate a corresponding amendment to the DCP but may also have implications for certain development types which is further discussed below. The following table shows these land uses grouped according to whether they are subject to existing controls in Shoalhaven DCP 2014.

Land uses that currently <u>DO</u> have development controls listed in DCP Chapter G9 for land between the FPA and PMF.	<ul style="list-style-type: none"> • Correctional centres • Early education and care facilities • Educational establishments • Emergency services facilities • Group homes • Hospitals • Respite day care centres • Seniors housing
Land uses that currently <u>DO NOT</u> have development controls included in DCP Chapter G9 when the land is between the FPA and PMF.	<ul style="list-style-type: none"> • Boarding houses • Eco-tourist facilities • Hostels • Information and education facilities • Tourist and visitor accommodation • Hazardous industries • Hazardous storage establishments • Sewerage systems • Water supply systems
Land uses that are currently covered by DCP Chapter G10 and <u>DO</u> require special flood consideration.	<ul style="list-style-type: none"> • Caravan parks

It is preferable that the LEP clause be adopted and specify that ‘sensitive and hazardous development’ includes the following land uses that are currently subject to relevant development controls in DCP Chapter G9 when proposed for land between the FPA and PMF: *correctional centres, early education and care facilities, educational establishments, emergency services facilities, group homes, hospitals, respite day care centres, seniors housing. ‘Hazardous industries’ and ‘hazardous storage establishments’* should also be included, because whilst there are not many development applications received for these

land uses, it is considered beneficial to have the clause in place to ensure that developments of this kind are appropriately assessed in terms of flood risk.

Whilst other land use combinations could be considered by Council, the above is considered to best manage flood risk for sensitive and hazardous development at this point in time.

It is noted that caravan parks have been excluded from the preferred option. Although there would be merit in applying the clause to proposed new caravan parks in Shoalhaven, it may not be a good outcome for the clause to apply to every minor development application for existing caravan parks. The current DCP controls are considered to be adequate in this regard.

Sewerage systems and water supply systems have also been excluded from the preferred option. Infrastructure constructed for Shoalhaven Water (e.g., for sewerage systems or water supply systems) is generally facilitated under *State Environmental Planning Policy (Infrastructure) 2007* where a development application may not be required. In instances where development consent from Council would be required, having the Special Flood Considerations clause apply may impose unhelpful limitations on the ability to service areas which are intersected by flood prone areas. It is considered that the use of appropriate procedures and pipe materials can minimise the risk to these types of assets.

Conclusions

There is currently a move towards true risk-based land use planning for flooding considerations. Adoption of the Special Flood Considerations clause would ensure that higher risk development types are appropriately located and undergo a robust assessment process from a flooding point of view.

Adopting the clause and applying it to land uses that are already covered by the DCP is considered relatively straightforward and beneficial for strengthening development assessment in relation to flood risk. Applying the clause to hazardous industries and hazardous storage establishments as well would ensure that these development types are appropriately assessed in terms of flood risk.

Community Engagement

The final flood prone land package was notified in May 2021 and commenced 14 July 2021. DPIE undertook community consultation in the lead up to its commencement.

Further consultation with the community regarding the opt-in process is unlikely, however DPIE has advised that it will consult directly with Councils that have expressed interest in adopting the Special Flood Considerations clause.

Relevant sections within Council have provided advice with regard to potential benefits, impacts and options to consider in adopting the clause, which are outlined in this report.

Policy Implications

Opting-in to the Special Flood Considerations clause will provide legislative weight to flood assessment and bolster the development controls where they already apply via the DCP. If the clause is adopted and at a later date it is decided that certain land uses should be added or removed from those specified as 'sensitive and hazardous development', it is expected that this could be done by way of the regular LEP housekeeping amendments.

A corresponding amendment to DCP Chapter G9 may also be required if, for example, additional land uses are specified; however, this could be undertaken as part of a broader review of the Chapter expected to be undertaken in the next few months. If Council does not opt in now, the clause could be included in Shoalhaven LEP 2014 at a point in the future via a planning proposal.

Clause 7 of the new 9.1 local planning direction on flooding will apply to councils that have adopted the Special Flood Considerations clause in their LEPs. Future planning proposals that contain provisions to which Special Flood Considerations apply would need to be consistent with this aspect of the local planning direction.

Risk Implications

No significant risk has been identified in adopting the clause for land uses to which there are already relevant development controls in the DCP or to the additional two land uses specified in Option 1. Adopting the clause minimises the risk that certain sensitive or hazardous development types are able to be approved on flood prone land beyond the FPA. The proposal also minimises exposure to flood risk that Council would find unacceptable.

A comparison of the FPA and PMF mapping available for the Shoalhaven LGA shows the difference between these two mapping layers is not overly significant, especially in areas zoned for development. These areas are already covered by the DCP for development types requiring special evacuation considerations. Adopting the Special Flood Considerations clause would not result in increased land being subjected to development controls that do not currently apply.

The clause would, however, put a greater emphasis on flood evacuation considerations for these developments, which would be beneficial to reduce the flood risk to the existing and future residents of Shoalhaven.

DE21.116 Update - Low Cost Loan Initiative - Funding Deeds for Local Infrastructure Projects

HPERM Ref: D21/400046

Department: Strategic Planning

Approver: Gordon Clark, Director - City Futures

Attachments:

1. Funding Deed - Moss Vale Road South URA Projects (under separate cover) [⇒](#)
2. Funding Deed - Mundamia URA Projects (under separate cover) [⇒](#)
3. Funding Deed - Boongaree & SCARP (under separate cover) [⇒](#)

Reason for Report

Update Council on its successful application to Round 3 of the NSW Government's Low Cost Loan Initiative (LCLI) and to advise that the offer of funding has been accepted.

Council made an application for selected local infrastructure projects in August 2020 and was notified of its success/approval in March 2021 by the NSW Department of Planning, Industry and Environment (DPIE).

The LCLI helps Councils to accelerate the delivery of infrastructure needed to support new housing by subsidising part of the interest on eligible loans used to fund infrastructure projects.

Recommendation (Item to be determined under delegated authority)

That Council receive the update report on the progress of the successful Low Cost Loan Initiative for local infrastructure projects and the signing of the related deeds for information.

Options

1. As recommended.

Implications: this report provides an update on Council's approved application to Round 3 of the LCLI and advises that Council has accepted the offer of funding. Given the short timeframe provided it was not possible to report the funding offer through Council earlier. However this enabled the funding arrangements to be finalised in a timely manner and for Council to continue progressing a range of local infrastructure projects needed to support new housing development in Shoalhaven.

2. Alternate resolution.

Implications: Will depend on the nature of the resolution.

Background

Council resolved on 28 July 2020 to endorse an application to Round 3 of the NSW Government's LCLI for selected local infrastructure projects and resolved to commence the process of obtaining loan funds to fund the projects (MIN20.535).

The selected projects are listed in **Table 1** and were submitted as three separate applications in August 2020. The projects include a range of roads, open space and drainage infrastructure necessary to release land for housing in Moss Vale Road South and Mundamia

Urban Release Areas (URA's), as well as other significant community infrastructure projects that broadly support new housing in Shoalhaven.

Table 1: LCLI Approved Local Infrastructure Projects

Application No.	Project type	Proposed works	Cost estimate / loan funds required
1. Moss Vale Road South URA	Open space	<ul style="list-style-type: none"> Preparation of an overall masterplan for all URA open space. Design & construction of open spaces in Stage 1. 	\$735,000
	Drainage	Design and construction of 2 sediment basins in Stage 1 (Ref. BIO_B1 and BIO_C1).	\$886,200
		Land acquisition for 2 sediment basins in Stage 3.	\$360,000
	Roads	Design and construction of internal roundabout at the Taylors Lane access point.	\$880,000
2. Mundamia URA	Roads	Design and construction of the George Evans Road and Yalwal Road intersection upgrade.	\$799,610
	Roads	Design and construction of URA access roads	\$3,215,790
	Roads	Design and construction of shared cycle/pathway - George Evans Road	\$266,280
	Roads	Design and construction of 2 roundabouts at Yalwal Road/Rannoch Drive and Yalwal Road/Lightwood Drive	\$1,458,240
3. Others	Shoalhaven Fire Control Centre (Albatross Road, Nowra)	Completion of internal roads, traffic facilities and car parking	\$1,400,000
	Boongaree Park, Berry	Construction of the youth zone and skate park extension, sporting fields, footpaths, parking and lead-in infrastructure.	\$9,000,000
	Shoalhaven Community and Recreation Precinct (SCARP)	Construction of croquet courts, clubhouse and supporting infrastructure (lighting, irrigation, etc).	\$2,532,500
Total:			\$21,533,620

In March 2021 Council was notified by DPIE that the applications had been successful and were approved. Council drew down the loan finance in June 2021 and has since commenced work on most of the projects.

Council received the formal offer of funding including three funding deeds from the NSW Office of Local Government (OLG) in August 2021. Given the short timeframe provided to accept the funding (25 days), it was not possible to report this to Council first and the funding deeds were signed by the Mayor and the CEO.

DE21.116

Copies of the funding offers and signed funding deeds for each application are provided at **Attachments 1, 2 and 3**. Council will receive final copies of the signed and executed funding deeds from the OLG in due course.

Conclusion

The successful applications to the NSW Government's Low Cost Loan Initiative will assist and help accelerate the delivery of local infrastructure projects that directly and indirectly support new housing in Shoalhaven.

Financial Implications

The LCLI will provide an interest subsidy on the loans used to fund the local infrastructure projects, paid to Council every six months.

The approved projects and the associated borrowings have been included in Council's Delivery and Operational Plans for 2021/22.

DE21.117 Update and Possible Implications - NSW Infrastructure Contributions Reforms

HPERM Ref: D21/403850

Department: Strategic Planning

Approver: Gordon Clark, Director - City Futures

Attachments: 1. Minister/Parliamentarian Responses to Proposed NSW Infrastructure Contributions Reforms [↓](#)

Reason for Report

Provide an update on the progress of the NSW Infrastructure Contributions Reforms (the Reform) and provide an overview of possible implications of the Reforms on Council's ability to fund/deliver certain infrastructure currently identified in Shoalhaven Contributions Plan 2019.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Receive this report for information.
2. Continue to advocate / lobby as necessary for the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 to be withdrawn and / or for appropriate consultation and engagement to occur with Councils before the overall contributions reform package is finalised.

Options

1. As recommended.

Implications: This is the preferred option. Council staff will continue to consider implications of the Reform and as per the previous resolution (3 August 2021, MIN21.583), Council and LGNSW (on Council's behalf) will continue to advocate and/or lobby for changes as needed as things emerge.

2. Alternative recommendation.

Implications: Will depend on the nature of the change.

Background

On 3 August 2021, Council received a Mayoral Minute regarding the proposed NSW Government Reforms, specifically the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (the Bill) that has been introduced to the NSW Legislative Assembly.

The Bill seeks to include the following planning system reforms:

- A regional infrastructure contributions system to collect levies on development in Greater Sydney, Central Coast, Hunter and the Illawarra Shoalhaven while preserving existing special infrastructure contribution arrangements.

- Requiring owners who benefit from their land being rezoned for development to contribute towards the provision of land for local infrastructure when their land is either sold or developed.
- Greater transparency and accessibility for Planning Agreements.
- Incentives for councils to fund infrastructure upfront, allowing councils to borrow and pool their funds.

Essentially, the Bill sets out a framework that will enable the NSW Government to implement recommendations from the NSW Productivity Commission review of Infrastructure Contributions (which is generally supported) but will also potentially enable other reforms to be made with limited consultation opportunities.

It was resolved (MIN21.583) that Council:

1. *Calls on the NSW Government to withdraw the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (the Bill) from the NSW Parliament.*
2. *Calls on the NSW Government to undertake further consultation with the local government sector on any proposed reforms to the infrastructure contributions system.*
3. *Calls on the NSW Government to de-couple the Independent Pricing and Regulatory Tribunal led review of the rate peg to include population growth from the infrastructure contributions reforms.*
4. *Write to the Member for Kiama Gareth Ward MP, the Member for South Coast & Minister for Local Government the Hon Shelley Hancock MP, the Premier the Hon Gladys Berejiklian MP, Treasurer the Hon Dominic Perrottet MP, and Minister for Planning and Public Spaces the Hon Rob Stokes MP seeking them to withdraw the Bill.*
5. *Write to the Shadow Treasurer the Hon Daniel Mookhey MLC, Shadow Minister for Planning and Public Spaces Mr Paul Scully MP, Shadow Minister for Local Government Mr Greg Warren MP, The Greens Mr David Shoebridge MLC, Shooters, Fishers and Farmers Party the Hon Robert Borsak MLC, Pauline Hanson's One Nation the Hon Mark Latham MLC, Animal Justice Party the Hon Emma Hurst MLC, Christian Democratic Party (Fred Nile Group) the Hon Fred Nile MLC, Independent Mr Justin Field, Portfolio Committee Chair The Greens Ms Cate Faehmann, Portfolio Committee Deputy Chair Animal Justice Party the Hon Mark Pearson MLC and Committee members Liberal Party the Hon Catherine Cusack MLC and the Hon Shayne Mallard MLC, The Nationals the Hon Ben Franklin MLC and Australian Labor Party the Hon Rose Jackson MLC and the Hon Adam Searle MLC seeking their support in securing the withdrawal of the Bill from the NSW Parliament and outlining Council's concerns with the Bill.*
6. *Alerts the local media to the threat of future ratepayer funds being expended rather than developer levies for new infrastructure brought about by increased development under the proposed legislation and shares and promotes these messages via its digital and social media channels and via its networks.*
7. *Affirms its support to LGNSW and requests LGNSW continue advocating on our behalf to protect local government from any amendments to infrastructure contributions which leaves councils and communities exposed to expending ratepayer funds on new infrastructure made necessary by new development, currently the responsibility of developers.*

Update on Bill and Inquiry

The Upper House Planning & Environment Committee tabled its Inquiry Report on 10 August 2021 and recommended that the Bill not proceed until the draft regulations have been developed and released for consultation, and the reviews into the rate pegging system, benchmarking and the essential works list have been published by the Independent Pricing and Regulatory Tribunal.

The Minister has acknowledged the Committee's recommendation; however, at this stage, it does not appear that the Bill will be withdrawn from Parliament or be amended to address the concerns of NSW councils and LGNSW.

Marcus Ray, Group Deputy Secretary of the Department of Planning, Industry and Environment has recently provided additional clarity to Councils regarding DPIE's intent for the reform, specifically that:

- Regional Infrastructure Contributions (replacing the existing State Infrastructure Contributions) will not replace or take any money away from local infrastructure contributions revenue. Further information on the Regional Infrastructure Contributions will be provided in a State Environmental Planning Policy following the Bill process.
- Councils will not be worse off as a result of the reforms.
- The settings within the reforms will be viable and sustainable for local government.
- IPART is reviewing the current system for setting council rates revenue to include population growth, and this work will continue.
- DPIE is having ongoing informal conversations with leaders from local government and LGNSW to inform the Reform.

Despite the above, actual information and guidance from DPIE at this stage and particularly in regard to the above remains limited.

Update on Resolution Actions

Since August 2021, the following actions have been undertaken by Council staff in response to the resolution:

- Correspondence has been sent to all Ministers / Parliamentarians referred to in parts 4 and 5 of the resolution, outlining the concerns in Council's August Resolution, specifically:
 - Shoalhaven's concerns about the Bill and the request that the Bill be withdrawn.
 - The need for the NSW Government to undertake further consultation with the local government sector on any proposed reforms to the infrastructure contributions system.
 - Shoalhaven's general support for LGNSW's position and their ongoing advocacy on our behalf.

To date, formal responses (see **Attachment 1**) have been received from:

- The Hon. Rob Stokes MP, Minister for Planning and Public Spaces; via the Hon. Shelley Hancock MP, Minister for Local Government.
- Jonathon Schipp, Executive Direction Planning System Policy, DPIE; on behalf of The Hon. Rob Stokes MP, Minister for Planning and Public Spaces.
- Mr Paul Scully MP, Shadow Minister for Planning and Public Spaces.

Gareth Ward MP, Member for Kiama has acknowledged Council's comments via email and advised he has written to the Minister for Planning and Public Spaces regarding Council's representations and once he has a response he will provide further advice.

The Office of Mr David Shoebridge MP has informally advised of his shared concerns and that he will be working to resist the changes.

Council staff also discussed the Council resolution directly with Greg Warren MP, Shadow Minister for Local Government via a Teams call on 6 September 2021

- A media release was published regarding the threat of the Reforms, specifically ratepayer funds expended rather than developer levies for new infrastructure.
- Correspondence has been sent to LGNSW regarding ongoing support and to request that LGNSW continue to advocate on our behalf.

Financial and Risk Implications

To enable Council (and LGNSW) to better understand the potential implications of the Reform for Shoalhaven, depending on its final nature, an indicative analysis of all existing projects in the Shoalhaven Contributions Plan 2019 has been undertaken. **Tables 1 and 2** below outline the projects (or elements of projects) that may need to be removed from Council's Contributions Framework as a result of the reforms, based on currently available information.

Approximately \$45.9million will need to be found from another source to deliver or repay the infrastructure items identified in **Table 1**. The projects in this table are expected to be deleted in their entirety as the projects are not considered as 'essential works' defined by IPART.

Table 2 presents projects where some elements may, or are expected to, be deleted (not the whole project) based on IPART's current 'essential works' list. This table presents a high-level estimate of potential implications only, due to the uncertainty regarding the 'essential works list' and project information readily available. This list will be refined as more detailed investigations are undertaken over time. It is anticipated that up to approximately \$25.2million may need to be found from another source to plan for / deliver or repay the infrastructure items identified in **Table 2**.

The projects in these tables may be subject to change as more information is made available, especially as the essential works list is refined; however, it provides a good estimate of potential implications at this stage.

At some point Council will need to consider a replacement funding source for the projects or project elements that will ultimately be deleted from the Contributions Plan, which may include a significant rate rise, special rate variation or reallocation of funds from other budgets. Alternatively, Council may wish to:

- Reconsider its commitment to deliver certain infrastructure (i.e., no longer proceed with certain infrastructure); or
- Consider changing to a s7.12 plan which is a levy, based on a percentage of the development cost. This approach has more flexibility than a s7.11 plan (current approach), but a lower rate of collection.

An estimate of potential implications will be provided to LGNSW to assist in their advocacy work, as per their request.

Table 1: Projects Anticipated for Deletion

Code	Description	Amount of Development Apportionment Outstanding	Reason for Deletion
01CARP2002	Berry Town Centre Car Parking (Queen Street)	\$7,667,054.59	Carpark (not associated with open space). Land and carpark not considered essential works.
01CARP3001	Nowra car parking (Egans Lane, Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghorne Street)	\$23,774,360.55	
01CARP3003	Bomaderry car parking (42-44 Coomea Street)	\$404,704.00	
01CARP3004	Kangaroo Valley car parking (169 Moss Vale Road)	\$140,346.51	
03CARP0004	St Georges Basin Village Centre car parking (Island Point Road)	\$214,233.00	
03CARP2002	Huskisson car parking (Owen Street & Huskisson Central Business Area)	\$621,559.72	
03CARP3001	Sanctuary Point car parking (Kerry Street)	\$612,492.17	
04CARP3001	Sussex Inlet car parking (16 Nielson Road & 45-47 Ellmoos Avenue)	\$475,703.45	
05CARP3001	Ulladulla car parking (19 Boree Street & 94-96 St Vincent Street)	\$1,499,061.07	
05CARP3002	Milton car park (84 Princes Highway)	\$452,045.50	
01AREC5006	Northern Shoalhaven Sports Stadium (Cambewarra Road)	\$525,129.47	Indoor sporting facility, not basic embellishment
03AREC3003	Bay and Basin Leisure Centre (The Wool Road, Vincentia)	\$816,314.58	
04AREC5003	Sussex Inlet Aquatics Centre (Thomson Street)	\$258,841.73	
CWCFAC5006	Shoalhaven City Library Extensions (Berry Street, Nowra)	\$2,801,381.84	Community facility, no land
CWCFAC5007	Shoalhaven Regional Gallery	\$549,919.79	
CWFIRE2001	Rural Fire and Emergency Service Plant and Equipment (various locations)	\$1,173,197.65	
CWFIRE2002	Shoalhaven Fire Control Centre (Albatross Road, Nowra)	\$2,183,208.11	
03CFAC0007	Bay & Basin Branch Library	\$1,058,060.41	
04CFAC5003	Sussex Inlet Community Centre / Pool	\$72,308.07	
Planning Area 4 - Community facility upgrades (various locations)			
05CFAC0011	Extension of Manyana Community Hall (Yulunga Drive) (Voluntary Planning Agreement for specific properties)	\$130,234.09	Not land or base level embellishment
01AREC5009	Thurgate Oval, Bomaderry	\$25,949.31	
Planning Area 1 recreational facilities			

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upgrades (various locations)			
05AREC0005	Milton – Various	\$29,674.24	Study Only
Planning Area 5 - Active recreation facility upgrades (various locations)	Ulladulla Leisure Centre Heated Indoor Swimming Pool	\$417,106.75	Indoor sporting facility, not basic embellishment
TOTAL		\$45,902,886.60	

Table 2: Projects with Some Elements Anticipated for Deletion

Code	Description	Elements of Project to be Deleted	Amount of Development Apportionment Outstanding	Reason for Deletion
01AREC5007	Nowra Swimming Pool Expansion (Scenic Drive)	Pool expansion and splashpad	\$2,137,312.29	Swimming pool expansion and majority of splash pool is not basic embellishment
01CFAC0002	North Nowra Community Centre (Hood Close)	Community Centre	\$64,733.01	Community facility beyond land costs
01CFAC5012	Nowra Integrated Youth Services Centre (Cnr Kinghorne & Plunkett Streets)	Construction	\$129,186.64	
01CFAC0014	Mundamia URA Community/Childcare Centre	Community/ childcare centre construction	\$1,248,420.00	
05CFAC2010	Southern Shoalhaven Branch Library (Ulladulla Town Centre precinct)	Everything that isn't land costs.	\$125,735.63	
CWCFAC5002	Shoalhaven Entertainment Centre (Bridge Road, Nowra)		\$8,234,202.12	
01AREC5009	Boongaree, Berry	Any embellishments that are not base level.	\$1,414,517.74	Highly embellished recreation areas cannot be included.
Planning Area 1 recreational facilities upgrades (various locations)	Edwards Avenue Reserve, Bomaderry		\$90,014.77	
	Harry Sawkins Park, Nowra		\$51,437.01	

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	Marriott Park, Nowra		\$51,437.01	
	Sampson Crescent Reserve, Bomaderry	Fenced off-leash dog park	\$2,571.85	Unclear if a dog park is an essential work
	Paringa Park, Nowra	Buildings and highly embellished spaces	\$1,671,702.78	Indoor sporting facility and highly embellished spaces
01OREC6015	Moss Vale Road South URA Passive Recreation	Any embellishments that are not base level.	\$2,023,000.00	Highly embellished recreation areas cannot be included.
03AREC0005 Planning Area 3 - Recreation facilities upgrade (various locations)	Vincentia Sportsground	Masterplan preparation.	\$218,614.92	Unclear if masterplan preparation is included.
	Sanctuary Point Oval		\$21,333.43	
	Wool Lane Sporting Complex		\$21,725.10	
	Francis Ryan Reserve Sports Field		\$54,361.72	
	Voyager Park	Any embellishments that are not base level.	\$131,168.95	Highly embellished recreation areas cannot be included.
05AREC0005 Planning Area 5 - Active recreation facility upgrades (various locations)	Ulladulla Sports Park	Any expansion of existing facilities that is not basic.	\$435,462.34	Only basic structures and equipment to be included.
CWAREC5005	Shoalhaven Community and Recreational Precinct (SCaRP) Cambewarra Road, Bomaderry	Repurpose indoor facility and possibly community pavilion.	\$6,999,564.24	Only basic structures and equipment to be included. Indoor facilities not included.
TOTAL			\$25,177,938.56	

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Community Engagement

It is understood that DPIE is intending to publicly exhibit the Reform package in October/November 2021. The Reform package will include an explanatory document and may include a draft Regulation and approximately 10 practice notes.

Policy Implications

The proposed Reform has significant Policy implications for Council. The Contributions Plan will need to be substantially amended to modify and delete infrastructure projects (or elements of) already committed to by Council which will result in significant resource demands across the organisation. At the appropriate point in time, Council may wish to investigate whether a s7.12 plan (levy) may be more appropriate for Council's ongoing needs.



The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

MDPE21/2059

The Hon. Shelley Hancock MP
Minister for Local Government
Member for South Coast
PO Box 1436
NOWRA NSW 2541

Via email: southcoast@parliament.nsw.gov.au

Dear Minister

Thank you for your correspondence on behalf of Shoalhaven City Council regarding proposed reforms to the NSW infrastructure contributions system.

I note the concerns Council has raised relating to the proposed Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021. The proposed reforms rebalance revenue sources to fund state and local infrastructure, and will make it easier for councils to fund infrastructure using local contributions. It will allow councils to pool local contributions between contributions plans as well as recoup the cost of interest on loans taken out to forward-fund local infrastructure.

The Department of Planning, Industry and Environment will continue to consult with local government through the Department's External Advisory Group and technical working groups on detailed policy settings currently being developed. There will be a further opportunities for councils and the community to provide feedback on detailed policy settings during public exhibition planned for later this year.

The contributions reforms are closely linked with the local government rate peg reforms. The Independent Pricing and Regulatory Tribunal has released a draft report on the methodology for adjusting rates in line with population growth. Changes to local government rate settings to allow for population growth are expected to increase revenue for councils to fund community infrastructure.

Should Council officers have any questions, they are welcome to contact Ms Kate Speare, Director Infrastructure Funding Policy, at the Department of Planning, Industry and Environment, on 9274 6230.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Rob Stokes'.

The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

**Planning,
Industry &
Environment**

MDPE21/2081

Mr Stephen Dunshea
Chief Executive Officer
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Via email: council@shoalhaven.nsw.gov.au

Dear Mr Dunshea

Thank you for your correspondence to the Hon. Rob Stokes MP, Minister for Planning and Public Spaces, regarding the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (Bill). The Minister asked me to respond on his behalf.

I acknowledge Shoalhaven City Council's concerns and note its resolution in relation to the progression of the Bill and the importance of ongoing consultation with the local government sector on proposed reforms to the infrastructure contributions system.

Reforming the infrastructure contributions system is central to supporting good growth across NSW. We have a rare opportunity to make the system more transparent, consistent, simpler and fairer. The NSW Government has adopted all 29 recommendations of the Productivity Commissioner to reform the contributions system, and the Bill is an important step in this process.

I note the Council's concerns about the interaction between the rate-pegging review being undertaken by the Independent Pricing and Regulatory Tribunal (IPART) and council revenue from section 7.11 and 7.12 contributions plans. Proposed changes to the rates system are separate to changes proposed to local contributions but are expected to improve council revenue for infrastructure not directly related to demand created by new development.

IPART released its Draft Report on their review of the rate peg on 29 June 2021 and sought public feedback until 6 August 2021. IPART is expected to present a Final Report to the Minister for Local Government in September 2021.

IPART has also commenced a review of benchmarking costs for local infrastructure, as well as a separate review of the essential works list, nexus and efficient infrastructure design. The Minister has asked IPART to consider the different needs of infill, greenfield, metropolitan and regional councils. These reviews will be conducted independently and transparently and I encourage the Council to engage with them.

Overall, councils will have greater fiscal flexibility under the reforms. In particular, councils will be able to assess the relative financial benefit when deciding whether to prepare a section 7.11 or section 7.12 contributions plan to deliver local infrastructure. The Bill contains key changes to enhance local government infrastructure provision, including through pooling between contributions plans, recouping interest on loans and the new land value contribution mechanism.

We are listening to local government concerns and believe we have a common objective that as a result of this reform, communities across NSW will see the more efficient delivery of infrastructure to support growth. To further support the pathway and development of this important reform, the Department will be releasing the detailed regulations and policy settings for the new system before progressing the Bill in Parliament.

If you have any more questions, please contact Ms Kate Speare, Director, Infrastructure Funding Policy, at the Department of Planning, Industry and Environment on 9274 6230.

Yours sincerely



13 August 2021
Jonathon Schipp
Executive Director
Planning System Policy

DE21.117 - Attachment 1



Shoalhaven City Council

Received 17 AUG 2021

File No. 31157E

Referred to: GJC

E/c
CEO S. Dunshea

Paul Scully MP

SHADOW MINISTER FOR PLANNING AND PUBLIC SPACES
MEMBER FOR WOLLONGONG

11 August 2021

Mr Stephen Dunshea
Chief Executive Officer
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Dear Mr Dunshea

Thank you for your correspondence regarding the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021*.

I have taken note of the submission by councils as part of the public inquiry into the Bill conducted by the Legislative Council Portfolio Committee No 7 – Planning and Environment. I have also noted the submission by Local Government NSW.

This Bill was introduced as part of the 2021-22 Budget Bills and was only subject to scrutiny following the actions of NSW Labor in the Legislative Council. As part of the inquiry process NSW Labor put a series of questions on notice to the Minister for Planning and Public Spaces, Hon Rob Stokes MP. The responses to NSW Labor's questions have been published on the Parliamentary Committee's website.

I note that the Committee published its report on 10 August 2021 with its key recommendation that the Bill not proceed until the draft regulations have been developed and released for consultation, and that reviews into the rate pegging system and the essential works list have been published by the Independent Pricing and Regulatory Tribunal (IPART).

NSW Labor agrees with the Committee report recommendation. We hope the Government will not proceed further with the Bill until additional key information is determined and further appropriate consultation takes place with councils and other stakeholders.

Yours sincerely

PAUL SCULLY MP
Shadow Minister for Planning and Public Spaces

DE21.118 Adjustment - Delegation - Plan Making (LEP) Process

HPERM Ref: D21/389439

Department: Strategic Planning

Approver: Gordon Clark, Acting Director - City Futures

Reason for Report

Update who can exercise the delegated Plan Making (Local Environmental Plan) authority on behalf of Council in accordance with Section 2.4 of the NSW Environmental Planning & Assessment Act 1979.

Recommendation (Item to be determined under delegated authority)

That Council, pursuant to Section 381 of the Local Government Act, consents to the Minister for Planning and Public Spaces giving the required delegations under Section 2.4 of the Environmental Planning & Assessment Act, in regard to the plan making process, to the positions of Chief Executive Officer, Director City Futures and Strategic Planning Manager.

Options

1. As recommended

Implications: This will ensure that Council can continue to correctly exercise its delegations in this regard when appropriate.

2. Alternate recommendation.

Implications: Would depend on the nature or any recommendation.

Background

In April 2012 as part of the reforms to the Plan Making component of the NSW Planning System, Council in part resolved to:

Should the proposed changes proceed, that pursuant to Section 381 of the Local Government Act, the positions of General Manager, Director-Strategic Planning and Infrastructure and Strategy Planning Manager be given the delegations under Section 32 of the Environmental Planning and Assessment Act 1979 in regard to the plan making process.

As part of the initial 'gateway determination' associated with Planning Proposals (PP's) one of the things that is determined is whether or not the plan making tasks at the end of the process can be delegated to Council. This essentially involves the finalisation of any resulting plan/amendment – liaising with the Parliamentary Counsel to finalise the drafting of the amendment, signing the amendment and then arranging its notification.

Council nominates relevant officers to exercise this delegation (usually the Chief Executive Officer and/or planning directors/managers) consistent with Section 381 of the Local Government Act.

There is now a need to update things in this regard to give the delegation to the following three positions in the current structure:

- Chief Executive Officer
- Director City Futures
- Strategic Planning Manager

This will ensure that Council has sufficient coverage to fulfill what is needed in this regard going forward.

Conclusion

It is important that Council continues to maintain and use its Plan Making delegations to ensure the timely finalisation of amendments to the LEP. As such there is a need to update the delegations to reflect the current organisational structure and advise the NSW Department of Planning, Industry & Environment accordingly.

DE21.119 Proposed Road Closure - Lot 4 DP 872852 (Vincentia) St Georges Basin Country Club and Response to Questions on Notice

HPERM Ref: D21/354817

Department: Technical Services

Approver: Paul Keech, Director - City Services

Attachments: 1. Checklist Road Closures [↓](#)
2. Road Closure Procedure [↓](#)

Reason for Report

To provide Council with the opportunity to consider the proposed road closure adjoining Lot 4 DP 872852 Vincentia as shown in the aerial image below with the intention to sell to the St Georges Basin Country Club.

Recommendation

That Council

1. Resolve to close the road reserves that adjoin Lot 4 DP 872852 Vincentia and sell to the owner of Lot 4 being the St Georges Basin Country Club with compensation for the sale of the land payable based on Independent Valuation advice.
2. Impose the conditions on the proposed closed road requested by Council's Environmental Services Department as shown below:
 - a. The 88B Instrument must contain a provision that it cannot be varied, modified, or released without the consent of the relevant parties as appropriate and without the consent of the Shoalhaven City Council.
 - b. The covenant must stipulate that:
 - All native vegetation must be retained unless subject to a formal development application approval under the NSW EP&A Act 1995.
 - All retained native vegetation must be declared off limits to course users
 - c. Upon endorsement by Council the covenant must be registered with LRS or the appropriate land registration body at the time of registration.
3. Require the portion comprised in the road closure be consolidated into one lot with the parent Lot being Lot 4 DP 872852.
4. Require all costs associated with the road closure, registration of documents and sale to be borne by St Georges Basin Country Club.
5. Authorise the Chief Executive Officer to sign any documentation required to give effect to this Resolution and to affix the Common Seal of the Council of the City of Shoalhaven to all documentation required to be sealed.

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Options

1. As Recommended

Implications: The road closure can proceed. Clearing of native vegetation within the proposed road closure will not be legal without approval from Council and a development consent.

2. Council could accept the above recommendation without the Covenant requested by Council's Environmental Services Department.

Implications: The road closure can proceed. This option is not recommended though because up to 0.5ha of vegetation could be legally removed within the proposed road closure area without the need for an approval process.

The resolution that would support this option would be

Points 1, 3, 4 and 5

3. Council could choose to reject the road closure application with a view to assess any road closure as part of a future Development Application/ Planning Proposal for the site if/when an application is made.

Implications: St Georges Basin Country Club would be required to lodge a new road closure application in conjunction with a Development Application/Planning Proposal. The St Georges Basin Country Club have indicated that this would prevent the road reserve areas being covered by their public liability insurance.

A resolution that would support this option would be;

That Council reject the road closure application for the road reserves that adjoin Lot 4 DP 872852 Vincentia, with a view to assess any road closure as part of a future Development Application/ Planning Proposal for the site if/when an application is made

Background

An application to close this road was made in 2012, however this was rejected by Crown Lands in 2017. This was due to the application not being completed by the date in 2017 when changes to the Crown Land management Act meant that Crown Lands could no longer determine these matters.

St Georges Basin Country Club lodged an application with Council in March 2021 to close and purchase portions of Council's Road reserve that are currently being utilised by the Golf Club.

Council was advised the road closure was necessary due to the parts of the golf course built within the road reserve (shown in aerial image below) not being covered under the Club's Public Liability Insurance.

The proposed road closure area is not currently used for access purposes.

Aerial Image of Proposed Roads to be closed.



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Environmental Considerations

The parent lot is known as Lot 4 DP 872852 and is a well-known birdwatching and bushwalking area.

Parts of the road reserve encroach into native heathland. This heathland is known to provide habitat for threatened fauna species including White-footed Dunnart, New Holland Mouse, Eastern Chestnut Mouse, Eastern Pygmy Possum, Ground Parrot, Eastern Bristlebird.

A scientific paper by Garry Daly, Ecologist in 2017 recorded these species within the golf course. There are also numerous records of the threatened Giant Burrowing Frog within close proximity to the course and road reserve.

The road reserves will be consolidated into the parent Lot which is Zoned RE2 – Private Recreation. Under Council's DCP Chapter G4, which defines 'declared' vegetation protected by the NSW Vegetation SEPP, however, this excludes RE2 zoned lands.

This means that there will be no protection for native vegetation under the Vegetation SEPP for vegetation currently within the road reserve unless a Covenant is applied to the land.

Response to Questions on Notice – Road Closure / Land Sale – Vincentia Golf Club

The following questions on notice (*in italics*) were put forth at the Development and Environment Committee meeting held on 7 September 2021. Answers follow each question.

Question 1.

That Council explain the process normally followed in the sale of surplus road reserves including the extent of notification on this particular proposal?

The process for the sale of surplus road reserves is included as Attachment 1 (D21/419989) and is summarised below

1. Application made
2. Details and legal status determined
3. Council seeks internal operational feedback
4. Council seeks feedback from notifiable authorities, for example utility service providers
5. Council seeks external (Public) feedback
6. Council obtains an independent valuation of the land
7. A report is written, with the results of the feedback for Councillors to consider whether to proceed with the road closure and sale or not

Question 2.

The land over which the "paper" roads sit is occupied by the St Georges Basin Country Club (Vincentia). Under what documented arrangement or legal authority does the Vincentia Golf Club occupy the land? Is there a lease in place and is there an agreed rent?

Authority to occupy 'paper' roads was given as part of prior development application approvals.

Question 3.

In a public notice of 11th August 2021, it was announced that "upon closure of the road(s) Council intends to sell the land to the adjoining landowner, St Georges Basin Country Club (Vincentia)." Would it be normal process to arrive at this "intention" and express it in a public notice before any community consultation or resolution of councillors has occurred? Has Council discussed the option of advertising the land on the open market or leasing it?

The St Georges Basin Country Club has applied to Council to close the road reserve and purchase the land. As part of the road closure and sale process Council advertises the requests from applicants, in this instance the request to close and purchase the land, as part of the community consultation process. Feedback from the community is then taken into consideration when reporting the road closure to Councillors for a resolution.

Question 4.

Is the parcel of land intended for sale comprised of any land other than that released by the road closures?

This application is only applicable to land released by the proposed closure of the road reserve.

Question 5.

How will the sale price of the land be determined and with what zoning would the land be sold? The parent Lot 4 DP 872852 is zoned RE2.

An independent valuer would be used to determine the sale price. The land would take on the zoning of the parent lot Lot 4 DP 872852 i.e., zoned RE2 – Private Recreation.

Question 6.

Did the proposal to sell the land arise from an approach by St. Georges Basin Country Club, if not how was it initiated?

Yes, an application was made by St. Georges Basin Country Club to close the road reserve and purchase the land.

Question 7.

What state legislation and Council policies guide the closure and any subsequent sale of the roads and are closure and sale two distinct and separate processes?

- Roads Act 1993
- Crown Lands Management Act 2016
- Local Government Act 1993
- Council Procedure PRD16/283 – Dealing with Requests for the Closure, Sale or Transfer of Council and Crown Roads – Attachment 2 (D21/419995)

Question 8.

Community understanding is that the golf course and road land was originally part of a grant from the Halloran Family to SCC for recreational purposes. Can Council confirm this?

Road reserves cannot be granted for recreational purposes. Council rating records indicate that the Council has not been in ownership of the golf course land.

Question 9.

Will any contract of sale for the land include a covenant that prevents its use for residential development?

No, however any future residential development would be subject to a planning proposal/development application.

Community Concerns

These centre around the future plans of the St. Georges Basin Country Club in relation to Vincentia Golf Course and speculation is strong that they may involve redevelopment of the holding to restore liquidity. A resolution has apparently been submitted for the Club AGM on 19th September asking the Board and Management to clarify their intentions for the future of the Vincentia Golf Club.

Question 10.

Does Council consider that it's in the public interest to ask for submissions on the proposed closure of the road reserves and sale of the land to the most likely purchaser before the community has clarity around the intentions of that purchaser?

Any future development plans would be assessed as part of a planning proposal or development application. The community has opportunities during a planning proposal or development application to make comment and submissions, with clarity around the landowners' intentions.

Question 11.

Community representative groups are requesting an extension for submissions on this matter to 30 days after the date of the St Georges Basin Country Club AGM. Does Council regard this as a reasonable request?

A one (1) week extension was granted to the Vincentia Residents and Ratepayers Association (VRRRA) to allow them time to compile submissions from their members, on top of the 28 day legislated time for submissions. Any future development plans would be assessed as part of a planning proposal or development application. The community has opportunities during a planning proposal or development application to make comment and submissions, with clarity around the developer/landowners' intentions.

Community Engagement

In accordance with the Roads Act 1993, Sec 38B, Council notified adjoining landowners, Notifiable Authorities, Vincentia Matters Group and the Vincentia Residents and Ratepayers Association (VRRRA).

An advertisement was placed at the Bay and Basin Leisure Centre and in the South Coast Register on 11 August 2021 allowing 28 days for submissions.

Council received numerous individual submissions concerning the future use of the land. These concerns largely noted the following preferences:

- Roads closed to be used for Recreational purposes only.
- Oppose any redevelopment or rezoning to Commercial or Residential
- Protect the wildlife and current native vegetation which is habitat for threatened species
- Defer until further information has been supplied to Council and the Community from the St Georges Basin Country Club regarding the future use of the land.

The Vincentia Matters Group submitted a response on behalf of their members.

The below table summarises the number of submissions received and areas of concern:

Submissions	Concern	Number
Environmental Services (SCC)	Protection of flora & fauna	(1)
Endeavour Energy	Easements to be over infrastructure	(1)

Shoal Water	Easements to be over all Council infrastructure including swale drains	(1)
Vincentia Matters on behalf of members	- Land to remain for recreational use	(1)
General Community Individual Submissions	- Land to remain as recreational use - Protection of Wildlife and native vegetation	(125)

A request for Easements/covenants were received from Council's Environmental Section, Shoalhaven Water and Endeavour Energy.

Policy Implications

This matter has been considered in accordance with Council Procedure *Dealing with Requests for the Closure, Sale, Transfer of Council and Crown Roads*.

Financial Implications

Council will receive compensation as determined by way of a valuation prepared by Walsh & Monaghan Valuers which is yet to be received.

All costs associated with the Road Closure process and sale are payable by the applicant and at no cost to Council.

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ROAD CLOSURE CHECKLIST



1. Initial Enquiry

Date:	<input type="checkbox"/> Initial enquiry received
Date:	<input type="checkbox"/> Template response letter sent enclosing <ul style="list-style-type: none"> • Application form • Schedule of Fees • Process
Date:	<input type="checkbox"/> Signed Application Form Received
Date:	Invoice requested from Accounts Receivable for Road Closure Application Fee. Natural Acc: 41327 Finance Project No: 102365 Activity: 1001
Date:	<input type="checkbox"/> Invoice sent to Applicant
Date:	<input type="checkbox"/> Road Closure Application Fee Paid
Trim Container Number:	Finance Number: Work Order Number:

2. Applicant Details

Name:	
Company Name (If Applicable):	
Address:	
Postal Address:	
Title Reference: Lot	DP
Phone: Home:	Mobile:
Email:	

3. Road Details

General Text Description of Road:			
Town/Locality:		LGA:	
Parish:		County:	
Approximate Area of Proposed Road Closure:		m ²	
Date:	<input type="checkbox"/> Site Inspection Completed		

4. Status Check – See Crown road status investigation guide

Status investigation Result – Eg: Gazettal, Subdivision plan, dedication, parish map etc	
<input type="checkbox"/> Council Road – Vesting in Council <input type="checkbox"/> Council Road – Vesting in Crown <input type="checkbox"/> Crown Road – No further action – Provide response to applicant to go directly to Crown lands.	
Will the Road Closure land be required to be consolidated with the adjoining land?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

5. Internal Notifications

Date:	<input type="checkbox"/> Request for Comments Memo Sent to Internal Stakeholders Submissions Close: Date:
Proceed:	
<input type="checkbox"/> Yes – Vesting in Council. Go to Step 6 <input type="checkbox"/> Yes – Vesting in Crown lands Go to Step 5.1 <input type="checkbox"/> No – No further action - Advise Applicant Council not proceeding.	

5.1 Crown Road – Vesting in Crown

Send "Enquiry to purchase unformed council roads" form to Crown lands.	
Date:	<input type="checkbox"/> Crown Land Acceptance Received. Go to Step 6 <input type="checkbox"/> Crown Land Objection Received – No Further action – Provide response to Applicant.

6. Step 2 Fee Payment

Date:	<input type="checkbox"/> Request invoice from Accounts Receivable for Step 2 Processing Amount \$
Date:	Receive Invoice from Accounts Receivable
Date:	Send letter to Applicant advising outcome of initial inquiry and tax invoice for Step 2.
Date:	<input type="checkbox"/> Payment for Step 2 processing received

7. External Notifications

Date:	Arrange Advertisement for Local Media
Date:	Submissions Close
Date:	Notification to Adjoining landowners:
Date:	Notification to Crown Lands
Date:	Notification to Notifiable authorities
Number of Submissions Received:	
Proceed:	
<input type="checkbox"/> Yes – Go to Step 8 <input type="checkbox"/> No – Consider submissions	

8. Valuation (Only if land is vesting in Council)

Date:	<input type="checkbox"/> Request Valuation
Date:	<input type="checkbox"/> Valuation Received Determined Amount \$ + GST (If applicable)
Date:	Letter of Offer sent to Applicant
Date:	<input type="checkbox"/> Offer Accepted – Go to Step 9 <input type="checkbox"/> Offer rejected/Counteroffer – Continue negotiations
Date:	Agreed Compensation: \$ + GST (If applicable)

9. Reporting to Council

<input type="checkbox"/> Council Report Drafted	S & A Meeting Date: MIN No.	Ordinary Date: MIN No.
Date:	<input type="checkbox"/> Advise applicant of Council Resolution	

10. Plan Preparation

Date:	<input type="checkbox"/> Request applicant to engage surveyor to prepare survey plan and associated documents.
Date:	<input type="checkbox"/> Plan received
Date:	<input type="checkbox"/> Arrange for appropriate signatures & consents e.g. subdivision certificate, S88B instrument.
Date:	<input type="checkbox"/> Arrange for registration of executed plan/docs at LRS by surveyor
Date:	<input type="checkbox"/> Confirmation received – Plan registered

11. Gazettal Notice

Date:	<input type="checkbox"/> Arranged Gazettal of road closure
Date:	<input type="checkbox"/> Copy of Gazette provided to Council
Date:	<input type="checkbox"/> Advise Applicant of Gazettal & obtain solicitor details
Wait 60 Days for L & E court appeal period to pass	
Date:	
Where is the land vesting? <input type="checkbox"/> Council – Continue with Step 11 <input type="checkbox"/> Crown – No Further Action - Notify Crown lands Strategic Sales & Disposals Unit + Applicant to deal with Crown directly from this point onwards	
Date:	<input type="checkbox"/> Engage Solicitor to Complete 11R Form and Lodge with LRS (include copy of Gazette Notice).
Date:	<input type="checkbox"/> Receive notification of Registration and new Certificate of Title

Date:	<input type="checkbox"/> Request Applicant to engage surveyor to draft consolidation plan
Date:	<input type="checkbox"/> Draft Plan Received
Date:	<input type="checkbox"/> Arrange Council to execute Deposited Plan Administration Sheet
Date:	<input type="checkbox"/> Consolidation Plan lodged with LRS for Registration
Date:	<input type="checkbox"/> Consolidation Plan registered

Date:	Instruct Solicitor to prepare Contract for Sale of Land <ul style="list-style-type: none"> - Conditional upon consolidation (if applicable) - Costs to be recovered from process (legal, advert, survey, val)
Date:	<input type="checkbox"/> Contract Received
Date:	<input type="checkbox"/> Arrange for Council to execute contract
Date:	Exchange of Contracts
Date:	Settlement
Date:	Advise internal stakeholders of completion of sale
Comments:	
Completing Officer Initials <div style="border: 1px solid black; width: 100px; height: 30px; float: right;"></div>	

Invoice Date	Company	Description	Amount	Purchase Order
	Internal	Advertising	\$	N/A
		Valuation	\$	
		Surveying	\$	
		Legal	\$	
			\$	
			\$	
Total Costs			\$	



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

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

Email: council@shoalhaven.nsw.gov.au

Website: www.shoalhaven.nsw.gov.au

For more information contact the Assets and Works Group

Dealing with Requests for the Closure, Sale or Transfer of Council and Crown Roads

Procedure Number: PRD16/283 • **Adopted:** 23/04/2013 • **Amended:** 20/12/2016 • **Minute Number:** MIN13.414, MIN16.1011 • **File:** 2895E, 29219E • **Produced By:** Assets and Works Group • **Review Date:** 1/12/2020

1. PURPOSE

To provide clear direction to the public and staff on the management of requests to Council for the closure and sale of Council and/or Crown Roads and the transfer of Crown Roads to Council.

2. STATEMENT

Requests for the closure, sale or transfer of Council or Crown Roads may be initiated by the Crown Lands Division, a member of the public or by Council.

There are a number of categories of roads which are impacted by this procedure including:

- a) Council formed public road;
- b) Council unformed public road; and
- c) Crown public road

Each category of road is dealt with differently however the guiding principles associated with the closure, sale or transfer consider the reasons for supporting or rejecting requests of this nature.

3. RELEVANT LEGISLATION

The relevant legislation pertaining to this procedure are:

- a) Roads Act 1993;
- b) Crown Lands Act 1989; and
- c) Local Government Act 1993.

4. PROVISIONS

The following issues are to be considered when determining whether a request to close, sell or accept transfer of a Council or Crown Road should be supported:

- a) Access to adjoining properties;
- b) Operational issues:

Shoalhaven City Council -

- Emergency services
- Utility services
- Walking tracks/trails
- Recreational purposes
- Bush fire breaks/Asset Protection Zones
- Buffers;
- c) Planning issues;
- d) Value:
 - Heritage;
 - Community;
 - Scenic;
 - Environmental e.g. open space corridor;
 - Financial/Economic;
- e) Asset Management:
 - Standard of formation
 - Future maintenance costs
 - Benefit to Council's existing road network
- f) The Council needs to consider the following when accepting or requesting the transfer of a Crown Road;
 - The upgrading of the road to acceptable Council standard as part of a Development Consent
 - Grant of DA Consent and payment of fee and "bonding" is held by Council
 - Long term liability which may necessitate a report to Council

5. IMPLEMENTATION

Requests relevant to this procedure will be dealt with by the Property Unit of the Business and Property Section.

The Implementation of the request will be undertaken using the processes detailed in Council's Intranet site.

The process requires that the sale of Council road be on the basis of market value at highest and best use.

6. REVIEW

This Procedure will be reviewed within one year of the election of every new Council.

7. APPLICATION OF ESD PRINCIPLES

ESD Principles are considered through the provisions of the procedure as outlined in Clause 4.

DE21.120 Development Application – DA21/1527 – 5 The Concourse Cambewarra Village – Lot 2011 DP 105276

DA. No: DA21/1527/4

HPERM Ref: D21/351366

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

Attachments: 1. s4.15 Assessment Report (under separate cover) [⇒](#)
2. Draft Determination - Refusal [↓](#)
3. Report - Clause 4.6 Exception (under separate cover) [⇒](#)

Description of Development: Alterations and additions to existing dwelling including second storey addition involving a clause 4.6 exception to the building height limit (SLEP 2014)

Owner: Luke Neil Jennings & Dianne Grace Campbell

Applicant: Nest Residential Design Pty Ltd

Notification Dates: 8 June 2021 – 24 June 2021

No. of Submissions: One (1) in objection

Purpose / Reason for consideration by Council

This matter relates to a Clause 4.6 exception sought to Shoalhaven LEP 2014 height limit. The extent of the variation is greater than 10% and the variation must be reported to the elected Council for determination.

This Report recommends refusal of the Development Application on the basis the variation has not been justified. In accordance with the Council's resolution on 7 April 2020, the matter needs to be reported to the Development & Environment Committee.

If the application were to be determined by way of approval, Council is able to assume the concurrence of the Secretary's concurrence.

Recommendation (Item to be determined under delegated authority)

That development application DA21/1527 for alterations and additions to existing dwelling including second storey addition involving a clause 4.6 exception to the building height limit (SLEP 2014) at 5 The Concourse CAMBEWARRA VILLAGE - Lot 2011 DP 1052766 be determined by way of refusal for the reasons set out in the Notice of Determination (Attachment 2) to this report.

Options

1. Refuse the development application (DA) in accordance with the recommendation.

Implications: The application would not proceed. The applicant can 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.

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2. Approve the application subject to recommended conditions of consent.

Implications: Council would have to determine the grounds on which the application is to be approved. This would include reasons to support the development having regard to section 4.15 considerations. Under some circumstances, third parties (i.e. objectors) can seek a judicial review of Council's decision in the NSW Land and Environment Court.

3. Alternative recommendation.

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

Location Map



Figure 1 – Location Map – Subject Site



Figure 2 – Location Map – Locality

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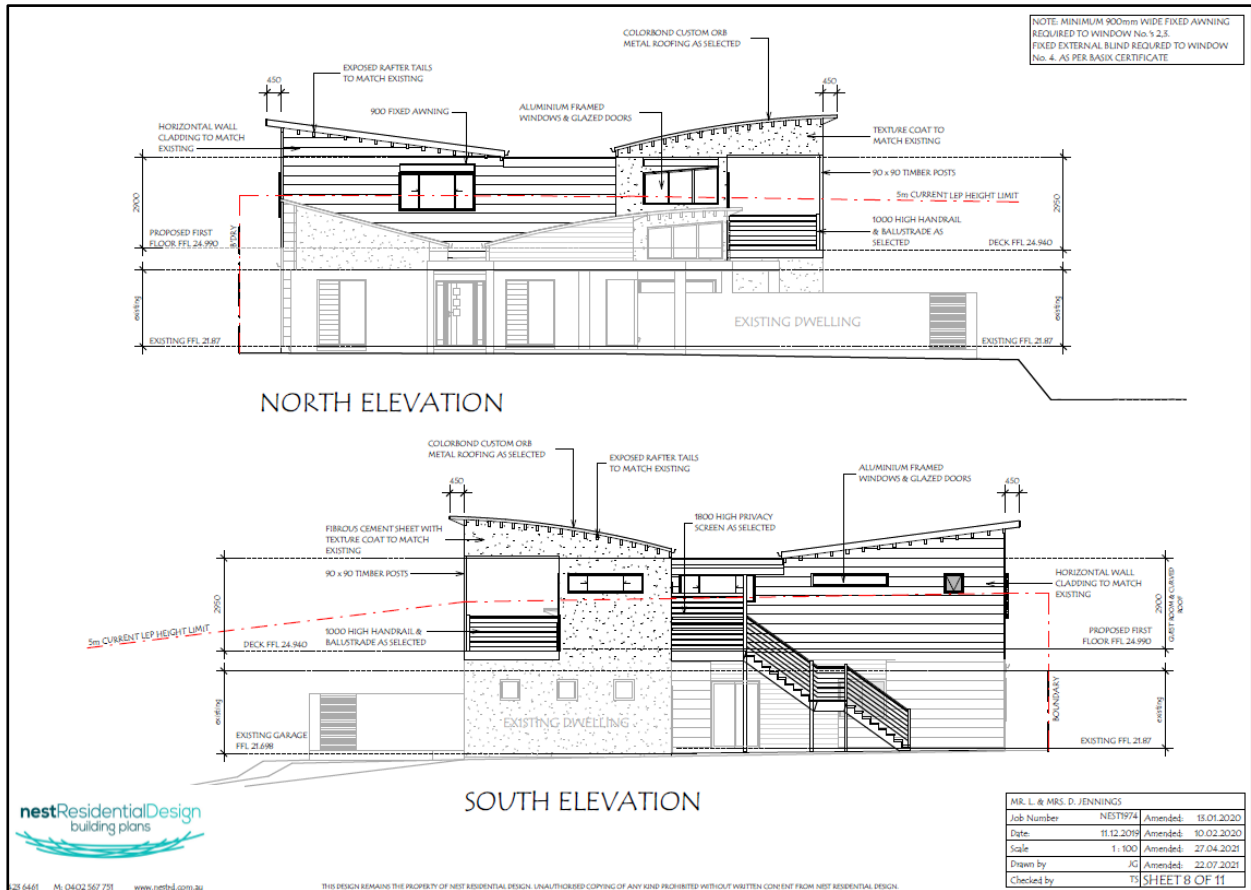


Figure 4 – Elevation Plan – North/South

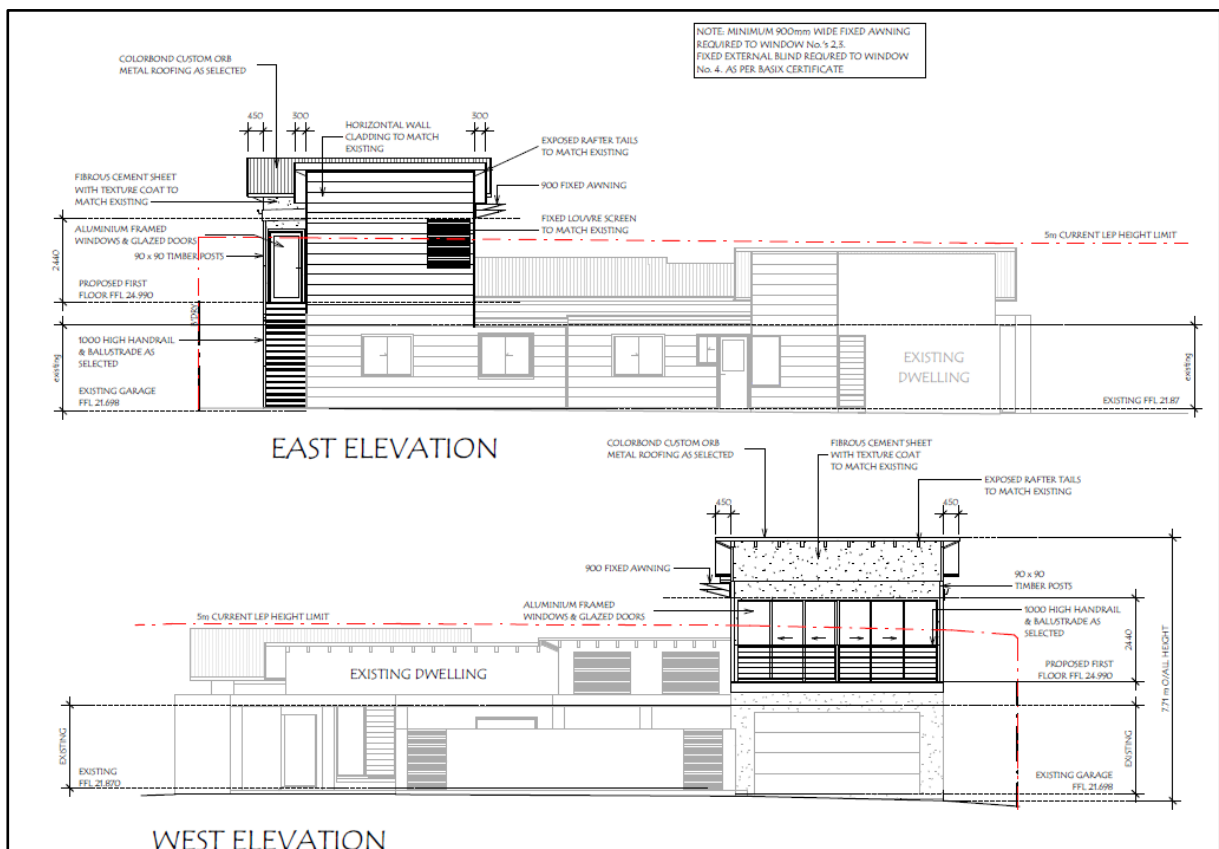


Figure 5 – Elevation Plan – East/West

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Subject Land

The subject site is located at 5 The Concourse, CAMBEWARRA VILLAGE - Lot 2011 DP 1052766 (refer to Figure 1).

Site & Context

The development site has an area of 711.90 m² and is zoned R2 - LOW DENSITY RESIDENTIAL under the *Shoalhaven Local Environmental Plan 2014 (SLEP 2014)*.

The subject site is an irregularly shaped corner lot with primary frontage towards The Concourse and secondary frontage towards The Terrace. The site is sloped towards the street, and it is accessed via The Terrace.

The subject site is not identified as bushfire prone land per council mapping nor is flood liable.

The site currently has a single dwelling and swimming pool. It is located within an area of established dwellings.

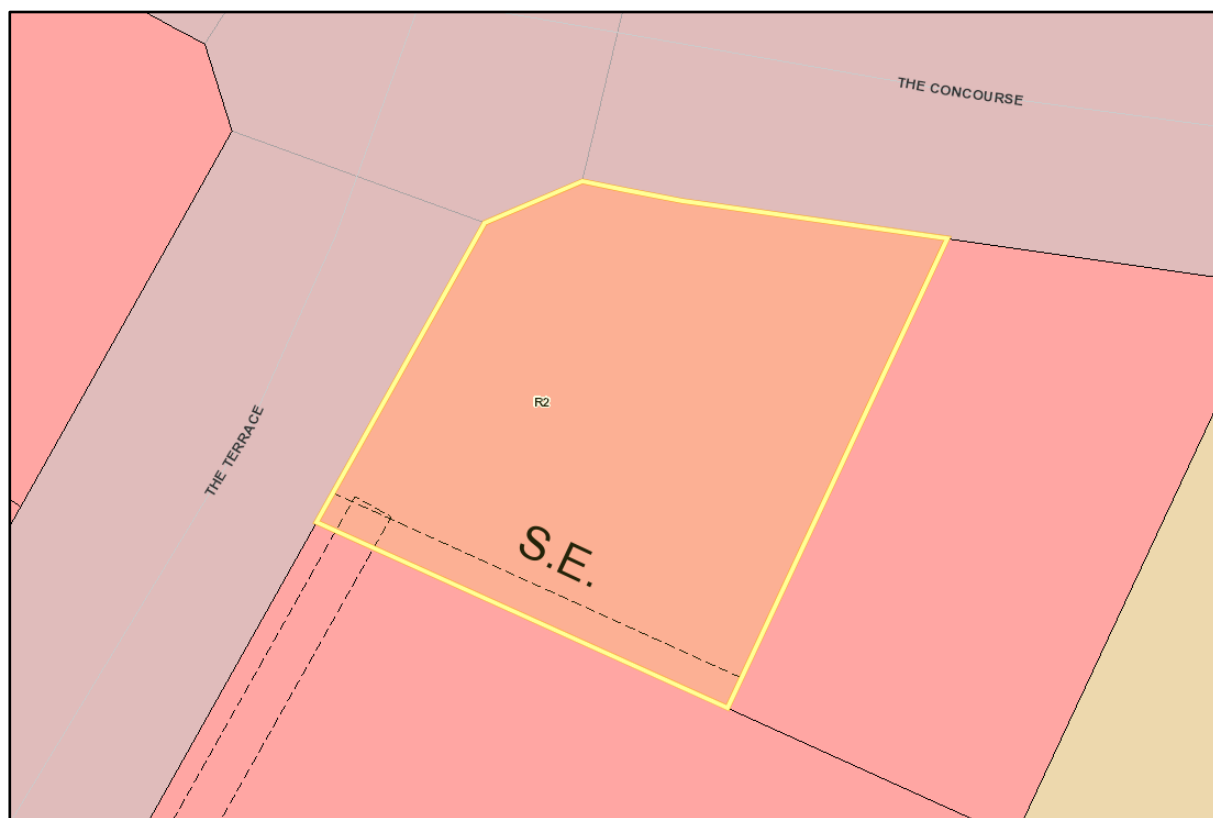


Figure 6 – Zoning Extract

History

The site was created as a residual lot (PT 133) within the initial Deposited Plan under the subdivision consent SF8832 and was registered on 12 June 2002. The following restriction as to user was created under SF8832, although, PT 133 was not burdened by the restriction:

“No building shall be constructed on any lot burdened unless its structure (not including vents, aerials, chimneys or similar minor facilities) is no higher than the horizontal plane which is five metres above the highest point of the natural ground to be occupied by the building. If the natural slope allows, two storey and/or split-level construction shall be allowed for part of the building providing the building complies with the above height restriction”.

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Lot PT133 was further subdivided into two lots (the subject site Lot 2011, and Lot 1012) under SF9236 which was approved on 5 March 2003 and registered on 13 May 2003.

The subdivision consent for SF9236 imposed a similar condition, that the maximum permissible height limit be 5m for the lot burdened. However, this restriction as to user does not appear to have been created on the 88B instrument.

The following is the development application history for the subject site:

Darts - since 1st July 2005						
Application	Appl. Date	Application Type	Proposal	Status	Completed	
DR21/1490	24/05/2021	Sewer Connection (Amended)	Alterations & Additions to Existing Dwelling	Incomplete		
DA21/1527	24/05/2021	Development Application	Alterations & Additions to Existing Dwelling	Incomplete		
DR20/1026	17/01/2020	Sewer Connection (Amended)	First Floor Additions to Create Detached Habitable Room	Withdrawn	21/01/2021	
DA20/1031	17/01/2020	Development Application	First Floor Additions to Create Detached Habitable Room	Withdrawn	21/01/2021	
OC05/3426	29/09/2005	Final Occupation Certificate	Swimming Pool (In Ground)	Approved	29/09/2005	

Plain Sailing - since 2nd September 1996				
Application	Appl. Date	Proposal	Status	Status Date
DA04-2747	05/08/2004	Swimming Pool (In Ground)	Approved (T)	01/09/2004
DA03-1548	20/02/2004	New Dwelling (Urban)	Approved (T)	20/02/2004
DA03-1548	07/03/2003	New Dwelling (Urban)	Approved (T)	17/04/2003
DA03-1548	07/03/2003	New Dwelling (Urban)	Approved (T)	06/04/2004
DR03-1268	07/03/2003	Sewer Application	Approved (P)	17/04/2003

Figure 7 – Building and Development Applications Extract

Previous Development Application (DA20/1031)

The current application is largely the same development as that proposed by DA20/1031, with some minor changes to include a 1.8m high privacy screen on the south elevation at the top of the external stairs. The layout and overall height of the proposed second storey additions at 7.71m and extent of the clause 4.6 exception remains unchanged in this DA compared to the previously proposed DA20/1031. This height represents a 54.2% variation to the 5 m standard (i.e. $2.71/5.0 = 0.542$ or 54.2%).

DA20/1031 was reported to the Development and Environment Committee meeting on 1 September 2020 for consideration of the clause 4.6 exception. The recommendation was that Council support the proposed clause 4.6 exception to building height limit and that the application be referred back to staff for determination.

MIN20.606 resolved not to support the clause 4.6 exception. The Applicant for DA20/1031 was informed of this resolution (MIN20.606) and the application was subsequently withdrawn.

DA20/1031 received one (1) public submission objecting to the development. The issues raised in the objection to DA20/1031 are largely the same as the issues raised in the objection received in relation to DA21/1527. These relate to height, bulk and scale of the development and non-compliance with building height limit, privacy and overshadowing impacts, increased parking demand as a result of the additions and potential use of the additions as a secondary dwelling or tourist accommodation.

This new development application is referred to the Development and Environment Committee for determination. The difference with this report is it includes the entire assessment and not just the clause 4.6 height variation.

Issues

Clause 4.3 (Height of Buildings) of SLEP 2014

Clause 4.3 of the Shoalhaven Local Environmental Plan 2014 specifies the maximum height of a building must not exceed that shown on the 'Height of Buildings Map'. In this instance, the subject site is limited to a maximum height of 5 metres.

The proposed development does not comply with this development standard and is seeking to have a maximum height of 7.71m. This represents a 54.2% variation to the development standard. The extent of the building that will be above the 5m height limit is shown below:

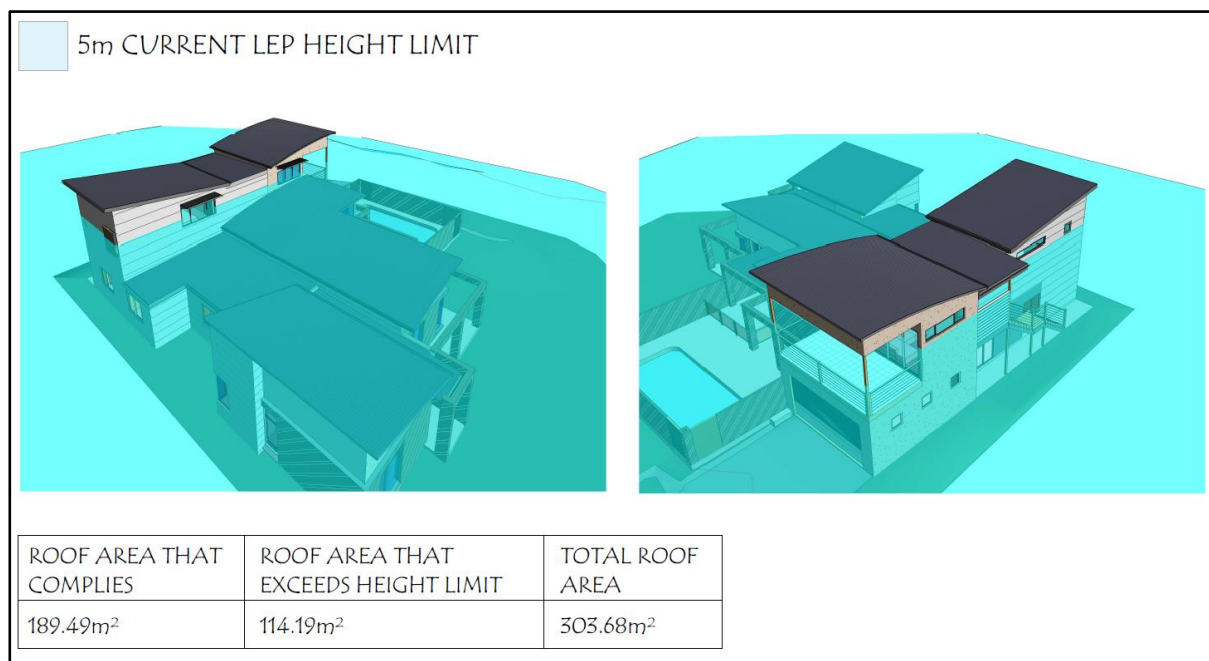


Figure 8 – 3D Model

Clause 4.6 (Exceptions to Development Standards) of SLEP 2014

Pursuant to clause 4.3 of the *Shoalhaven Local Environmental Plan 2014*, the prescribed height limit for the subject site is 5m. The proposed development seeks an exception to the development standard, to allow the resultant building to stand 7.71m above existing ground level.

With a clause 4.6 exception to a development standard, Council must consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

Council must be satisfied that:

- The applicant's written request has adequately addressed the matters above (i.e. that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard); and
- The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out; and

- c) the concurrence of the Planning Secretary has been obtained.

Extracts from Applicant's Submission

3.1 JUSTIFICATION

The design of the proposal is influenced by the existing development, which itself is influenced by the constraints associated with the development of a corner allotment, and a desire to present well to both street frontages. This has resulted in the existing dwelling being sited in the south-eastern corner of the property to provide generous setbacks to both The Concourse and The Terrace. This, coupled with the siting of the existing pool, significantly limits the area where any additional floor area can be provided such that a first-floor addition must be considered.

Noting that the existing dwelling has a total living area of some 219.6 m², and which results in a floor space ratio of 0.3:1, it is not unreasonable to anticipate that additional floor area could be proposed when the allowable floor area of 0.5:1 applies under the Shoalhaven DCP 2014. This would allow for an additional 136 m² of floor area.

...

9.0 CONCLUSION

Under the circumstances outlined above it is my view that this objection made pursuant to Clause 4.6 is well founded and strict compliance with Clause 4.3 (2) of Shoalhaven LEP 2014 would be unreasonable under the specific circumstances of this case as:

- *The building is well designed featuring an interesting design, use of variable building materials, and a design that is articulated to break up the apparent bulk of the building;*
- *The objectives that underpin the development standard outlined in Clause 4.3 of Shoalhaven LEP are achieved notwithstanding non-compliance with the development standard;*
- *This proposal is consistent with state and regional planning provisions applying to this land;*
- *The proposal is consistent with the objectives of the R2 Low Density Residential zone that applies to the land;*
- *The proposed development is representative of the existing character of the locality;*
- *The building presents well to both The Terrace and The Concourse with a contemporary design aesthetic, consistent with the existing dwelling;*
- *The building is well set back from both The Concourse and The Terrace which provides a better planning outcome for the general public;*
- *The proposal incorporates a high architectural quality in design that will contribute to the character of the development. The design adopts a composition of building elements, materials, textures, colours which will have a positive effect in terms of the scale and appearance of the development in context of this local area;*
- *The non-compliance is relatively minor as the section of the building which exceeds the height maximum is only a portion of the overall development; and*
- *The subject site is eminently suitable for the proposal development.*

Although well considered, the eleven metre [correct to 5m] height restriction

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encapsulated within Clause 4.3 (2) should not be rigidly enforced as a development standard in all cases.

This submission demonstrates that the variation to the development standard sought by this proposal is consistent with the underlying objectives of the state, regional and local planning provisions for this site. It is my opinion that strict compliance with this development standard under the specific circumstances of this case would be unreasonable and unnecessary.

Discussion

The application has been supported by a written statement as required by clause 4.6 of Shoalhaven LEP 2014.

Consideration of the applicant's clause 4.6 statement is outlined below.

Unreasonable or Unnecessary

Clause 4.6 requires that Council be satisfied that the applicant's clause 4.6 statement demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Extract from applicant's clause 4.6 statement

8.1 COMPLIANCE WITH STANDARD UNREASONABLE OR UNNECESSARY

It is our view that requiring compliance with the maximum height requirement of Clause 4.3 (2) of the SLEP 2014 under the specific circumstances of this case would be unreasonable and unnecessary.

Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC827 (21 December 2007) provides commentary with respect to establishing whether compliance with a development standard is unreasonable or unnecessary under the specific circumstances of a particular matter. Whilst this case related to the use of SEPP 1, given the similarities between the objects of SEPP No. 1 and Clause 4.6 the findings of Preston CJ does provide guidance with respect to the implementation of this clause.

According to Preston CJ one of the most commonly invoked ways to establish that compliance with the development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

As outlined in Section 6.0 above, the objectives underpinning the development standard – in this instance the maximum building height of five metres is a relevant consideration in determining whether strict compliance with that standard under the specific circumstances of the case would be unreasonable or unnecessary.

The purpose or objective of the height of buildings standard is expressly stated in Clause 4.3 as follows:

- a) *to ensure that buildings are compatible with the height, bulk, and scale of the existing and desired future character of a locality,*
- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

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

The above objectives in my view provide a clear appreciation of the purposes underpinning the height of buildings development standard outlined in Clause 4.3 (2) and which applies to the subject site.

This written submission will demonstrate that this proposal will not prevent the above objectives from being achieved notwithstanding non-compliance with the five-metre height restriction development standard in the specific circumstances of this case.

Having regard to the above objectives, it is my view that the proposal is not inconsistent with these for the following reasons:

- The design of the development is compatible with the bulk and scale of the existing development on the site and in the locality. In this regard, the proposed addition is clearly an upper level, however as outlined above, the existing dwelling already features an oversized highlight window that gives the impression of the building containing an upper level (refer **Plate 1**). This is replicated in the dwelling to the south (**Plate 2**) which features a dormer style window, typical of a building containing an upper level.
- Furthermore, the existing dwelling located at No. 1 Lebene Grove, Cambewarra (an extension of The Terrace) is clearly of two stories in height with a level above garaging. The 5 m limit imposed by the Height of Building Map also applies to this property and has clearly been breached by the resultant development on that allotment. As such, it is evident that Council has not strictly applied the 5 m height limit.
- The Height of Building Map that applies to land on the western side of the Terrace (i.e., immediately opposite the subject site) stipulates an 8.5 m limit and this has resulted in dwellings two storeys in height.
- The subject site does not immediately adjoin rural land, but adjoins other residential zoned land and the proposed development is appropriate in a residential setting, and will suitably transition to the nearby pastoral landscape.
- The proposal incorporates a high architectural quality in its design that will contribute to the character of the development and its context within the public domain. The design adopts a composition of building elements, materials, textures, colours which will have a positive effect in terms of the scale and appearance of the development in context of this local area and which matches the existing dwelling.
- The design of the development has been undertaken in compliance with the statutory requirements of both the SLEP 2014 and SDCP 2014. The minor breach to the maximum building height limit notwithstanding the proposed development complies with the relevant statutory requirements which relate to the anticipated bulk scale and size of development envisaged for this site.
- The placement of floor space is constrained by the corner siting, and a desire to present well to both street frontages through the provision of generous setbacks to The Terrace and The Concourse, which will enhance the broader appeal of the development and provide greater public benefit.
- The extent to which the proposal exceeds the maximum building height limit is only minor and in consideration of the overall development. The proposal will have a compliant height limit for the majority of the development, only a modest section of the overall development exceeds the height limit and in this regard, it is noted that 189 m² of roof area complies, as opposed to 114 m² of non-compliant area. This represents 62.4% of the total roof area as being compliant.

- The proposed encroachment above the 5 m height limit does not result in significant additional visual impacts, disruption of views, loss of privacy or loss of solar access to existing development. In this regard, the proposal:
 - Maintains privacy to the:
 - South, through the use of highlight windows which are predominantly used along the southern elevation of the additions where privacy issues are concerned. Elsewhere, windows and the balcony overlook only the adjoining driveway,
 - East, by presenting with as the ensuite bathroom window is provided with a fixed screen,
 - North, the windows overlook the roof of the existing dwelling
 - West, the balcony overlooks The Terrace public road
 - Does not result in any additional view loss;
 - Does not unreasonably overshadow adjoining dwellings, and in particular the dwelling sited on the property to the south which is well set back from The Terrace and subject site such that overshadowing mostly affects the driveway.

That property also contains an inground swimming pool which may be impacted by the first storey addition. In this regard, Shadow Diagrams prepared at the winter solstice do show that the addition will overshadow the pool at midday and until approximately 3:00 pm. However, noting that the pool is unlikely to be used during the colder winter months, Shadow Diagrams were also prepared to show the extent of overshadowing at the Summer solstice and Autumn/Spring equinoxes. These show that for these periods, the pool is not overshadowed at all between 9:00 am and 3:00 pm. Consequently, it is considered that the proposal will not unreasonably overshadow the inground pool.

- The subject site, adjoining properties and nearby areas are not identified as containing identified heritage items, or as being within a heritage conservation area.

Given the factors outlined above, it is our view that the proposal has been designed in a manner that is consistent with the scale of development undertaken in this area having regard to the planning provisions that apply to the land; and incorporates design measures to ensure compatibility with established residences in the locality. As a consequence, it is considered that strict compliance with the standard is unreasonable under the circumstances.

[Plate 1, 2 and 3 from applicants variation statement inserted for reference] –



Plate 1: Existing dwelling.



Plate 2: Existing dwelling.

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Plate 3: Adjoining dwelling to south.

Commentary from Development Assessment Staff

The applicant's clause 4.6 statement seeks to demonstrate that compliance with the development standard (building height limit) is unreasonable and unnecessary in the circumstances of the case by showing that the objectives of the development standard are achieved notwithstanding noncompliance with the development standard. This is one of the methods identified by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC827.

The objectives of the building height limit set by clause 4.3 of Shoalhaven LEP 2014 (the development standard) are as follows -

- a) to ensure that buildings are compatible with the height, bulk, and scale of the existing and desired future character of a locality,
- b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

Compatibility with the existing and desired future character of the locality

The subject site is part of a small parcel of lots within Cambewarra Village that are subject to a 5m building height limit. As a result, the subject site and surrounding lots that fall under the 5m building height limit are occupied by single storey dwellings. As noted in the applicant's clause 4.6 statement, the dwelling at 1 Lebene Grove, Cambewarra is the exception to this height limit, with a peak building height of 6.78m approved by DA04/1670.



Figure 9: Aerial image highlighting subject site (yellow) and 1 Lebene Grove (blue)

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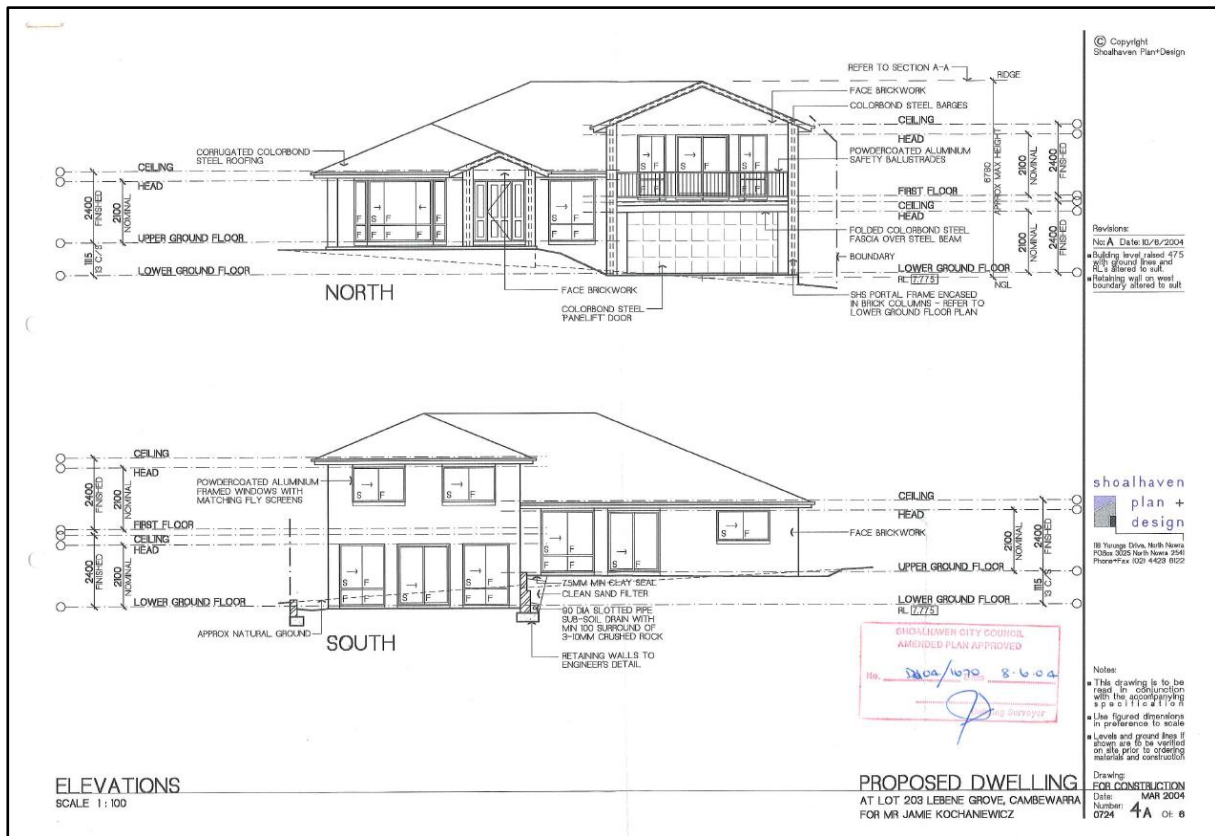


Figure 10: Approved Elevation Plans for DA04/1670



Figure 11: Image of existing dwelling at 1 Lebene Grove

The allotments on the western side of The Terrace and southern side of The Concourse as well as other allotments throughout the locality fall under an 8.5m building height limit. Under the 8.5m maximum building height mapping, single and two-storey dwellings of various building heights are observed.

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Figure 12 – Height of Building Mapping Extract (subject site highlighted in yellow)

The lots on the northern side of The Concourse and the eastern side of The Terrace have been intentionally mapped in the Shoalhaven LEP 2014 as having a maximum building height limit of 5m. This building height limit is similarly reflected in restrictions on the title of these allotments and for the most part, all lots within the mapped 5m maximum building height limit area are single storey and comply with the 5m height limit. Therefore, the desired future character of the locality is to maintain a 5m height limit and resulting single storey character for these areas.

The applicant's clause 4.6 statement points to Plate 1, 2 and 3 as justification that the proposed second storey additions are compatible with the surrounding area. These Plates show recessed highlight windows and dormer attic-style windows which have been purposefully integrated into the roof designs so that the buildings present as single storey as opposed to two-storey buildings.

The dwelling at 1 Lebene Grove does exceed the 5m building height limit however, this property is located over 200m away from the subject site and it is not representative of the dominant character of the 5m building height mapped area.

The applicant's variation statement has not adequately demonstrated that the proposal is compatible with the height, bulk, and scale of the existing and desired future character of a locality.

Privacy

The applicant has supported the application with written declarations from the landowners of 4 The Concourse, 3 The Concourse and 2 The Terrace advising they have no objection to the proposed development.

As the subject site is a corner lot, the primary and secondary frontages do not directly adjoin properties. The proposed development therefore does not give rise to privacy concerns along the Northern and Western boundaries. The subject site directly adjoins two properties, 3 The Terrace (to the south) and 3 The Concourse (to the east).

The eastern elevation of the proposed development adjoins 3 The Concourse. The eastern elevation features a louvre screen that faces the adjoining property. Direct views into the private open space and living areas of 3 The Concourse are therefore avoided.

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As noted in the applicant's clause 4.6 statement privacy to adjoining residences has sought to be maintained by provision of highlight windows and privacy screens. Although suitable privacy measures have been incorporated into the design to maintain privacy to adjoining residences from upper-level rooms, the balcony area and the top of the external staircase, the application has not demonstrated that privacy to adjoining residences will be maintained when ascending or descending the external staircase. The staircase will place people in an elevated position along the southern boundary which will overlook the swimming pool and principal private open space area for the adjoining residence at 3 The Terrace. Although these overlooking impacts from the external stairs would be only transitory, due to the elevated nature of the development, they are not insignificant.

The applicant's clause 4.6 statement has not adequately demonstrated that the proposal has been designed to minimise loss of privacy to adjoining development.

Solar Access

In accordance with acceptable solution A10.3 of section 5.6 – Solar and Daylight Access of *Shoalhaven DCP 2014*, the application has been supported by shadow diagrams showing that the development maintains at least 3 hours of direct sunlight between 9am and 3pm on 21 June to adjoining development to:

- 10m² of private open space; and
- 50% of windows and glazed doors of north facing living areas; and
- North facing roofs and existing solar collectors.

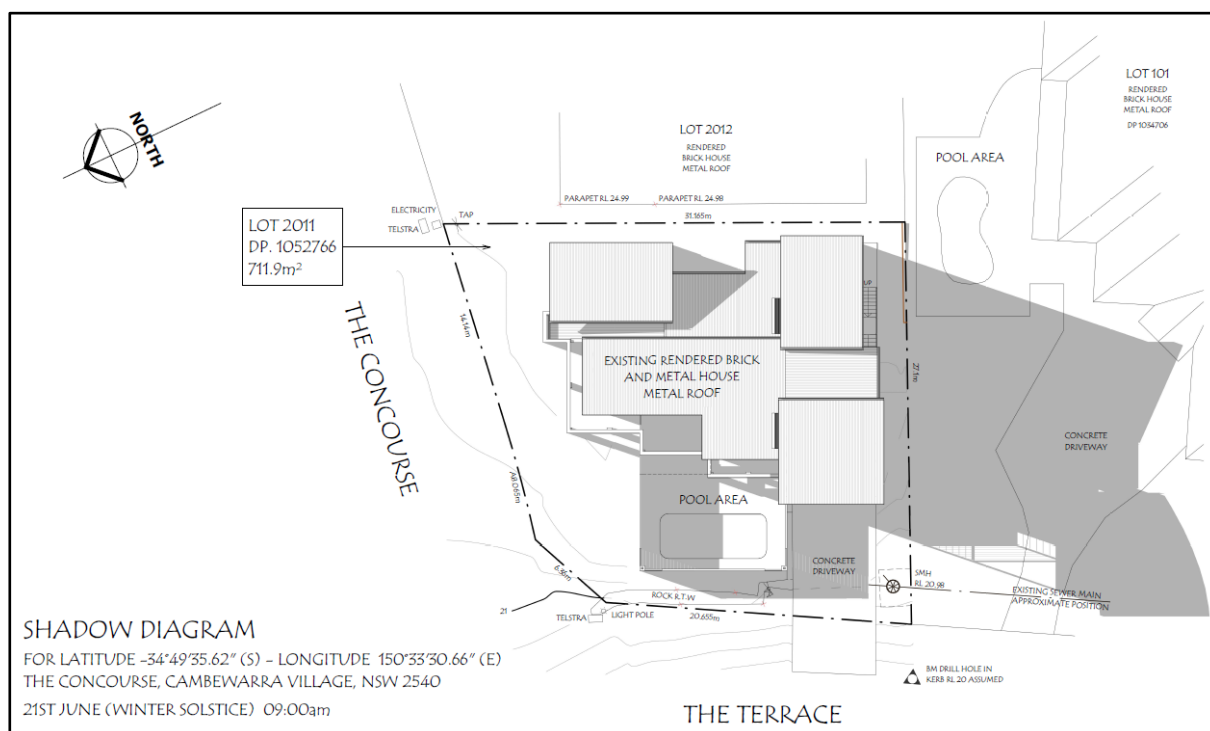


Figure 13 – Shadow Diagram – 9:00am

DE21.120

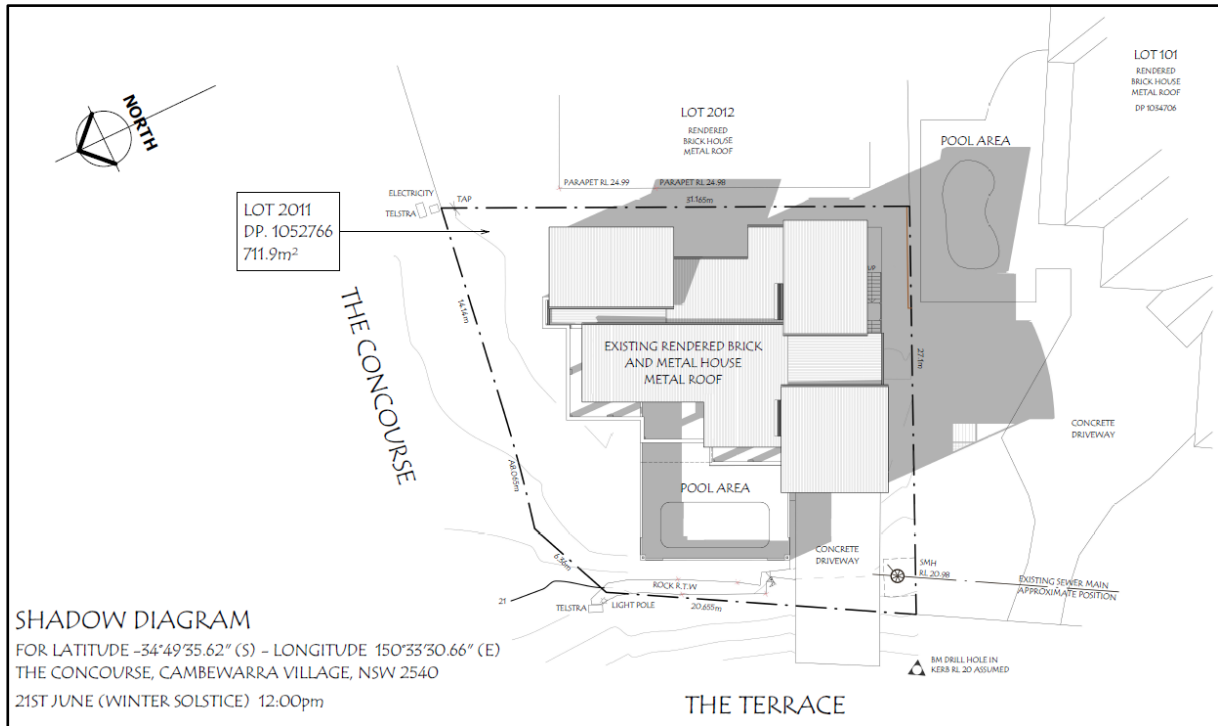


Figure 14 – Shadow Diagram – 12:00pm

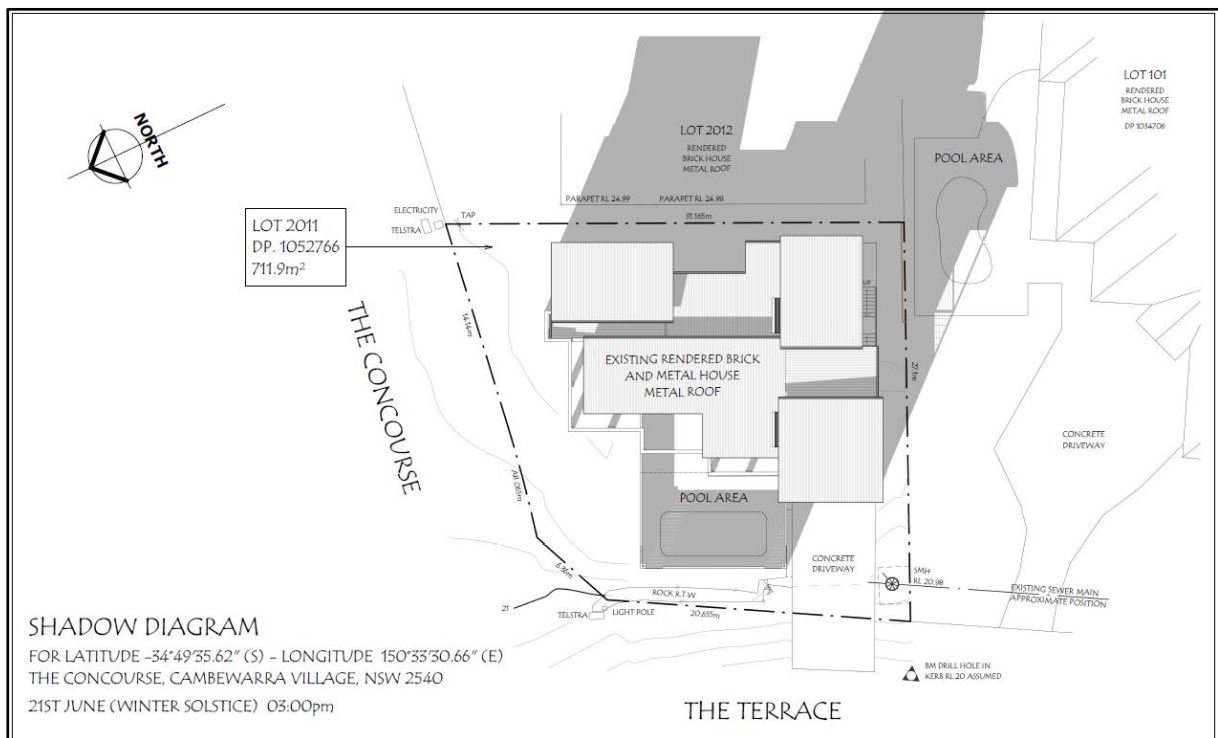


Figure 15 – Shadow Diagram – 3:00pm

The applicant's clause 4.6 statement indicates the overshadowing impacts are largely confined to the front driveway and pool area of the residence at 3 The Terrace (property to the south) and suggests that the pool is unlikely to be used during the colder winter months. The application has also been supported by shadow diagrams for the summer solstice and Autumn/Spring equinoxes, all of which show minimal overshadowing of the adjoining residence and associated private open space.

The Land and Environment Court in *The Benevolent Society v Waverley Council* [2006] NSWLEC1082 has established the following planning principles and considerations that should be considered when assessing solar access and overshadowing impacts:

- The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.
- The amount of sunlight lost should be considered, as well as the amount of sunlight retained.
- Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.
- For a window, door, or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.
- For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.
- Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be considered in a qualitative way, in particular dense hedges that appear like a solid fence.
- In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.

The subject land is affected by a 5m building height limit under the Shoalhaven LEP 2014 and as such, there is a reasonable expectation that overshadowing impacts would be limited to that created by a 5m building. The pool and private open space at 3 The Terrace (property to the south) are situated on the northern side of the allotment and with the 5m building height limit, it is reasonable to expect that these areas receive adequate solar access both during Summer and Winter.

The pool at 3 The Terrace is enclosed by an approximate 1.8m high solid wall/fence on the north and west. The pool is located approximately 1.5m from these walls/fences. The overshadowing impacts of these existing walls and fences have not been specifically considered by the applicant, however it is likely that they would result in some overshadowing of the pool area, especially during winter.

The applicant's clause 4.6 statement has identified that solar access is maintained to the adjoining residence and associated pool and private open space areas during Summer, Spring and Autumn. There are overshadowing impacts during Winter.

Although this level of overshadowing impact from a two-storey dwelling to an adjoining pool area may not be unreasonable in other contexts, the 5m building height limit in this area implies there is a greater expectation with regard to solar access and that overshadowing of adjoining properties should be minimal.

Given the building height limit and the reasonable expectation for solar access, it is the development assessment staff's opinion the Applicant's clause 4.6 statement has not sufficiently demonstrated the development meets the objectives of clause 4.3 in minimising loss of solar access to existing development.

View sharing

The subject site is located within Cambewarra Village which features expansive land views including Cambewarra Mountain. The views are not considered 'Iconic Views' however various partial and whole views of Cambewarra Mountain and surrounding lands are observable from the subject site and the locality. The proposed development is not expected to unreasonably diminish these views.



*Figure 16 – Image showing direction of views to mountain ranges.
Subject site highlighted in yellow.*

The most significant view from the subject site and adjoining properties are to the North and West. Mountain views to the North and West of the subject site are observable and unobstructed from the public domain. As the proposed development is significantly setback from the street reserve, views from the public domain are not expected to be impacted. Furthermore, the proposed addition does not impede the Northern and/or Western views for adjoining properties to the North, West, and East of the subject site.

For the adjoining property to the South of the subject site, 3 The Terrace, the views from the front and rear boundaries are West and East facing respectively. The North-facing view is observable from the side boundary of 3 The Terrace, where the proposed development of number 5 The Concourse is located. Whilst the proposed development may result in some view loss, the impact is not considered to be severe or devastating. Furthermore, under the NSW Land & Environment Court Planning Principles, the expectation to retain side and sitting views is considered unrealistic. Especially where Eastern, Southern and Western facing views will remain unobstructed as a result of the proposed development.

DE21.120

Overall, the impact on view sharing as a result of the proposed development is considered minor. Whilst a departure from the prescribed height limit, the proposed development and contravention of the development standard would have minimal visual impact and not result in the loss of views.



Figure 17 – North-facing images along The Concourse

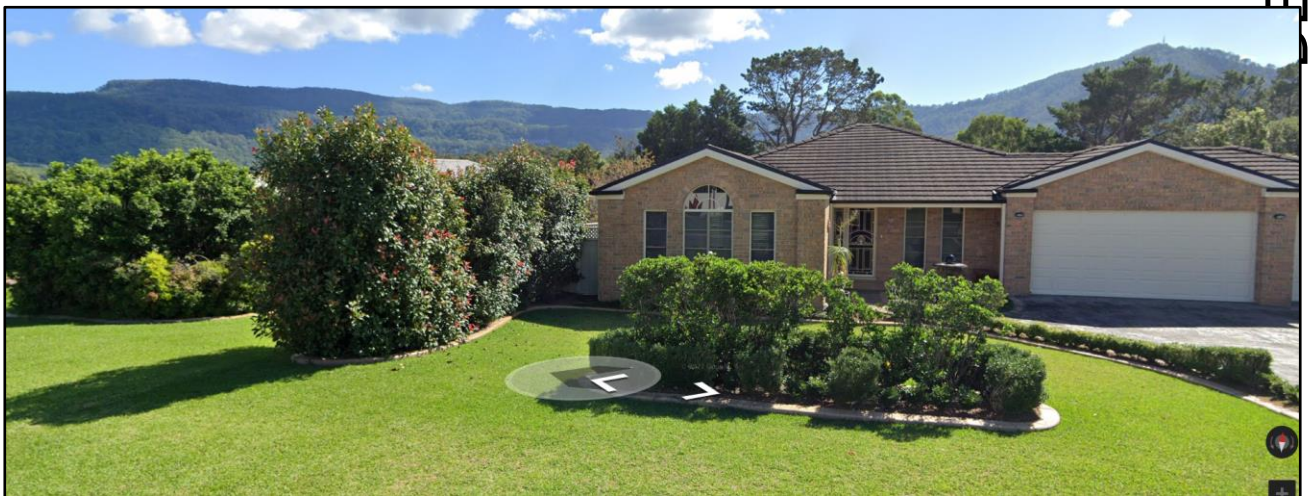


Figure 18 – North-facing images along The Concourse



Figure 23 – North-facing views from The Terrace



Figure 24 – West-facing views from The Terrace



Figure 25 – South-facing views from The Terrace

Heritage Impact

The objectives of clause 4.3 of Shoalhaven LEP 2014 requires consideration of heritage impact. The applicant's clause 4.6 statement has identified the subject site and adjoining properties are not identified as containing heritage items, or as being within a heritage conservation area. The proposed development and exceedance to the building height limit would not have an adverse heritage impact.

Summary of Clause 4.3 Objectives

The applicant's clause 4.6 statement has not demonstrated the proposed development will achieve the objectives of clause 4.3. Specifically, the application does not demonstrate that the proposed development is compatible with the height, bulk, and scale of the existing and desired future character of the locality, or that the proposal will minimise privacy loss and loss of solar access to existing development.

Sufficient Environmental Planning Grounds

Clause 4.6 requires Council to be satisfied the applicant's written statement demonstrates there are sufficient environmental planning grounds to justify contravening the development standard. Environmental planning grounds are matters relating to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979*, including the objects of the Act.

Extract from applicant's clause 4.6 statement

8.2 ENVIRONMENTAL PLANNING GROUNDS THAT JUSTIFY CONTRAVENING DEVELOPMENT STANDARD

The written request is also required to demonstrate that there are sufficient environmental planning grounds to justify contravening the five-metre height restriction.

- The proposal is not inconsistent with state and regional planning provisions applying to this land.
- The subject site, being a corner allotment, is constrained by the need to observe appropriate setbacks to both street frontages, and the current proposal to develop an additional level is a preferred planning outcome.
- The proposal is consistent with the objectives and is permissible within the R2 Low Density Residential zone that applies to the land as demonstrated below.
- Despite the non-compliance with the five-metre height restriction, the proposal is consistent with the stated objectives of Clause 4.3 as they relate to the building height requirements as outlined above in Section 8.1 of this written request.
- The proposed development is representative of the envisaged character of the locality and other dwellings in the locality.
- The subject site is eminently suitable for the proposal development.

Commentary from Development Assessment Staff

The points listed in the applicant's clause 4.6 statement do not provide sufficient environmental planning grounds to justify contravening the 5m building height limit.

As established in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, a clause 4.6 statement must justify the aspect or element of the development that contravenes the development standard, not the development as a whole, and why that contravention is justified on environmental planning grounds.

The points listed in the applicant's clause 4.6 statement do not justify the exceedance to the building height limit. Rather, they only discuss why the development as a whole is suitable, as opposed to how the exceedance to the building height limit furthers the objects of the *Environmental Planning and Assessment Act 1979*.

Public Interest

Clause 4.6 (4)(a)(ii) requires that Council be satisfied the proposed development will be in the public interest because it is consistent with the development standard objectives and the objectives of the zone.

The subject site is zoned R2 Low Density Residential. The objectives of the R2 Low Density Residential Zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.*

Whilst the proposal does not contravene the R2 Low Density Residential zone objectives, it is the development assessment staff's opinion the proposal is not the public interest because of the inconsistencies with the Clause 4.3 objectives.

Planning Secretary's Concurrence

As per Planning Circular (PS20-002), a delegate of Council cannot consider a variation if the development contravenes the numerical standard by greater than 10%. These matters need to be considered by the full Council. In these circumstances, the Secretary's concurrence assumed.

In this instance, staff do not support the variation to the numerical standard. This report recommends refusal for the application for the reasons presented.

Additional Issues

Use of the proposed additions

As shown on the submitted plans, the proposed second storey additions are accessed via external stairs and include a games room, kitchenette (no cooking facilities), guest bedroom, walk in robe and linen storage areas, ensuite and second storey balcony.

The use of the proposed second storey additions could therefore be considered functionally akin to the definition of a detached habitable room which is set out in the Dictionary of Shoalhaven DCP 2014 or a detached studio which is defined in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008; albeit the proposed additions are attached to the existing dwelling.

Detached habitable room 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 cannot be fully self-contained but may contain a bathroom. The room or suite of rooms must not include a kitchen, laundry, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothes-drying room and should rely on the main dwelling house for these purposes, to function as a single dwelling occupancy.

detached studio means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and—

- a) is established in conjunction with a dwelling house, and
- b) is on the same lot of land as the dwelling house, and
- c) is separate from the dwelling house, and
- d) is not used as a separate dwelling house, and
- e) does not contain any cooking facilities.

As the proposed additions are situated above the existing dwelling and accessed via external stairs, if the additions were used for separate occupation and/or short or long-term tourist and visitor accommodation, there would be implications to the classification of the building under the National Construction Code (NCC). This would change the class of the building from a Class 1a to building with Class 2 and Class 3 portions.

Compliance with and consideration of NCC building class is not a matter for consideration in assessment of a development application under Section 4.15 of the Environmental Planning and Assessment Act 1979. However, if Council is of a mind to approve the development application it is important that condition be added to ensure it remains as the single Class 1a building.

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:

One public submission was received in relation to Council's notification of the development. This submission was an objection to the development. The notification was made in

accordance with Council's Community Consultation Policy with letters sent within a 25 metre buffer of the site. The notification was for a 2-week period.

Key issues raised as a result of notification are provided below.

Objection Raised	Assessing officer comments
<p>Building Envelope – The development proposed, located over the garage is exaggerating the built form as it is unable to be disguised.</p>	<p>The proposal is seeking a clause 4.6 exception to the building height limit.</p> <p>The applicant's clause 4.6 statement has not sufficiently demonstrated that the proposed development is compatible with the height, bulk, and scale of the existing and desired future character of a locality as per the objectives of clause 4.3 of Shoalhaven LEP 2014.</p>
<p>Loss of privacy – The location of the development immediately overlooking the in-ground pool area and internal living spaces of my property and the position of the stairs and front door in a location to afford such a direct view is totally in contravention to the DCP intent.</p>	<p>The proposal is seeking a clause 4.6 exception to the building height limit. Although the application has addressed privacy from the upper-level rooms, balcony area and top of the stairs, the applicant's clause 4.6 statement has not sufficiently demonstrated that privacy to adjoining residences will be maintained when ascending or descending the external staircase. The staircase will place people in an elevated position along the southern boundary which will overlook the swimming pool and principal private open space area for the adjoining residence at 3 The Terrace. Although these overlooking impacts from the external stairs would be only transitory, due to the elevated nature of the development, they are not insignificant.</p> <p>The applicant's clause 4.6 statement has not adequately demonstrated that the proposal has been designed to minimise loss of privacy to adjoining development as per the objectives of clause 4.3 of Shoalhaven LEP 2014.</p>
<p>Overshadowing – The in-ground swimming pool is covered by a solar collector and is not afforded 3 hours continuous sunlight between 9am and 3pm on 21 June. Locating the development at the front of the building would have less impact.</p>	<p>The proposal has been supported by shadow diagrams to evidence a minimum of 3 hours of direct sunlight between 9am and 3pm is maintained to adjoining properties on 21 June. The shadow diagrams note that there will be some overshadowing of the pool and private open space area at 3 The Terrace.</p> <p>Considering the 5m building height limit established under clause 4.3 of Shoalhaven LEP 2014, there is a reasonable expectation that overshadowing impacts would be limited to that created by a 5m building and that adequate solar access be maintained to adjoining properties in the Summer and the Winter.</p> <p>The applicant's clause 4.6 statement has not sufficiently demonstrated the development has met the objectives of clause 4.3 in minimising loss of solar access to existing development.</p>
<p>Heights and Setbacks – Locating the addition toward the front of the developed</p>	<p>The proposal is seeking a clause 4.6 exception to the building height limit.</p> <p>The applicant's clause 4.6 statement has not sufficiently</p>

property with an internal access would have achieved this intent but the current proposal fails completely.	demonstrated that the proposed development is compatible with the height, bulk, and scale of the existing and desired future character of a locality as per the objectives of clause 4.3 of Shoalhaven LEP 2014.
Proposed development not complying with development standards for detached habitable rooms and studios	<p>The proposed addition is attached to the main dwelling. The additions do not include a separate laundry or cooking facilities and therefore is reliant on the dwelling for its occupation.</p> <p>If Council is of a mind to approve the development, it is recommended that conditions of consent be included to ensure that the building continues to operate as a single residential dwelling.</p>
Increased parking pressure	<p>Under chapter G21 of the Shoalhaven DCP 2014 a dwelling house requires 2 parking spaces. The existing dwelling provides 2 parking spaces.</p> <p>The proposed development does not give rise to additional parking requirements.</p>
Potential use of the proposed development as a secondary dwelling or tourist accommodation	<p>The proposed development will not be self-contained. The application has been supported by a floor plan that does not include the installation of any laundry or cooking facilities.</p> <p>The proposal is best characterised as alterations and additions to existing dwelling under the SLEP 2014. The proposal is permitted within the zone with the consent of Council.</p> <p>However, noting that the access to the second storey additions are accessed via external stairs, if Council is of a mind to approve the development it is recommended that conditions of consent be included to ensure that the building continues to operate as a single residential dwelling.</p>

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Financial Implications:

Whilst not a consideration pursuant to section 4.15 Evaluation of the *Environmental Planning and Assessment Act 1979*, potential costs may arise for Council in the event of not supporting the requested variation to the height limit and refusal of the application. Such costs may be associated with defending an appeal in the Land and Environment Court of NSW.

Legal Implications

A section 8.2 review and / or an appeal with the Land and Environment Court are possible if the application is refused.

Summary and Conclusion

The proposed development is for second storey additions to an existing dwelling house. The site is a corner block with a site area of 711m². The existing dwelling house and pool on site occupy the majority of the site. As noted by the applicant, there is no other opportunity to

construct additional rooms or floor area for the dwelling without them being second storey additions.

The site is affected by a 5m building height limit under clause 4.3 of Shoalhaven LEP 2014 which effectively limits development to a single storey building. Any upper storey additions would exceed the 5m height limit irrelevant of their design.

The application has been made pursuant to clause 4.6 and has been supported by a written clause 4.6 statement.

There are a series of Land and Environment Court caselaw decisions that are relevant to consideration of clause 4.6 exceptions. These decisions establish that in order to support an exception to a development standard, the applicant's clause 4.6 statement must demonstrate to the satisfaction of Council that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to support the contravention to the development standards. Council must also be satisfied the development and contravention to the development standards is in the public interest.

This report has outlined these considerations and it is the development staff's opinion that the applicant's clause 4.6 statement has not demonstrated that compliance with the 5m building height limit is unreasonable and unnecessary as it has not adequately demonstrated that the exceedance to the building height limit achieves the objectives of clause 4.3 notwithstanding noncompliance with the development standard. Specifically, the application does not demonstrate the proposed development is compatible with the height, bulk, and scale of the existing and desired future character of the locality, or that the proposal will minimise privacy loss and loss of solar access to existing development.

Furthermore, the applicant's clause 4.6 statement has not adequately demonstrated why the why the exceedance to the building height limit is justified on environmental planning grounds.

As the applicant's clause 4.6 statement has failed to demonstrate that the objectives of clause 4.3 of Shoalhaven LEP 2014 have been achieved, the development application and contravention to the development is not considered to be in the public interest.

It is recommended that the clause 4.6 exception not be supported, and the application determined by way of refusal on the following grounds:

1. The applicant's clause 4.6 statement has not adequately demonstrated to Council's satisfaction that compliance with the building height limit set by clause 4.3 of Shoalhaven LEP 2014 is unreasonable or unnecessary in the circumstances of the case. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979)
2. The applicant's clause 4.6 statement has not adequately demonstrated to Council's satisfaction that there are sufficient environmental planning grounds to justify contravening the building height limit development standard set by clause 4.3 of Shoalhaven LEP 2014. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979)
3. 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)
4. Having regard to the above matters to address the relevant provisions of Environmental Planning and Assessment Act, 1979, 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)



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Address all correspondence to

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

shoalhaven.nsw.gov.au     

**NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION
DEVELOPMENT CONSENT**

Environmental Planning and Assessment Act, 1979
DA21/1527

TO:

Nest Residential Design Pty Ltd
PO Box 902
NOWRA NSW 2541

being the applicant(s) for DA21/1527 relating to:

5 The Concourse, CAMBEWARRA VILLAGE - Lot 2011 - DP 1052766

APPROVED USE AND OR DEVELOPMENT:

Alterations and additions to existing dwelling

DETERMINATION DATE:

XXXX

REFUSAL DATE:

XXXX

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:

DE21.120 - Attachment 2

Determination Notice - Page 2 of 3 - DA21/1527

REASONS FOR REFUSAL

1. The applicant's clause 4.6 statement has not adequately demonstrated to Council's satisfaction that compliance with the building height limit set by clause 4.3 of Shoalhaven LEP 2014 is unreasonable or unnecessary in the circumstances of the case. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979)
2. The applicant's clause 4.6 statement has not adequately demonstrated to Council's satisfaction that there are sufficient environmental planning grounds to justify contravening the building height limit development standard set by clause 4.3 of Shoalhaven LEP 2014. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979)
3. 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)
4. Having regard to the above matters to address the relevant provisions of Environmental Planning and Assessment Act, 1979, 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.

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).

Determination Notice - Page 3 of 3 - DA21/1527

SIGNED on behalf of Shoalhaven City Council:

Development Planner
City Development

DE21.120 - Attachment 2

DE21.121 Development Application - DA20/2312 – 42 Duncan Street Huskisson – Lot 5 Sec 9 DP 758530

DA. No: DA20/2312/4

HPERM Ref: D21/341496

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments:

1. Section 4.15 Planning Report (Planning Consultant Report) - 42 Duncan Street Huskisson (under separate cover) [⇨](#)
2. Draft Notice of Refusal - 42 Duncan Street Huskisson [↓](#)
3. Covering Letter - Response from Applicant's Town Planner (First) - 42 Duncan St Huskisson [↓](#)
4. Covering Letter - Response from Applicant's Town Planner (Second) - 42 Duncan St Huskisson [↓](#)
5. Covering Letter - Response from Applicant's Town Planner (Third) - 42 Duncan St Huskisson [↓](#)
6. Architectural Plans (as amended 23.8.21) - 42 Duncan Street Huskisson (under separate cover) [⇨](#)
7. Landscape Plans (as amended 23.8.21) - 42 Duncan Street Huskisson [↓](#)

Description of Development: Demolition of the existing dwelling and shed, construction of multi dwelling housing comprising four by two storey dwellings with a common driveway, and strata subdivision

Owner: AF and CF Developments Pty Ltd, Mikayla Cierra Pty Ltd
Aaron and Carina Ferguson, Adriana Guider

Applicant: Macquarie Grove Homes

Notification Dates: 08/02/2021-24/02/2021

No. of Submissions: Three (3) submissions received, including two (2) by way of objection and one (1) in support.

Purpose / Reason for consideration by Council

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

"The delegation to the CEO be rescinded to determine a development application by refusal until the end of COVID 19 crisis.

The refusal of a development application must only be by Council/Committee resolution."

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

DE21.121

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/2312 for demolition of the existing dwelling and shed, construction of multi dwelling housing comprising four by two storey dwellings with a common driveway, and strata subdivision, Lot 5 Sec 9 DP 758530, 42 Duncan Street Huskisson be determined by way of refusal, for the reasons contained in the Notice of Determination, Attachment 2 of this report.

Options

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

Implications: The development is unable to proceed as applied for and a section (s) 8.2A review may be sought by the applicant or an appeal with the Land and Environment Court of NSW (LEC) is possible in the event of a refusal of the application.

2. Approve the application.

Implications: Council would need to determine the grounds on which the application can be approved, having regard to section 4.15(1) considerations.

3. Alternative recommendation.

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

Location Map



Figure 1. Location Map

DE21.121



Figure 2. Locality map

Background

Proposed Development

The DA seeks approval for the demolition of the existing dwelling and shed, and construction of multi dwelling housing comprising four by two storey dwellings with a common driveway, and strata subdivision. Figures 3 – 6 below provide excerpts of the proposed plans.

The multi-dwelling housing comprises of four (4) x two-storey dwellings as follows:

- Dwellings one and two (to the front or western part of the site):
 - both have two bedrooms plus two spaces (nominated as lounge areas) that are of similar size to a bedroom and could be used / adapted as a bedroom. Unit 1 includes a rumpus on the ground floor. Unit 2 has a family room at ground level.
 - will be attached to each other and oriented north-south, with the driveway to the south and open space generally to the north.
 - have a single car garage.
- Dwellings three and four (to the rear or eastern part of the site)
 - both dwellings will have five bedrooms.
 - will be attached to each other and oriented east-west, with the “L” shaped driveway to the west and private outdoor space to the east, between the rear building line and the rear (eastern) boundary.
 - have double car garages.
- A total of eight (8) car spaces provided onsite inclusive of two (2) visitor spaces; and
- Vehicular access from a shared driveway off Duncan Street.

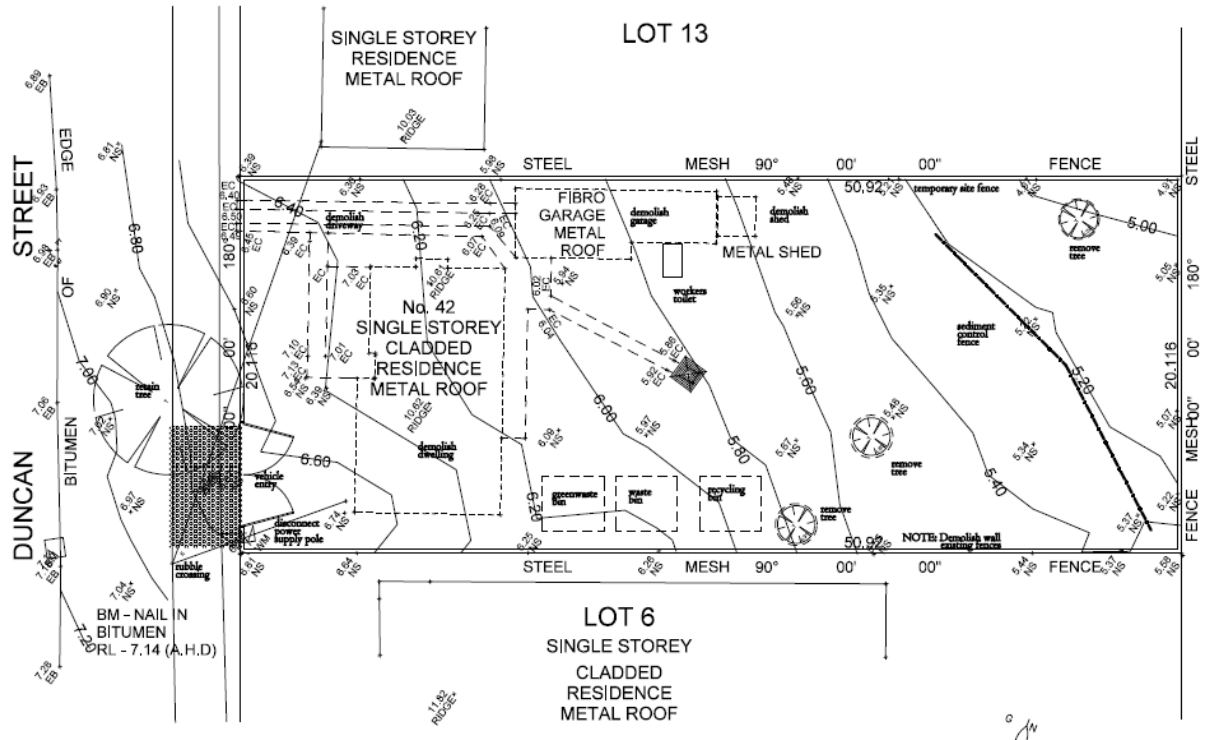


Figure 3. Demolition Plan

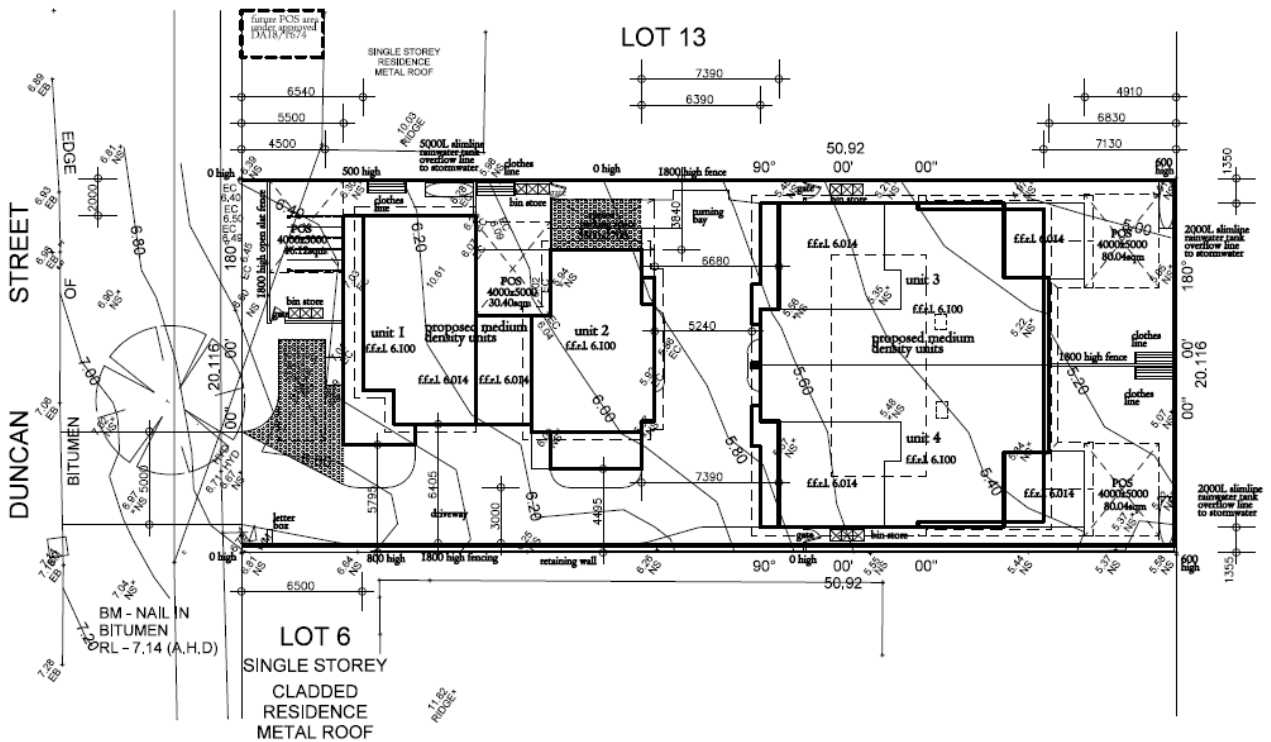


Figure 4. Site Plan

DE21.121

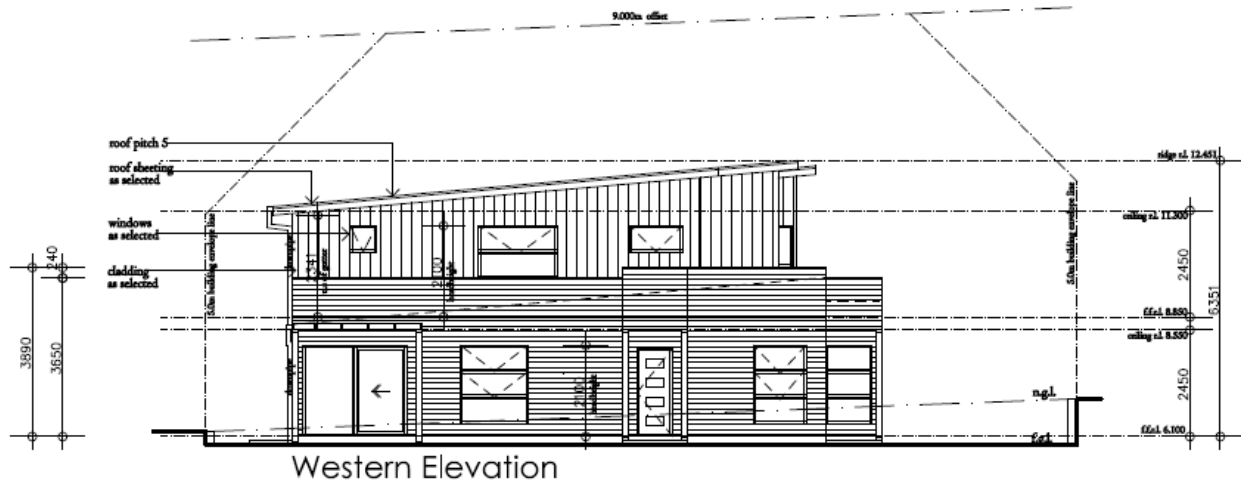


Figure 5. Duncan Street Elevation Plan

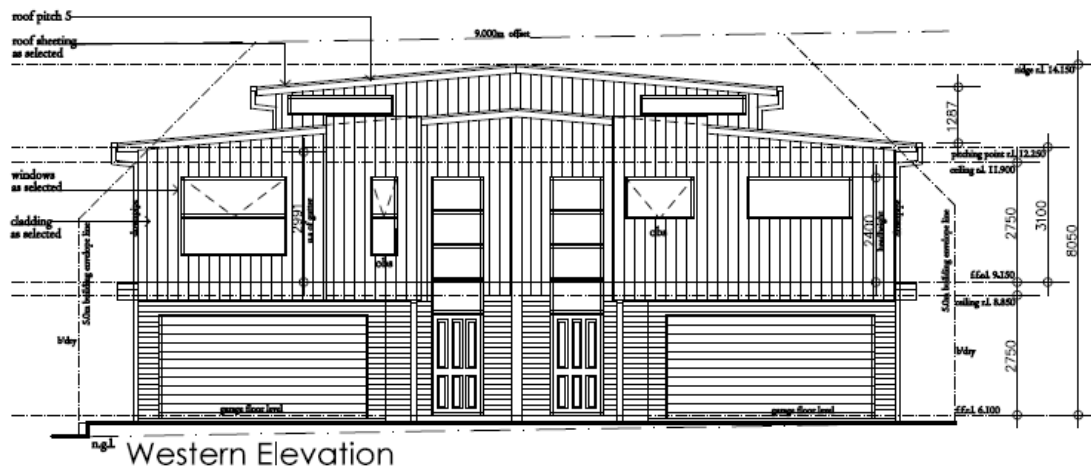


Figure 6. Elevation Plan of Units 3 and 4 (from internal driveway)

Subject Land

The development site is Lot 5 Sec 9 DP 758530 (42 Duncan Street, Huskisson). Refer to Figure 1.

Site & Context

The development site:

- Is approximately 1024m² in area (by calculation),
- Is rectangular and situated on the eastern side of Duncan Street, approximately one kilometre southeast of the Huskisson town centre.
- The rear (eastern boundary) adjoins an unformed road reservation (Kent Lane).
- To the east of this road reservation is a large area of uncleared bushland that is Council owned and zoned RE1.
- The site is approximately 100m from Huskisson Beach to the east. The site is approximately 40m north of Keppel Street (Keppel St/Burrill St provides the main vehicle access between the Huskisson town centre to the north and Vincentia to the south).
- The site accommodates an existing single storey dwelling house, and associated sheds and driveway. The land is predominantly cleared of vegetation, except for scattered perimeter planting and gardens adjacent to the dwelling and is mostly grassed. There is one street tree on the adjacent verge.

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History

The following table outlines the history and correspondence between Council and the applicant during the assessment of the application. It is noted the subject application was assessed by an independent planning consultant on behalf of Council, with any correspondence reviewed and sent by Council staff.

Date	Action
06/12/2020	Application lodged
08/12/2020	<p>A request for information was provided to the applicant requesting the following matters be addressed:</p> <ol style="list-style-type: none"> 1. <i>A site plan and site analysis plan prepared in accordance with Schedule 1 of the Environmental Planning and Assessment Regulation 2000 and Chapter G1: Site Analysis, Site Design and Building Materials of Shoalhaven Development Control Plan 2014 (SDCP 2014). The site plan and site analysis plan shall be prepared to an appropriate scale, be fully dimensioned and include development on the adjoining land.</i> 2. <i>A stormwater concept plan prepared in accordance with Chapter G2 Sustainable Stormwater Management and Erosion/Sediment Control of SDCP 2014.</i> 3. <i>A landscape plan prepared in accordance with Chapter G3 Landscaping Design Guidelines SDCP 2014.</i> 4. <i>Amended statement of environmental effects (SEE) to include a detailed assessment of the following chapters of the Shoalhaven Development Control Plan 2014 as follows:</i> <ol style="list-style-type: none"> a) <i>Chapter G11 Subdivision of Land;</i> b) <i>Chapter G13 Medium Density and Other Residential Development; and</i> c) <i>Chapter G21: Car parking and Traffic.</i> <p><i>It would appear from the plans and SEE that the application does not demonstrate strict compliance with Chapter G13 and G21 of SDCP 2014 as it relates to the design of the multi-dwelling housing and car parking provided. It is noted that Chapter G21 was amended and commenced on 23 October 2020. The amendments provided new car parking rates for multi-dwelling housing which do not appear to have been reflected on the plans or SEE. Granted that the Chapter has only just been adopted by Council I would be reluctant to provide preliminary support to varying these controls as part of this application.</i></p> <p><i>Where the development does not demonstrate compliance with the acceptable solution the extent of the non-compliance and justification for the non-compliance is to be provided along with the alternate solution to the performance control.</i></p>
18/12/2020	<p>A response to Council's request was uploaded by the applicant to the NSW Planning Portal including amended:</p> <ul style="list-style-type: none"> - SEE, - Landscape plan, - Stormwater concept plan; and - Architectural plans.

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08/02/2021	A further request was made to the applicant in relation to the amended plans as for Unit 1 and 2 a duplicate of the lower floor plans was submitted. The applicant was requested to submit upper floor plans for Units 1 and 2 for Council consideration.
08/02/2021-24/02/2021	Affected owner notification. Three submissions received including one (1) in support and two (2) in objection to the proposal.
17/03/2021	<p>Following a detailed assessment of the application by Council's planning consultant and Council's internal referrals, a detailed request for information was sent to the applicant outlining a detailed list of issues raised with the development as proposed, as follows:</p> <ol style="list-style-type: none"> 1. <i>"Provide a site plan and site analysis plan prepared in accordance with Schedule 1 of the Environmental Planning and Assessment Regulation 2000 and Chapter G1: Site Analysis, Site Design and Building Materials of SDCP 2014.</i> 2. <i>Provide and amended SEE that addresses the following matters. An additional SEE (prepared by Michael Brown Planning and dated December 2020) was submitted in response to Council's initial request for additional information, but does not address Council's requirements as follows:</i> <ol style="list-style-type: none"> a) <i>Chapter G11: Subdivision of Land – the SEE states subdivision is not proposed. Please confirm whether the strata subdivision is proposed and, if yes, address the relevant sections of SDCP 2014 Chapter G11 in the SEE.</i> b) <i>Chapter G13: Medium Density and Other Residential Development – The SEE includes a Table 5 Compliance with Controls that do not appear to match the provisions of Chapter G13. The SEE does not adequately address non-compliances with Chapter 13 in relation to the amenity for future residents and the wider neighbourhood. Refer to Point 4 for detail.</i> c) <i>Chapter G21: Car Parking and Traffic – The SEE does not adequately address non-compliance with car parking requirements. Refer to Point 3 for detail.</i> 3. <i>SDCP 2014 Chapter G21 requires two car parking spaces per dwelling (with more than three bedrooms) and 0.5 the number of units in visitor parking. That is, each unit must have a double garage [i.e., be provided with 2 parking spaces], and two visitor parking spaces must be provided on-site for the proposed development. Further, there are aisle width and turning requirements that need to be met, including enabling vehicles to enter and exit in a forward direction.</i> <p><i>The request for variation in the original SEE is not considered adequate given the perceived pressure on parking in this area of Huskisson from tourism activity, the unacceptable location of the second car space for Unit 2, the second car space for Unit 1 not being identified, and the location of a car space on the drive forward of the building line that does not comply with manoeuvrability. The proposed parking space for Unit 2, accessed via a drive-through garage and within a grassed area of the rear yard, is not acceptable because the grass would impede use for parking, and there would be an adverse impact on residential amenity and landscaping. The parking space forward of the building line between Unit 1 and the property boundary is not acceptable for residential use, as residential parking must be within the dwelling footprint. Further, it would not be possible for a vehicle in this space to enter and exit in a forward direction, which contravenes SDCP 2014</i></p>

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Chapters G21 and G13, and the space is not, therefore, acceptable for visitor parking.

Parking is of particular concern in Huskisson, where there is potential for short term holiday rental that generates a high demand for parking beyond typical residential use. Given the recent adoption of Chapter 21, the engineering comments, and concerns raised in the submissions, full compliance with the SDCP 2014 car parking requirements is encouraged and requires a redesign of the proposed development. To demonstrate that all vehicles will be able to enter and leave the site in a forward direction you are requested to provide evidence, such as swept paths or a dimensioned site plan.

*Alternatively, you are requested to provide adequate justification for departure from SDCP 2014 requirements for car parking provision and design. The request for variation must be in the format required in Chapter 1, Section 11 of the SDCP 2014. *Note this is addressed further later in this report.*

4. *The development does not demonstrate compliance with SDCP 2014 Chapter G13 Medium Density Development and there are non-compliances with the provisions relating to setback, building height plane, fences, private open space, and car parking. The SEE does not address or provide sufficient justification for these non-compliances. You are requested to redesign the proposed development to provide a better outcome in relation to these matters. Alternatively, to address the following matters in an amended SEE, noting that fitting a larger development on the site is not justification for exceeding the acceptable solutions. Rather the aim of allowing flexibility in the DCP requirements is to promote innovation and design excellence.*
 - a. *Setbacks – The SEE seeks variation to the setback requirements of SDCP 2014 but does not provide clarity on the control being varied, the extent of the proposed variation and the unique circumstances as to why the variation is being sought (as required by Chapter 1, Section 11 of the SDCP 2014). The SEE does not provide justification for the non-compliance and the proposed development should be redesigned to comply.*
 - b. *Building height plane - Provide elevations showing the correct building height plane. Planes are projected at 450 from a height of 5m above ground level (existing) at the front, side and rear boundary. The planes provided with the application are drawn from the finished ground level (that includes fill) rather than the existing ground level, and the planes from the front and rear boundary are not shown on the submitted plans. Units 3 and 4 exceed the building height plane, and when drawn correctly from the existing ground level, the non-compliance will be greater than that discussed in the SEE. The SEE does not justify the non-compliance and the proposed development should be redesigned to comply.*
 - c. *Fences – The 1.8m high fence within the front setback is not considered acceptable as it will interrupt the landscaped character of the front of the site and is not in keeping with the streetscape that has lower fences and gardens with the front setback. The objective of the landscape requirements is to place buildings within a landscaped setting and provide screening to reduce the impact of built form. The proposed fence within the front set back will inhibit the achievement of these objectives and should be removed (in conjunction with the redesign of the private open space for Unit 1 as discussed following).*
 - d. *Private open space Unit 1– Location of the private open space for Unit 1*

	<p><i>within the front set back is not considered acceptable as it does not provide a fully private outdoor area for residents (it will be closer than usual to the street and not fully screened) and it encroaches into the front set back (as discussed above). Further, the DCP requires a paved outdoor space 5m by 4m that is 50% covered, and this is not provided for Unit 1. The required hard paved, partially covered area is considered essential as it provides residents with an outdoor area that can be used for dining, and recreation/clothes drying during inclement weather.</i></p> <p><i>e. Private open space Unit 2 – Unit 2 does not have a paved and partially covered outdoor space as required by the SDCP 2014. As discussed above, this is unacceptable as such an area provides essential and usable space for residents. Further, the private open space for Unit 2 is also designated as a car space. As a car space, the area can't perform its intended role of recreation and deep soil planting. The area should, therefore, be clearly designated as either private open space or car space and this results in non-compliance with the SDCP 2014 requirements.</i></p> <p><i>f. Landscape and private open space generally – All open space areas should be shown on the dimensioned site plan. Please note that service areas, such as those used for bin storage, water tanks and clothes drying, should be excluded from the calculations for landscape and private open space.</i></p> <p><i>g. Car parking and manoeuvring – Refer to Point 3.</i></p> <p><i>5. Earthworks - Provide details of the proposed cut, fill and retaining walls on the fully dimensioned site plan. Cut and fill is proposed to level the building areas and retaining walls are shown on the elevations. These should also be shown on the site plan. Note that retaining walls over 0.6m are required to be set within the landscaping.</i></p> <p><i>6. Bin storage – Unit 2 bin storage area will need to be accessed via the garage, which is unacceptable. You are requested to provide a more accessible bin storage area or address in the SEE how bins for Unit 2 will be accessed without requiring residents to move vehicles.</i></p> <p><i>7. Provide the correct plans of the upper floor of Units 1 and 2 - the upper floor plans submitted for Units 1 and 2 incorrectly show the ground floor of Units 1 and 2.</i></p> <p><i>8. Provide a stormwater concept plan prepared in accordance with SDCP 2014 Chapter G2 Sustainable Stormwater Management and Erosion/Sediment Control of SDCP 2014. The original SEE refers to a stormwater plan by MI Engineers. However, this could not be located in Council's records. Stormwater could be discharged along the rear lane to the existing Council open drain (behind 38 Duncan St) or similarly to the neighbouring development at 44 Duncan St (DA19/1841), via the Keppel Street road reserve to the open drain in the unformed section of Fegen St. The stormwater plan should also demonstrate on-site detention."</i></p>
22/04/2021	<p>Additional information from the applicant in response to Council's request dated 17 March 2021 was received. This included amended plans including landscape plans, engineering plans and SEE addressing the matters raised.</p> <p>A response from the applicant's town planner provided a response to each of the</p>

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	<p>matters raised in Council's request. A copy of this is attached to this report at Attachment 3 (dated 14 April 2021).</p>
15/06/2021	<p>Following further consideration of the additional information by Council's internal referrals and Council's consultant planner, a Council email to the applicant regarding the non-compliance of fundamental DCP requirements including parking, landscaping, private open space and building plane was sent. The email stated the following:</p> <p><i>"The development as lodged with Council is compliant with the Shoalhaven Local Environmental Plan 2014 (SLEP 2014). However, the proposal fails to meet a number of performance criteria and is non-compliant with a number of the relevant provisions of the SDCP 2014.</i></p> <p><i>The development application is non-compliant with Chapter G13: Medium Density and Other Residential Development and Chapter G21: Car Parking and Traffic. The development application is supported by a written justification in support of the variations.</i></p> <p><i>The variations have been considered by the Unit and the Section Manager and are of the view to <u>not</u> support the variations under Chapter G13 and Chapter G21 of SDCP 2014 for the following reasons:</i></p> <p><u><i>Building Envelope, Heights and Setbacks</i></u></p> <ul style="list-style-type: none"> <i>• The DCP allows exemptions to building envelope encroachments for gutters, fascias, downpipes, and eaves up to 0.6m. The encroachment includes walls and roof and exceeds the 0.6m standard.</i> <i>• The building in question is a very large block with little articulation or progressive setbacks that would reduce its bulk.</i> <i>• Compliance with one standard (in this case height) is not justification for variation in others.</i> <i>• The building will cast a mid-winter shadow over the property to the south that will have a negative impact on the outdoor spaces (private and communal) of the approved development on that property and the encroachment is contributing to the extent of this overshadowing.</i> <i>• The SEE does not provide any reason or justification for the non-compliance or discuss whether it is possible to design the building containing units three and four within the building plane.</i> <i>• The SEE does not provide any unique circumstances as to why the variation is being sought or necessary.</i> <i>• The SEE does not demonstrate how the relevant objectives and performance criteria are being met with the proposed variation.</i> <i>• Demonstrate that the development will not have any additional adverse impacts as a result of the variation.</i> <i>• The request for variation is not supported by other documentation to demonstrate why the variation is needed.</i> <p><u><i>Landscaping and Private Open Space</i></u></p> <ul style="list-style-type: none"> <i>• The proposal will not provide sufficiently dimensioned landscaping that would provide amenity to residents, effective screening and enable tree and large shrub planting.</i> <i>• For Units 1 and 2, the proposal will not provide sufficiently dimensioned private open space that will be functional and useable for residents all year round, and ensure that the private open space provided for a dwelling is useable and meets user requirements for active and passive outdoor</i>

recreational activities.

- *The variation will result in the proposed development not being able to meet the objectives of Chapter G13. Specifically, the following:*
 - i. *Ensure a comprehensive design-oriented approach to housing resulting in high-quality urban design, development and residential amenity.*
- *The SEE does not provide any reason or justification for the non-compliance or discuss whether it is possible to design the proposed development with the required parking.*
- *The SEE does not provide any unique circumstances as to why the variation is proposed or necessary.*
- *The SEE does not demonstrate how the relevant objectives and performance criteria are being met with the proposed variation.*
- *The SEE does not demonstrate that the development will not have any additional adverse impacts as a result of the variation.*

Car Parking

- *It is apparent that adequate off-street parking will not be provided with the development and that this will adversely impact the occupants of the proposed development*
- *The proposed development will create significant demand for parking, and the shortfall in parking on-site will put pressure on-street parking that is already and will continue to be under pressure in the vicinity as more development occurs.*
- *Given Chapter 21 (recently adopted) clearly details the desired future character of the medium density areas as having adequate off-street parking. The non-compliance means the proposed development will not contribute to the desired future character of the medium density residential areas and will not be compatible with the surrounding development.*
- *The variation will result in the proposed development not being able to meet the objectives of Chapter G21. Specifically, the following:*
 - i. *Ensure that adequate off-street parking is provided in conjunction with development throughout the city, including any overflow parking.*
 - ii. *Discourage the use of on-street parking for new development.*
 - iii. *Ensure those car parking areas are visually attractive, functional, operate efficiently, are safe and meet the needs of users.*
- *The SEE does not provide any reason or justification for the non-compliance or discuss whether it is possible to design the proposed development with the required parking.*
- *The SEE does not provide any unique circumstances as to why the variation is proposed or necessary.*
- *The SEE does not demonstrate how the relevant objectives and performance criteria are being met with the proposed variation.*
- *The SEE does not demonstrate that the development will not have any additional adverse impacts as a result of the variation.*

Required Action

The development in its current form is not supported by Council and cannot be recommended for approval.

The assessment of the application can proceed in accordance with the following options:

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	<ol style="list-style-type: none"> <i>The plans are amended to address the variations to Chapter G13 and G21; or</i> <i>The application is to be reported to the next Development & Environment Committee for determination by the elected Council. The report is likely to recommend that the development application be refused citing the non-compliance with the relevant provisions of Chapter G13 and G21; or</i> <i>The application could be withdrawn at any time before the reporting of the application to the Development & Environment Committee.”</i>
21/06/2021	<p>Applicant's response letter received. A copy of the response from the applicant's town planner is included at Attachment 4 (dated 19 June 2021).</p> <p>It is noted that in addition to the planning and design matters raised, a fundamental area of dispute is the parking required for the development and the parking rate that applied to the proposal at the time of lodgement. Council's development assessment officer has confirmed from Council's Strategic Planning Section that as the development application was lodged on 6 December 2020, the most recent version (V4) of Chapter G21: Car Parking and Traffic (SDCP 2014) commenced on 23 October 2020, and this is the applicable document. Further the car parking rates applied to the development have been consistent since lodgement.</p>
27/7/2021	<p>Council's Assessment Staff emailed the applicant in relation to the disputed car parking requirements to provide details of the Council Planning Register with regard to Amendment 41 in the DCP.</p>
23/8/2021	<p>The applicant emailed amended plans and covering letter to Council – a copy of the letter from the applicant's town planner is included at Attachment 5 (dated 10 August 2021). This information was unsolicited, and not in response to an RFI. As outlined in the applicant's response:</p> <p><i>“By way of introduction to the amended plans, Unit 1 has now been reduced from three (3) bedrooms to two (2) bedrooms. This unit and Unit 2 were originally submitted as four (4) bedroom units and then amended to three (3) bedrooms. Unit 2 remains a three (3) bedroom unit. Units 3 and 4 remain five (5) bedroom units but bedrooms 3 and 4 of each unit have been reduced in size to comply with the building envelope control, with the eaves still encroaching, as permitted by Chapter 13 of the DCP.”</i></p> <p>No amended BASIX Certificate or NatHERS Certificate were submitted with the amended plans which still show the development as containing 4 bedrooms in both Units 1 and 2.</p>

Issues

The subject development application has been assessed independently by a planning consultant. The section 4.15 assessment included at Attachment 1 has undertaken a detailed assessment of the proposal against the relevant planning instruments and plans. Council staff have reviewed the report and agree with the recommendations made. Key issues are further detailed below.

Summary of key issues

The following provides a summary of the reasons as outlined in the Consultant's report for the reasons for refusal.

- *Poorly designed and dimensioned landscaping*
- *Poorly designed and dimensioned private open space (particularly for units 1 and 2)*
- *Inadequate off-street parking and manoeuvrability*
- *Privacy impacted by inappropriately located visitor parking*
- *Potential undue overshadowing of the outdoor spaces of approved development to the south*
- *Not meeting the objectives of Chapter G13, specifically to:*
 - i. Ensure a comprehensive design-oriented approach to housing resulting in high quality urban design, development and residential amenity.*
- *Not meeting the objectives of Chapter G21. Specifically, the following:*
 - i. Ensure that adequate off-street parking is provided in conjunction with development throughout the City, including any overflow parking.*
 - ii. Discourage the use of on-street parking for new development.*
 - iii. Ensure that car parking areas are visually attractive, functional, operate efficiently, are safe and meet the needs of users.*

The applicant has not:

- *Provided acceptable reasons or justification for the non-compliances or reasonably discussed whether it is possible to design the proposed development on the site to comply with all SDCP 2014 requirements.*
- *Outlined any unique circumstances as to why the non-compliances are proposed, necessary or justified.*
- *Demonstrated adequately how the relevant objectives and performance criteria of SDCP 2014 are being met with the proposed non-compliances.*
- *Demonstrated that the development will not result in any additional adverse impacts because of the design of the proposal and the non-compliances with SDCP 2014.*

These are issues that have been raised by Council staff to the applicant during the course of the assessment of the proposal. The response from the applicant to the issues raised is included at Attachments 3, 4 and 5 of this report to ensure both Council's consultant town planner's assessment and the applicant's response are provided for full consideration of the issues with the proposal.

Car parking & manoeuvrability

The subject application was lodged shortly after the implementation of Version 4 of Chapter G21 Car Parking and Traffic. The multi-dwelling development was designed based on Version 3 of Chapter G21 and was the subject of detailed assessment as outlined in the above table of the history of the application for being noncompliant with Version 4 of the DCP. Since then, however, Version 5 has been adopted by Council at its meeting on 7 September 2021, which is outlined in the below table. While the proposal did not comply with Version 4, the application complies with Version 5. Accordingly, it is no longer considered that the numerical parking provision is unacceptable on the site.

Rooms capable of being used as a bedroom	Proposed Parking	Chapter G21 Parking Control	
		V4 (current controls) <i>Note: Spaces for each dwelling are to be enclosed within the dwelling footprint</i>	V5 (adopted controls – not yet in force) <i>Note: The arrangement and layout of the required parking</i>

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				<i>will be assessed on merit and on a case-by-case basis</i> <i>At least one space per dwelling should be provided for the sole benefit of each dwelling.</i>
Unit 1	4	1 space	2 spaces	2 spaces
Unit 2	4	1 space	2 spaces	2 spaces
Unit 3	5	2 spaces	2 spaces	2 spaces
Unit 4	5	2 spaces	2 spaces	2 spaces
Visitor		2 spaces	2 spaces (Visitor parking is in addition to resident parking)	No additional (Visitor parking is included in the rates above)
Total		8 spaces	10 spaces	8 spaces

Despite this however, this parking provision under Version 5 of Chapter G21 also includes the note that: ‘*The arrangement and layout of the required parking will be assessed on merit and on a case-by-case basis*’.

While the proposed development may be numerically compliant with the endorsed Version 5 of Chapter G21, Council’s Development Engineers have raised major concerns regarding the manoeuvrability of accessing these parking spaces, stating:

“The swept paths provided are also insufficient as they use a B85 vehicle, whereas DCP G21 requires use of a B99 vehicle for all residential development. This is to ensure compatibility with the current vehicle market which has evolved significantly since the vehicle surveys informing AS2890.1 which are over 20 years old.

Unit 1 requires a three point turn on entry and exit which is unacceptable. Units 2 and 3 require a three point turn on exit which is also not ideal. Refer to DCP G21 P1.1. Swept paths should be provided for the visitor parking spaces”.

In summary, the majority of car spaces on site cannot be accessed or egressed in one movement, even using the B85 vehicle type. The information provided to date suggests that a number of car spaces are not practically useable due to the restrictive manoeuvring paths, which is symptomatic of overdevelopment of the site.

Accordingly, “*inadequate off-street parking and manoeuvrability*” as recommended and assessed by Council’s independent planning consultant is recommended to form a reason for refusal as the proposed parking provision has not demonstrated the *arrangement and layout of the required parking spaces* can be accessed safely.

Variations to Chapter G13: Medium Density and Other Residential Development

The development as lodged with Council is compliant with the Shoalhaven Local Environmental Plan 2014 (SLEP 2014). However, the proposal fails to meet a number of performance criteria and is non-compliant with a number of the relevant provisions of the Shoalhaven Development Control Plan 2014 (SDCP 2014), specifically Chapter G13: Medium Density and Other Residential Development.

The table below identifies the variations to the relevant acceptable solutions and Council’s planning consultants’ assessment of the variation.

Acceptable Solution	Extent of Variation & Assessment
<p>5.1.2 Density</p> <p>Performance Criteria:</p> <p>P2 The bulk and scale of new development, particularly on the perimeter of the development site, or where that locality or development site has heritage significance and/or distinctive character, is:</p> <ul style="list-style-type: none"> • Compatible, consistent and sympathetic to the bulk and scale of existing development in the locality. • Sympathetic with the streetscape and complements the existing and desired future character of the area. <p>Acceptable Solution:</p> <p>A2.1 The maximum floor space ratio or gross floor area complies with Table 1 - for multi-unit dwellings in the R3 Zone the maximum FSR is 0.7:1</p>	<p><i>The SEE states that the proposed development has an FSR of 0.63:1, which is just within the maximum 0.7:1 specified in the DCP. However, at the proposed bulk and density the proposal fails to meet the minimum DCP requirements for car parking provision/design, landscaping, private open space, and building plane (to a minor extent). The proposal fails to achieve the desired future character that includes amenity features that are not achieved in the proposal.</i></p>
<p>5.1.3 Building Envelope, Heights and Setbacks</p> <p>Performance Criteria:</p> <p>P3.1 The bulk and scale of development is compatible with the existing or desired future character of the area and minimises adverse amenity impacts on neighbours, the streetscape and public domain.</p> <p>Acceptable Solution:</p> <p>A3.1 Buildings are sited within a building envelope determined by the following method: planes are projected at 45° from a height of 5m above ground level (existing) at the front, side and rear boundary.</p>	<p><i>The building plane is not shown for the west (front) and east (rear) boundaries. However, given the 5.5m setback from the front and 7m setback from the rear, the proposal is assumed to be within the building plane on those boundaries.</i></p> <p><i>The roof of the first floor of the building that contains units three and four exceeds the building plane to a minor extent.</i></p> <p><i>The DCP allows exemptions to building envelope encroachments for gutters, facias, downpipes, and eaves up to 0.6m, not walls and roofs. The encroachment in the August 2021 amended plan is minor (only a small part of wall and roof encroaches as shown in Figure 7). Given the original encroachment was minor and only raised in relation to the numerous other non-compliances in the assessment, and the amendment results in only a small part of the roof and upper wall of Unit 4 encroaching, it could be accepted on its own.</i></p> <p><i>However, while the encroachment could be considered minor, it is a result of minimal setbacks from the side boundaries and a very large building with limited progressive setbacks that would create articulation.</i></p> <p><i>The side setbacks for the building containing Units 3 and 4 are minimal. While these comply with minimum numerical standards, the outcome is not considered to comply with performance criteria. The side setbacks contain retaining walls, meter box, hot water service, bin storage and access to the laundry. These will be cramped and possibly dank and dark areas.</i></p> <p><i>The August 2021 amendment does little to reduce the bulk of Units 3 and 4 (refer Figure 7), and would do little to reduce overshadowing of the property to the south (refer Figure 8).</i></p>

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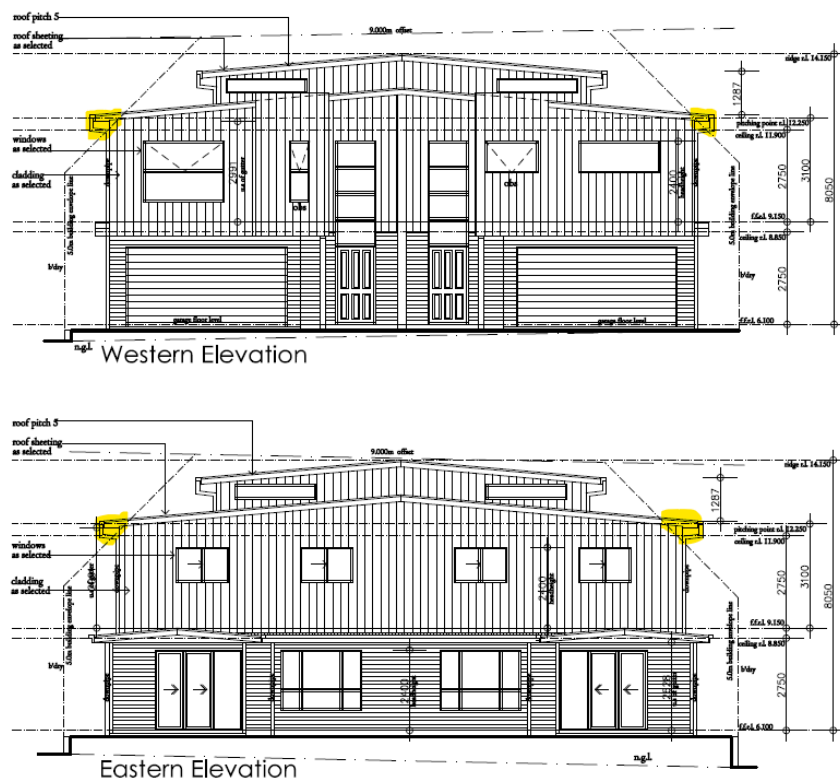


Figure 7. East and West Elevation Plans highlighting building plant variation

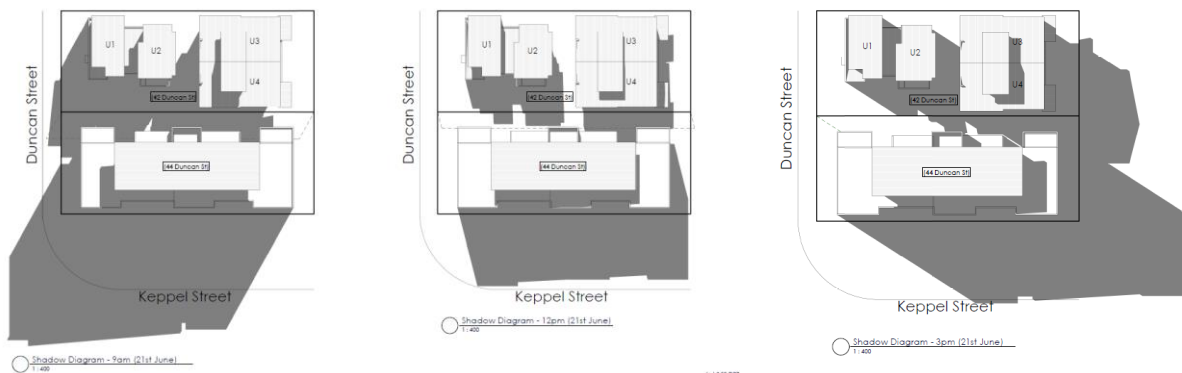


Figure 8. Submitted Shadow Diagrams

A4.3 Any two-storey dwelling component is to be located to minimise the shading of adjacent private open space.

The building will cast a mid-winter shadow over the property to the south (44 Duncan Street) that could have a negative impact on the outdoor spaces (private and communal) of the approved development on that property. The encroachment to the building plane (although minor) is contributing to the extent of this overshadowing. (See Figure 8)

5.1.4 Landscaping

A6.1 At least 10% of the site area is to include high quality formal landscaping, which:

- Has a minimum dimension of 1.5m in any direction
- Consists of 100% deep soil planting.

A6.2 In addition to the formal landscaping area required at A6.1, a

A6.1:

In the original landscape plan, only about 40m2 of the site is shown with formal planted landscaping, and this did not include tree planting. This formal landscaping area was calculated using the planting schedule, plant species and dimensions, and resulted in a shortfall of quality deep soil planting of about 60m2.

In the August 2021 amended plan additional planting is shown along the dividing rear yard fence between Units 3

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<p>further area of at least 20% of the site is to be provided, which:</p> <ul style="list-style-type: none"> • Has a minimum dimension of 1m in any direction. • Is inclusive of 40% deep soil planting. • Can include landscaped areas, decks, terraces, alfresco areas, swimming pools or other recreation areas / structures. 	<p>and 4, and denser planting is shown within all other areas where formal planting was shown on the original plan. Discounting areas that are not considered viable (given they conflict with parking, access and service areas), it is calculated that an area of approximately 50m² is shown with deep soil planting, which is considered a marginal increase over the original landscape plan, and a shortfall of about 50m² of quality deep soil planting.</p> <p>As discussed under G3: Landscaping design guidelines (refer attached Section 4.15 report at Attachment 1), the landscaping will not provide screening or be of a scale that would reduce the bulky appearance of the proposed development, provide shade, or have a cooling effect. Given the density of the development (considered to be unacceptable), the need for driveways, parking, service areas and outdoor terraces and recreation areas, there is limited room for deep soil planting and a satisfactory landscaped outcome for the proposed development can't be achieved.</p> <p>A6.2:</p> <p>A total of 30% (307.29m²) of the site is required for landscaped area. From the plans the provided landscaped area is calculated to be about 200m². The proposal fails to provide about 100m² of the required 307.48m² of landscaped area. Areas excluded from the applicant's calculation of landscaped area include:</p> <ul style="list-style-type: none"> • Path to the rear yard of unit two and continuing along the fence where required for vehicle manoeuvring • Area of visitor parking spaces • Side paths to units three and four <p>As discussed above the proposal fails to meet the initial requirement for deep soil planting under A6.1, so by default fails to meet the requirement that 40% of the additional landscaped area contain deep soil planting.</p>
<p>A6.3 At least 35% of the front setback is to be landscaped.</p>	<p>The proposal fails to provide approximately 12.5m² of the required landscaping within the front setback. The front setback is about 110m² in area and about 25m² is landscaped. The remainder is driveway, visitor parking space and fenced yard for unit one.</p>
<p>A6.4 The landscaping provided at A6.1, A6.2 and A6.3 excludes any areas used for storage, clothes drying, and water tanks.</p>	<p>In calculating the landscaping, the applicant included areas use for bin storage, clothes drying and water tanks. The applicant also included two visitor parking spaces and space need for circulation in the calculation.</p>
<p>A6.5 Retaining walls greater than 0.6m within the front setback are to be softened by planting for a minimum depth of 600mm on the low side of the retaining wall, for the entire length of the retaining wall.</p>	<p>The retaining wall on the southern boundary is 800mm high and within the front setback. The landscape plan shows minimal planting between the wall and the drive, using dwarf lilly pilly and one Kangaroo Paw. There is no space to provide adequate screening of the wall.</p>

<p>5.2.1 Local Character and Context</p> <p>A7.1 The development must consider/address the following:</p> <ul style="list-style-type: none"> • The local character/ context of the area and streetscape • How the proposal is sympathetic and compatible with the existing or future desired character, development, and amenity of the locality • How the visual appearance and articulation of the development contributes to the existing streetscape and character of the local area 	<p><i>The approved residential flat building development at 44 Duncan Street is only possible given the corner site and non-developable land to the south, is atypical for this area of Duncan Street, and can't be used as a benchmark for character or consistency. Two to three dwellings per lot (in area similar to the subject site) is more characteristic. Older medium density developments are single storey, and more recently approved development is two storeys. The proposed development is not considered to be consistent with the density and design of characteristic medium density development in the vicinity due to it being four dwellings.</i></p> <p><i>For comparison, the approved medium density development on 40 Duncan Street comprises three units and has an FSR 0.41:1. All units have two car parking spaces within an attached garage (visitor parking spaces were not required at the time of approval), and all have larger areas of private open space and better privacy than those proposed on the subject site.</i></p>
<p>A10.1 A site analysis plan is submitted with the development application which:</p> <ul style="list-style-type: none"> • Meets the requirements of Chapter G1: Site Analysis, Sustainable Design and Building Materials Rural, Coastal and Environmental Areas of this Development Control Plan. • Clearly provides the following detail for the site and adjoining/adjacent development: <ul style="list-style-type: none"> - Height and use of buildings. - Front setbacks. - Driveways. - Boundary treatments (including retaining walls). - Easements. - Stormwater management. <p>A10.2 The proposed site layout responds to and implements the findings of the site analysis</p>	<p><i>A plan labelled 'site analysis' was lodged with the amended plans. The plan does not provide any indication as to why the development has been designed in the way it has, or how the objectives of the DCP requirements are met. Specifically, the plan does not include:</i></p> <ul style="list-style-type: none"> • <i>Clear location of and heights of dwellings on adjoining land</i> • <i>Clear location of and heights of approved development on adjoining lots</i> • <i>How overshadowing impacts of on adjoining dwellings will be minimised.</i> <p><i>The site analysis lacks a scale and dimensions.</i></p>
<p>5.2.3 Vehicles and Pedestrian Access</p> <p>A13.1 Driveways must be designed to:</p> <ul style="list-style-type: none"> • Be all-weather and service every dwelling. • Minimise the hardstand/paved footprint. • Be setback a minimum of 0.5m from the side and/or rear boundary to accommodate appropriate landscape elements. • Accommodate all public services and infrastructure (e.g., street gully pits). • Avoid a gun-barrel effect down the side boundary. Where a gun-barrel driveway cannot be avoided, the driveway must be curved and landscaped to Council's satisfaction to break up the appearance of the 	<p><i>The driveway is 'L' shaped so does not run the full length of the site and create a gun barrel effect. The front of unit 4 will be visible from the street and will provide a visual backdrop to that part of the driveway that is visible from the street.</i></p> <p><i>In the August 2021 amended plan a row of lomandra is shown along the southern boundary (in an area that also accommodates a retaining wall, 1.8m high metal fence, the side pathway and bin storage for Unit 4, and space required for manoeuvrability). It is considered this area is not workable (not all of the infrastructure can be accommodated in such a narrow space) and that the planting shown on the plans will not be viable. The lack of significant landscaping along that boundary, and on the driveway in general, will mean that the visual dominance of the driveway is not minimised.</i></p> <p><i>Materials, grades, and services location can be confirmed by consent conditions.</i></p>

<p>gun-barrel design.</p> <ul style="list-style-type: none"> • A grade no greater than 20%. • Maximise the availability of on-street parking. • Achieve minimum sight lines for pedestrian safety in accordance with AS2890.1 (Figure 3.3). 	
<p>5.3.1 Building Separation and Visual/Acoustic Privacy <u>A14.2 Habitable windows shall not be located adjacent to a shared driveway at the ground level.</u></p>	<p><i>The window to the rumpus room/ bedroom of Unit 1 is adjacent the proposed visitor parking space. The window to the rumpus room/bedroom of Unit 2 is directly on the driveway. The privacy of both units is compromised and is further indication that the proposal represents an over-development of the site. Reduced density would enable more setback from the driveway and potentially a privacy fence. Screening is not considered appropriate as this will reduce daylight to the rooms and will not impede noise.</i></p>
<p>5.3.2 Solar and Daylight Access <u>A16.1 Dwellings are to be:</u></p> <ul style="list-style-type: none"> • Oriented to make appropriate use of solar energy by maximising solar access to north-facing windows. • Sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced. • Designed to locate living areas and private open space on the northern side of the development and non-habitable areas to the south and west of <u>dwellings</u>. 	<p><i>Unit 2 is not well designed or oriented. The only full height sliding door faces south onto the fully enclosed hard stand and there is only one high sill height window facing north into the living areas. Further the POS for Unit 2 is squeezed between the visitor parking space and the covered hard stand and is likely to be overshadowed by the approved development to the north on 40 Duncan Street. The POS does not meet the minimum standard for POS and is further compromised by the water tank, bin storage and clothes drying areas.</i></p>
<p>5.3.3 Private Open Space A17.1 A minimum area of private open space shall be provided for each dwelling in accordance with Table 5 - for multi dwelling housing the requirement is 35m² A17.2 Private open space shall have direct access from a living area. A17.3 Where the private open space of a dwelling is provided at the ground level, it shall:</p> <ul style="list-style-type: none"> • Include a defined hardstand area (e.g., concrete, paving, decking) of usable space which: <ul style="list-style-type: none"> ○ Is setback at least 1.2m from an external boundary. ○ Has a minimum dimension of 5m x 4m, of which 50% 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. 	<p><i>The POS for Unit 1 is calculated to be about 35m². However, Unit 1 does not have the required partially covered 20m² hardstand. Rather, a 3mx3m open pergola is provided within the front setback. The POS for Unit 1 is also on a slope (batter for the cut required to accommodate the proposed development). The impact of this slope on the function and usability of the POS has not been determined as the extent of the slope is not shown in section on plan</i></p> <p><i>The POS for Unit 2 is calculated to be about 28m², and the hardstand (fully covered rather than partially covered as required) is about 14m² rather than the required 20m². Unit two occupants will need to move the bins into the POS before being able to open the gate. The remaining POS is compromised by the service areas (the water tank is still not shown on the plans), reducing its useability for outdoor recreation, and providing an outlook from the patio that is only of the service areas and three lily pily in the middle of the space that further interrupt its useability.</i></p> <p><i>As described above, the POS for Unit 2 is not well designed and will not be functional all year round and is not dimensioned to meet the requirements of residents for recreational needs and service functions.</i></p> <p><i>The usable private open space area is reduced by about 12m² for each unit through the exclusion of obstructions - clothes drying, bin storage areas, and the above ground rainwater tanks.</i></p>

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Planning Assessment

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

Policy Implications

There are no policy implications as a result of the development as proposed.

Consultation and Community Engagement:

The application was notified for 14 days from 8 February to 24 February 2021. Three (3) submissions were received from surrounding residences.

It is noted that the submissions were received in response to the application as originally lodged. The amended plans received throughout the assessment process were not renotified in accordance with Council's Community Consultation Policy, due to the minor nature of the changes and the fact the amendments did not substantially change the development with regard to the issues raised in the submissions.

The following is the assessment provided by the planning consultant in relation to the submissions received.

Summary of Public Submissions	
Objection Raised	Comment
One submission is in support of the application as being in keeping with the other buildings in Duncan Street and the surrounding area.	<i>Multi-unit housing is envisaged in the area and is approved on the adjoining lot. However, the proposal fails to meet minimum requirements in relation to car parking manoeuvrability, landscaped area, private open space and privacy., and has not demonstrated acceptable impact on adjoining land. Amendments to meet relevant amenity and impact standards are required to ensure the development of the subject site is truly in keeping with other buildings in Duncan Street.</i>
The 18 bedrooms proposed seems excessive and will have ramifications for traffic congestion and noise.	<i>In its current form the proposal is considered to be overdevelopment of the site. The proposal fails to meet minimum requirements in relation to car parking manoeuvrability, landscaping, private open space, and privacy.</i> <i>The non-compliance with parking provision and design may impact on the street with overflow parking and amendments to meet relevant standards are required to reduce density and this potentially reduce the number of bedrooms proposed. Notwithstanding, the area has been zoned for medium density development and traffic generation was considered in the planning process. Council's Subdivision Engineer has not raised traffic generation as an issue in relation to the proposed development.</i>
Overshadowing 44 Duncan Street approved units facing north – solar access was	<i>The building will cast a mid-winter shadow over the property to the south that could have a negative impact on the outdoor spaces (private and communal) of the approved development</i>

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<p>required in the application – proposal needs greater setbacks and lower height on southern boundary.</p>	<p><i>on that property. The impact is from the combined bulk of the development, given the lack of open space on the site. The encroachment to the building plane (although minor) is contributing to the extent of this overshadowing.</i></p> <p><i>Solar access was required for the approved development on 40 Duncan Street under SEPP 65 and the Apartment Design Guide. The impact of the proposal, and whether the approved development can meet its requirements needs to be assessed.</i></p> <p><i>The conflicting information submitted with the application does not enable full assessment of the overshadowing. (The applicant provided amended shadow diagrams August 2021 that show a different shadow profile to the shadow diagrams lodged with the original) Note: refer to Attachment 1 - s4.15 report for comparison of shadow diagrams at page 28.</i></p>
<p>Lack of parking – vehicles on street and verges</p>	<p><i>The non-compliance with parking provision and design may impact on the street with overflow parking.</i></p> <p><i>Amendments to meet relevant standards are required to reduce density and provide adequate parking on site (noting that the DCP requirements aim to establish parking on site to discourage vehicles parking on the street, and verges in particular).</i></p>

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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 Land and Environment Court, should the applicant utilise appeal rights afforded under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

Legal Implications

According 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 approval or refusal. If such a review is ultimately pursued, the matter would be put (again) to Council for consideration.

Alternatively, an applicant may also appeal to the Court against the determination according to section 8.9 of the EP&A Act.

Summary and Conclusion

The assessment of the application by Council's planning consultant has identified there are several departures to the overall objectives and acceptable solutions contained within SDCP 2014, which are not supported. Council's planning consultant has stated that ultimately and *"the cumulative impacts of the numerous non compliances with numerical requirements, performance criteria and acceptable solutions result in poor amenity and functioning of the proposal."*

The applicant has provided a response to the matters raised in their response which are provided at Attachments 3, 4 and 5 of this report.

While the development could be modified to resolve the issues, this would likely impact on the development yield or size of the units and in the assessment of the proposal the

applicant has been reluctant to make significant amendments to the proposal to address these matters. Further the applicant's written requests to vary the various controls under SDCP 2014 has not been supported as it has not adequately addressed the matters required to be addressed by Chapter 1, Section 11 of the SDCP 2014.

As the application stands, it is not currently considered capable of support, and it is recommended the proposal be refused for the reasons outlined in the attached draft determination notice at Attachment 2.



Address all correspondence to: The Chief Executive Officer,
PO Box 42, Nowra NSW 2541 Australia
shoalhaven.nsw.gov.au/contact | 1300 293 111

shoalhaven.nsw.gov.au     

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

Environmental Planning and Assessment Act, 1979
DA20/2312

TO:

Macquarie Grove Homes
5/338 Camden Valley Way
NARELLAN NSW 2567

being the applicant(s) for DA20/2312 relating to:

42 Duncan St, HUSKISSON - Lot 5 - DP 758530

REFUSED USE AND/OR DEVELOPMENT:

Demolition of structures and construction of four (4) two (2) storey dwellings in a multi-dwelling housing development and four (4) lot strata title subdivision of the resulting development.

DETERMINATION DATE:

[#Application Date#]

REFUSAL DATE:

[#Application 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 - DA20/2312

REASONS FOR REFUSAL

This application has been assessed having regard for Section 4.15 (Evaluation) under the Environmental Planning and Assessment Act 1979. As such, it is recommended that Development Application No. DA20/2312 be refused for the following reasons:

1. The proposed development is inconsistent with the following Objectives of Chapter G3 Landscape Design Guidelines Shoalhaven Development Control Plan 2014:
 - (a) Blend new developments, where appropriate, into the existing streetscape and neighbourhood character
 - (b) Enhance the appearance, amenity and energy efficiency of new developments for the users and for the community in general
 - (c) Provide landscaping within a development that relates to the scale and type of existing elements in the neighbouring landscape.
2. The proposed development is inconsistent with the Objectives, Performance Criteria and Acceptable Solutions as they relate to the following provisions of Chapter G13 Medium Density and Other Residential Development Shoalhaven Development Control Plan 2014
 - (a) 5.1.2 Density
 - (b) 5.1.3 Building Envelope, Heights and Setbacks
 - (c) 5.1.4 Landscaping
 - (d) 5.2.1 Local Character and Context
 - (e) 5.2.3 Vehicles and Pedestrian Access
 - (f) 5.3.2 Solar and Daylight Access
 - (g) 5.3.3 Private Open Space
 - (h) 5.3.5 Car and Bicycle Parking
3. The applicant's written request to vary performance criteria regarding 5.1.3 Building Plane, 5.1.4 Landscaping, 5.3.3 Private Open Space is not supported as it has not adequately addressed matters required to be addressed by Chapter 1, Section 11 of the SDCP 2014 and the cumulative impacts of the numerous non compliances with numerical requirements, performance criteria and acceptable solutions result in poor amenity and functioning of the proposal.
4. The proposed development is inconsistent with the Objectives, Performance Criteria and Acceptable Solutions as they relate to the following provisions of Chapter G21 Car Parking and Traffic Shoalhaven Development Control Plan 2014:
 - (a) 5.1 Car Parking Schedule
 - (b) 5.3.5 Parking Layout and Dimensions
 - (c) 6.3 Manoeuvrability
5. The applicant's written request to vary 5.1 regarding parking provision is not supported and has not adequately addressed matters required to be addressed by Chapter 1, Section 11 of the SDCP 2014 and the cumulative impacts of the numerous non compliances with numerical requirements, performance criteria and acceptable solutions result in poor amenity and functioning of the proposal.
6. The development is likely to have adverse impacts on the built environment.
7. The development is likely to have adverse impacts on the social environment.
8. The site is not suitable for the development as proposed
9. The development is not in the public interest.

Determination Notice by way of Refusal - Page 3 of 3 - DA20/2312

RIGHTS OF REVIEW AND APPEAL**Determination under Environmental Planning and Assessment Act, 1979**

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

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

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

Approvals under Local Government Act, 1993

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

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

GENERAL ADVICE**Privacy Notification**

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

SIGNED on behalf of Shoalhaven City Council:

City Development

DE21.121 - Attachment 2



PO Box 295
CAMDEN NSW 2570

Phone: 46 480877

Mobile 0418620718
Email: michael@michaelbrown.com.au
ABN 52 162 313 895

14 April 2021

Your Ref: 2020/2312

Our Ref: 2020/0189

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

Attention: Elliott Weston

Dear Elliott,

Re: DA/2020/2312 – No 42 Duncan Street, HUSKISSON –

Reference is made to the Council email dated 17 March 2021 requesting additional information in respect of the above property. Firstly, we act for Macquarie Grove Homes in this matter and have been requested to provide a town planning response to the matters raised. Please find attached the following addressing Council issues and refer to the attached amended plans Issue I.

1. Provide a site plan and site analysis plan prepared in accordance with Schedule 1 of the *Environmental Planning and Assessment Regulation 2000* and Chapter G1: Site Analysis, Site Design and Building Materials of Shoalhaven Development Control Plan 2014 (SDCP 2014). The site plan and site analysis plan must be prepared to an appropriate scale, be fully dimensioned and include development on the adjoining land.

Response

A site analysis plan is attached at **Sheet 13** of the attached plans.

2. Provide an amended SEE that addresses the following matters. An additional SEE (prepared by Michael Brown Planning and dated December 2020) was submitted in response to Council's initial request for additional information, but does not address Council's requirements as follows:
 - a) Chapter G11: Subdivision of Land – the SEE states subdivision is not proposed. Please confirm whether the strata subdivision is proposed and, if yes, address the relevant sections of SDCP 2014 Chapter G11 in the SEE. **Note throughout the submitted SoEE and Sheet 19 shows that strata subdivision is proposed by the subject application. Refer to Section 4.7.4 of addendum.**

- b) Chapter G13: Medium Density and Other Residential Development – The SEE includes a Table 5 Compliance with Controls that do not appear to match the provisions of Chapter G13. The SEE does not adequately address non-compliances with Chapter 13 in relation to the amenity for future residents and the wider neighbourhood. Refer to Point 4 for detail. **Amended and now Table 6 in addendum report.**
- c) Chapter G21: Car Parking and Traffic – The SEE does not adequately address non-compliance with car parking requirements. Refer to Point 3 for detail. **This matter is addressed in Section 4.7.6 of the addendum SoEE report.**

Response

The SoEE has been amended and is attached to this response.

3. SDCP 2014 Chapter G21 requires two car parking spaces per dwelling (with more than three bedrooms) and 0.5 the number of units in visitor parking. That is, each unit must have a double garage, and two visitor parking spaces must be provided on-site for the proposed development. Further, there are aisle width and turning requirements that need to be met, including enabling vehicles to enter and exit in a forward direction.

The request for variation in the original SEE is not considered adequate given the perceived pressure on parking in this area of Huskisson from tourism activity, the unacceptable location of the second car space for Unit 2, the second car space for Unit 1 not being identified, and the location of a car space on the drive forward of the building line that does not comply with manoeuvrability. The proposed parking space for Unit 2, accessed via a drive-through garage and within a grassed area of the rear yard, is not acceptable because the grass would impede use for parking, and there would be an adverse impact on residential amenity and landscaping. The parking space forward of the building line between Unit 1 and the property boundary is not acceptable for residential use, as residential parking must be within the dwelling footprint. Further, it would not be possible for a vehicle in this space to enter and exit in a forward direction, which contravenes SDCP 2014 Chapters G21 and G13, and the space is not, therefore, acceptable for visitor parking.

Parking is of particular concern in Huskisson, where there is potential for short term holiday rental that generates a high demand for parking beyond typical residential use. Given the recent adoption of Chapter 21, the engineering comments, and concerns raised in the submissions, full compliance with the SDCP 2014 car parking requirements is encouraged and requires a redesign of the proposed development. To demonstrate that all vehicles will be able to enter and leave the site in a forward direction you are requested to provide evidence, such as swept paths or a dimensioned site plan.

Alternatively, you are requested to provide adequate justification for departure from SDCP 2014 requirements for car parking provision and design. The request for variation must be in the format required in Chapter 1, Section 11 of the SDCP 2014.

Response

Unit 1 & 2 have been reduced to three (3) bedrooms, which according to SDCP 2014 Chapter G21 requires a single space for either unit. The four (4) units need 2 x visitor parking spaces or 0.5 spaces per unit. Parking is compliant with two (2) spaces shown on Sheet 15. The spaces are shown as grasscrete or similar treatment or if Council requires, can be provided as permeable paving to reduce the impact of hardstand areas.

4. The development does not demonstrate compliance with SDCP 2014 Chapter G13 Medium Density Development and there are non-compliances with the provisions relating to setback, building height plane, fences, private open space and car parking. The SEE does not address or provide sufficient justification for these non-compliances. You are requested to redesign the proposed development to provide a better outcome in relation to these matters. Alternatively, to address the following matters in an amended SEE, noting that fitting a larger development on the site is not justification for exceeding the acceptable solutions. Rather the aim of allowing flexibility in the DCP requirements is to promote innovation and design excellence.

Response

Addendum report addresses compliance.

- Setbacks – The SEE seeks variation to the setback requirements of SDCP 2014 but does not provide clarity on the control being varied, the extent of the proposed variation and the unique circumstances as to why the variation is being sought (as required by Chapter 1, Section 11 of the SDCP 2014). The SEE does not provide justification for the non-compliance and the proposed development should be redesigned to comply.

Response

Refer to addendum report and plans.

- Building height plane - Provide elevations showing the correct building height plane. Planes are projected at 45° from a height of 5m above ground level (**existing**) at the front, side and rear boundary. The planes provided with the application are drawn from the finished ground level (that includes fill) rather than the existing ground level, and the planes from the front and rear boundary are not shown on the submitted plans. Units 3 and 4 exceed the building height plane, and when drawn correctly from the existing ground level, the non-compliance will be greater than that discussed in the SEE. The SEE does not justify the non-compliance and the proposed development should be redesigned to comply.

Response

The addendum report request a variation of the building height plane, as the DCP allows for eaves and gutters to encroach, but requires a request to be submitted.

- Fences – The 1.8m high fence within the front setback is not considered acceptable as it will interrupt the landscaped character of the front of the site and is not in keeping with the streetscape that has lower fences and gardens within the front setback. The objective of the landscape requirements is to place buildings within a landscaped setting and provide screening to reduce the impact of built form. The proposed fence within the front set back will inhibit the achievement of these objectives and should be removed (in conjunction with the redesign of the private open space for Unit 1 as discussed following).

Response

A request to permit the front fence for the POS for Unit 1 is provided in the addendum and providing reasons why such should be permitted and referencing development approvals granted for Nos 40 and 44.

- Private open space Unit 1– Location of the private open space for Unit 1 within the front set back is not considered acceptable as it does not provide a fully private outdoor area for residents (it will be closer than usual to the street and not fully screened) and it encroaches into the front set back (as discussed above). Further, the DCP requires a paved outdoor space 5m by 4m that is 50% covered, and this is not provided for Unit 1. The required hard paved, partially covered area is considered essential as it provides residents with an outdoor area that can be used for dining, and recreation/clothes drying during inclement weather.

Response

Refer to above comments and details submitted with the addendum report.

- Private open space Unit 2 – Unit 2 does not have a paved and partially covered outdoor space as required by the SDCP 2014. As discussed above, this is unacceptable as such an area provides essential and usable space for residents. Further, the private open space for Unit 2 is also designated as a car space. As a car space, the area can't perform its intended role of recreation and deep soil planting. The area should, therefore, be clearly designated as either private open space or car space and this results in non-compliance with the SDCP 2014 requirements.

Response

POS addressed with door relocated and alfresco added to hard surfaced area.

- Landscape and private open space generally – All open space areas should be shown on the dimensioned site plan. Please note that service areas, such as those used for bin storage, water tanks and clothes drying, should be excluded from the calculations for landscape and private open space. **This has been addressed, calculations exceed expectations for minimum requirements.**
- Car parking and manoeuvring – Refer to Point 3.

Response

In respect of landscaping, refer to **Sheets 15 & 25** for details. Also refer to **Table 2** of the addendum SoEE, which provides details of the amount of private open space (POS) provided for each unit. It would be noted that the POS has a northerly aspect for each unit.

In terms of the car manoeuvring, AE Consulting Engineers have produced plans at **C01 & C02 of Annexure D**. The plans show how into the garages of Units 1 to 4 and exit such garages and leave the development in a forward direction. The plans show a number of movements for each unit to comply with the relevant Australian Standard for this form of development.

5. Earthworks - Provide details of the proposed cut, fill and retaining walls on the fully dimensioned site plan. Cut and fill is proposed to level the building areas and retaining walls are shown on the elevations. These should also be shown on the site plan. Note that retaining walls over 0.6m are required to be set within the landscaping.

Response

Cut & Fill Plan Shown on **Sheet 23**. The proposal will require a 500mm high retaining wall along the northern boundary, a 600mm retaining wall along the eastern boundary and 800mm on the southern boundary. This is to ensure any overland flows do not impact on the floor levels of the proposed dwellings.

6. Bin storage - Unit 2 bin storage area will need to be accessed via the garage, which is unacceptable. You are requested to provide a more accessible bin storage area or address in the SEE how bins for Unit 2 will be accessed without requiring residents to move vehicles.

Response

Bin storage areas shown with side gate on amended plans.

7. Provide the correct plans of the upper floor of Units 1 and 2 - the upper floor plans submitted for Units 1 and 2 incorrectly show the ground floor of Units 1 and 2.

Response

Plans show correct details.

8. Provide a stormwater concept plan prepared in accordance with SDCP 2014 Chapter G2 Sustainable Stormwater Management and Erosion/Sediment Control of SDCP 2014. The original SEE refers to a stormwater plan by MI Engineers. However, this could not be located in Council's records. Stormwater could be discharged along the rear lane to the existing Council open drain (behind 38 Duncan St) or similarly to the neighbouring development at 44 Duncan St (DA19/1841), via the Keppel Street road reserve to the open drain in the unformed section of Fegen Street. The stormwater plan should also demonstrate on-site detention.

Response

Refer to amended stormwater plans SW01-SW02 of Annexure D prepared by AE Consulting Engineers. The plans indicate that roof and hardstand/surface drainage can be directed to an Onsite Detention (OSD) system with a volume capacity of 7.2m³ before being discharged to the rear lane via flow dissipators.

Having regard to the above, we respectfully request that Development Application 2020/2312 be approved subject to conditions.

Sincerely yours,



MICHAEL J BROWN
DIRECTOR
MICHAEL BROWN PLANNING STRATEGIES PTY LTD



PO Box 295
CAMDEN NSW 2570

Phone: 46 480877

Mobile 0418620718
Email: michael@michaelbrown.com.au
ABN 52 162 313 895

19 June 2021

Your Ref: 2020/2312

Our Ref: 2020/0189

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

Attention: Elliott Weston

Dear Elliott,

Re: DA/2020/2312 – No 42 Duncan Street, HUSKISSON –

Reference is made to our letter dated 14 April 2021 and the Council email dated 15 June 2021 requesting further additional information in respect of the above property. Firstly, we act for Macquarie Grove Homes in this matter and have been requested to provide this town planning response to the further matters raised. Please find attached the following addressing Council issues.

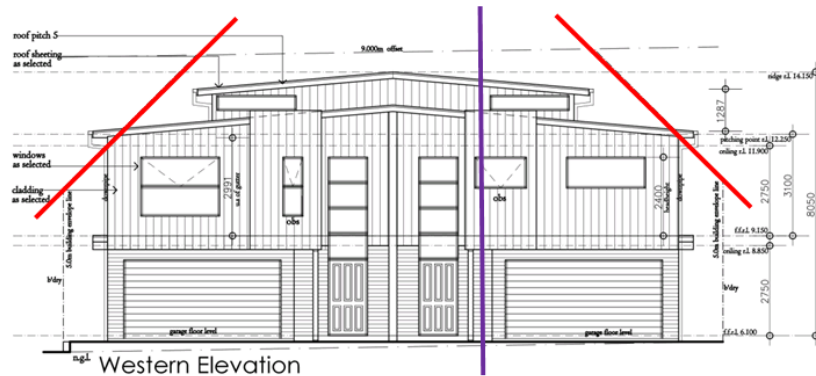
Building Envelope, Heights and Setbacks

- The SEE does not provide any reason or justification for the non-compliance or discuss whether it is possible to design the building containing units three and four within the building plane.
- The SEE does not provide any unique circumstances as to why the variation is being sought or necessary.
- The SEE does not demonstrate how the relevant objectives and performance criteria are being met with the proposed variation;
- Demonstrate that the development will not have any additional adverse impacts as a result of the variation.
- The request for variation is not supported by other documentation to demonstrate why the variation is needed.

Response

The response requests a variation of the building height plane, as the DCP allows for eaves and gutters to encroach, but requires a request to be submitted, as detailed above. The proposed dwellings 3 and 4 are compliant with the building envelope control for the ground floor level.

At the upper floor level, the eaves encroach into the building envelope as shown below. It is noted that there are exemptions to the building envelope encroachments to include gutter, fascias, downpipes, eaves up to 0.6m.



Section 5.1.3 of Chapter G13 of the DCP provides the following objectives:

- i. Provide practical building envelopes for development to ensure that the height and scale of new development is not excessive, relates well to the local context/streetscape and is compatible with the existing or desired future environmental character within the locality.
- ii. Minimise the visual impacts of elements of the development that exaggerate the built form and impacts negatively on desired future streetscapes.
- iii. Encourage design that creates desirable living conditions and ensures that the amenity of surrounding properties is properly considered and not adversely impacted.
- iv. Allow adequate separation between dwellings (within the development) and adjoining properties to promote natural light, solar access, ventilation, landscaping and privacy.
- v. Retain the amenity of the public domain.

In respect of the objectives, that part of the dwelling that is encroaching are the eaves located at the upper floor. The majority of the dwelling is located well within the envelope control as shown above, with the red line depicting the amount of encroachment. It is clear from the plans that the eaves do encroach 0.6m and less than that permitted.

It would be noted that the ground and upper floor ceiling heights are 2.75m. the ceiling heights could be reduced to 2.45m to reduce or have no encroachment. However, best building practice and the Low-Rise Building Code requires a ceiling height of 2.75m for bedrooms for better air circulation/ventilation. The same for the ground floor. It is noted that there is no height control under Clause 4.3 of the LEP and therefore the height control relates to the building envelop/height plane to some extent.

Therefore, it is considered that the encroachment is minor and is consistent with the objectives of minimising building bulk/scale and height (first objective).

The site plan shows a rectangular development with four units labeled 'unit 1', 'unit 2', 'unit 3', and 'unit 4'. Each unit is labeled 'proposed medium density units' and 'EFL 6.100'. Unit 1 is on the left, unit 2 is in the center, unit 3 is on the right, and unit 4 is at the bottom right. There are parking areas with 'POS' (Proposed Open Space) and 'POS 4000x5000 8000sqm' labels. The plan includes various setbacks, easements (EFL 6.104), and infrastructure like a '1800 high fence', 'turning bay', and 'retaining wall'. A red line runs horizontally across the middle of the plan. The plan is surrounded by a '500 high' fence on the top and bottom, and a '1800 high fence' on the right. The plan is also adjacent to a '2000, Alameda' street on the right and a '2000, Alameda' street on the bottom right.

As stated, the separation of the buildings allows a reasonable amount of solar access penetration to the property to the south. It should be noted that any development to the south of a medium density development will be impacted, and, in this regard, the design has minimised as much as possible (fourth objective). The public realm has been maintained (fifth objective).

Landscaping and Private Open Space

- The proposal will not provide sufficiently dimensioned landscaping that would provide amenity to residents, effective screening and enable tree and large shrub planting.

- For Units 1 and 2, the proposal will not provide sufficiently dimensioned private open space that will be functional and useable for residents all year round, and ensure that the private open space provided for a dwelling is useable and meets user requirements for active and passive outdoor recreational activities.

Clause 5.14 provides objectives and controls for landscaping. The following objectives apply.

- Ensure that landscaping maximises amenity for future residents, neighbouring dwellings and the public domain.
- Ensure the provision of adequate and appropriate landscaping that is sympathetic to the local character.

In relation to these objectives, we are of the opinion that the proposed landscape area is not inconsistent with these objectives. The controls provide that at least 10% of the site area is to include formal landscaping, and that a further 20% is to be provided, with 35% of the front setback area to be landscaped. We note that landscaped areas can include alfresco areas or other recreational areas/structures.

Clearly the proposed landscaping responds effectively to the site and neighbouring properties and provides for a well-designed landscape treatment, which matches with other developments that have a similar setback. Therefore, the setback proposed is characteristic with existing developments in this part of the medium density area.

The philosophy of this design is to integrate and provide a sympathetic and consistent landscape treatment to the road frontage, to integrate the proposed development into the streetscape. This has been used to increase water permeation and therefore efficacy of the landscape treatment to the frontage and consistent with landscape treatment nearby.

The proposed landscape design when viewed from the streetscape responds to the existing site and provides regular layered landscape treatment, as well as regular placement of trees, to create visual interest and scale to the proposed development. The streetscape itself is kept clean and simple, followed by the landscape layered treatment of trees, shrubs and groundcovers within the nominated landscape zone.

Unit 1 provides an alfresco area directly accessible from the meals/family area to provide indoor areas, with the alfresco providing an extension to this area with an outdoor area. The alfresco area is located on the northern side and has dimensions of 4m x 4.35m or 17.4m². on the northern side is an area that measures 2m x 6.04m or 12.08m². We note that the DCP accepts areas that have minimum dimensions of 1.5m in any direction. Therefore, this area is acceptable.

The other area of POS is that located within the front of unit 1. The area is 46.12m² and the minimum dimensions of 4m x 5m have been provided and directly accessible from the family room. As stated in the addendum SoEE, the Council has set a precedent by permitting this area to be used for POS with the adjoining development. The dimensions easily meet the controls.

With Unit 2, there is an area that measures 4m x 5m with an overall area of 30.4m² of which 14.22m² is alfresco area. The dimension of the remaining space meets the control. Whilst the spaces may be considered minimal, nonetheless, the acceptable standard for medium density development is 24m² with dimensions of 4m x 6m. The proposed POS is compliant with this requirement.

In medium density developments, people are attracted due to minimal maintenance of open space areas. Whilst a tree may not be able to be grown in such space, persons living in these developments want low shrubs or garden beds in which to potter around. Trees within a medium density development in small yards are incongruous with the lifestyle of such living.

The use of layered landscaping, regular tree plantings and minimising the impact of the development on the streetscape and environment and increases the overall landscaped area. It is considered that the depth of landscaping is consistent with the above objectives by providing deep soil zone areas; will improve the streetscape of the area and is sustainable.

As such, we are of the opinion that the objectives have been met and that Council should accept the amount of POS provided, as it is not contrary to the objectives nor the controls.

Car Parking

- It is apparent that adequate off-street parking will not be provided with the development and that this will adversely impact the occupants of the proposed development.
- The proposed development will create significant demand for parking, and the shortfall in parking on-site will put pressure on-street parking that is already and will continue to be under pressure in the vicinity as more development occurs.
- Given Chapter 21 (recently adopted) clearly details the desired future character of the medium density areas as having adequate off-street parking. The non-compliance means the proposed development will not contribute to the desired future character of the medium density residential areas and will not be compatible with the surrounding development.
- The variation will result in the proposed development not being able to meet the objectives of Chapter G21. Specifically, the following:
 - i. Ensure that adequate off-street parking is provided in conjunction with development throughout the City, including any overflow parking.
 - ii. Discourage the use of on-street parking for new development.
 - iii. Ensure those car parking areas are visually attractive, functional, operate efficiently, are safe and meet the needs of users.
- The SEE does not provide any reason or justification for the non-compliance or discuss whether it is possible to design the proposed development with the required parking.
- The SEE does not provide any unique circumstances as to why the variation is proposed or necessary.

- The SEE does not demonstrate how the relevant objectives and performance criteria are being met with the proposed variation.
- The SEE does not demonstrate that the development will not have any additional adverse impacts as a result of the variation.

Response

In respect of onsite carparking, G21: Car Parking and Traffic (Version 4 – amended 26 March 2021) provides that for a dwelling containing 3 or more bedrooms, two (2) spaces are required and for developments with 3 or more dwellings, 0.5 visitor spaces are required.

The proposed development provides 2 x 3 bedroom and 2 x 5 bedroom units. Based on the above requirement, eight (8) carparking spaces are required for the units. In addition, two (2) visitor spaces are required, making a total of ten (10) spaces. The proposed development provides six (6) spaces for the units and two (2) visitor spaces, which equates to a shortfall of two (2) spaces, noting that Units 1 and 2 only provide one (1) space for each unit.

However, it is noted that at the time the application was lodged with Council, the DCP required two car parking spaces per dwelling with more than three bedrooms and 0.5 in visitor parking, i.e. each unit must have a double garage and two visitor spaces.

At the time of lodgement, the application proposed 2 x 4 bedroom units & 2 x 5 bedroom units. This proposal provided a single garage for Unit 1, a stacked parking for Unit 2 and double garages for Units 3 & 4. Under the DCP four (4) bedroom units required two spaces and therefore non-compliant with the above.

Following Council requesting additional information, particularly in respect of carparking provision, the application was amended to have Units 1 & 2 reduced from four bedrooms to three bedrooms to be compliant with the above DCP control and providing two (2) onsite visitor spaces. The total parking provision was eight (8) spaces.

The current DCP amended 24 March 2021, now requires two spaces for three bedrooms or more. This equates to ten (10) spaces to be required on site. We note that the DCP does not contain a savings provision, and the current DCP controls apply.

This in our opinion is unreasonable, as the plans have already been amended to comply and now to further make changes to the DCP with an application in the system is not reasonable. We assume that the Council supports development in the Township, but it is unreasonable to amend a DCP to then make a development non-compliant if such application is lodged before amendments have been made to essentially require further changes to a development.

The stated objectives of the DCP are:

- Ensure that adequate off-street parking is provided in conjunction with development throughout the City, including any overflow parking.
- Discourage the use of on-street parking for new development.

- iii. Ensure those car parking areas are visually attractive, functional, operate efficiently, are safe and meet the needs of users.

In respect of the objectives, the following is provided.

As stated above, at the time of lodgement of the application, the DCP contained a different carparking rate. It is acknowledged that the application was not compliant with the control as was subsequently amended to be compliant. There is no available information to ascertain why the DCP was amended to require more carparking spaces. Did the Council have empirical information or conduct studies to show that medium density development was causing a shortfall in onsite carparking and impacting on street parking?

If on the basis that this occurred, then we can understand that the Council would amend the DCP to ensure that the first objective would be met. However, to require a development proposal that was submitted prior to changes to the DCP, which have significant implications with a redesign and involve a significant loss of income from the sale of the two front units, is unreasonable and not justified.

If the control was in place prior to the application being lodged that is an entirely different issue and a different development outcome would have resulted.

As such, we are of the opinion that at the time of lodgement of the application, including the amendment, the carparking control should be the basis of the assessment of the application and under this circumstance the objective has been met.

The second objective has partially been addressed above. However, whilst the Council can provide carparking controls, every scenario can never be achieved, as there are uses that even with the best endeavours simply will not provide sufficient carparking onsite. Indeed, visitors to developments, even there is onsite parking, will still tend to park in the street, as it is more convenient.

We do not disagree with Council having as an objective or control that all parking associated with a development should be provided onsite. However, for instance, if each unit had a visitor or more than two visitors at the same time, such persons would have no choice but to park in the street.

We are of the opinion that the eight (8) onsite carparking spaces are sufficient for this development and will minimise the potential for on street parking. It will not eliminate this occurring but will minimise the potential. Therefore, the second objective has been met.

In respect of the third objective, the visitor space at the front of the property is conveniently located and will be constructed of a grasscrete material. This ensures that the area within the front setback does not contain a hardstand area and therefore the 'green' frontage and landscape treatment is retained to preserve the streetscape. The landscape outcome for this development was addressed above. If the Council requires additional landscaping to further soften the streetscape, then such can be conditioned on the consent, noting that there is only one carparking space at the front of the development.

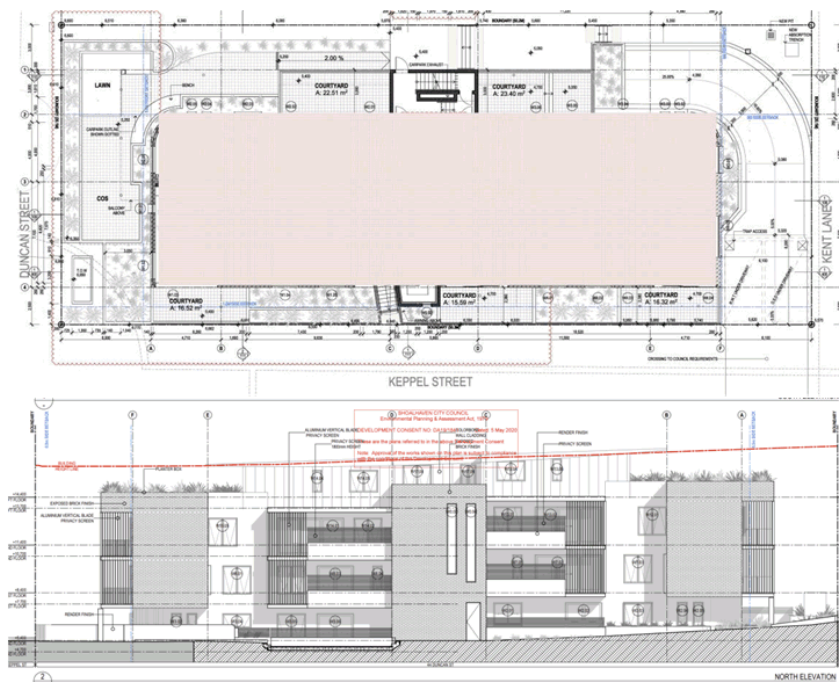
In our opinion, the location of this space is likely to be used because of its location. Hence this would be consistent with the second objective. In our opinion, the comment that the location of the carparking space will detract from the streetscape (grasscrete), yet the Council also requires that such spaces be functional and meet the needs of users, is not antipathetic to the above objectives.

It is our opinion that the amount of carparking provided onsite is consistent with the objectives. An additional parallel carparking space could be provided opposite the rumpus room of Unit 2 by the removal of the landscaped area and a reduction in the size of the rumpus room. This would result in a shortfall of one (1) space.

An alternative proposal could be to reorientate Units 3 and 4 such that they adjoin Unit 2. The outcome of this proposal would be a gun-barrel effect and result in one long continuous wall along the northern side of the subject property. This, in our opinion, would be contrary to the design to have the development broken up into two blocks and provide a better built form outcome.

As it is proposed, Unit 4, in particular, is located at the end of the driveway and terminates the development, rather than a long driveway. The position of Unit 4 is compliant with CPTED principles by providing passive surveillance of the driveway.

The development of No 44 Duncan Street is typically a long gun-barrel development, except it is a corner allotment. This is clearly demonstrated in the extracts below.



Having regard to the above, we are of the opinion that a case has been provided to justify the proposed development and that it is not contrary to the above objectives. It is our opinion that the development provides a better built form outcome than the traditional gun-barrel developments that typically are developed on such properties.

Therefore, we respectfully request that Development Application 2020/2312 be approved subject to conditions.

Sincerely yours,

MICHAEL J BROWN
DIRECTOR
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10 August 2021

Your Ref: 2020/2312

Our Ref: 2020/0189

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

Attention: Ms Rebecca Lockart

Dear Rebecca,

Re: DA/2020/2312 – No 42 Duncan Street, HUSKISSON – Construction of Four (4) Multi-dwelling Housing Development

Reference is made to previous correspondence and the email dated 27 July 2021 in respect of the subject development application DA/2020/2312. We also note that in previous correspondence that Chapter G21 relating to car parking requirements was mentioned had been amended and that the application did not comply with this part of the DCP.

It is noted that during the course of the assessment by Council that Chapter 21 was amended and that the plans were amended to reflect the changes apparently made. We note the admission in the email dated 27 July 2021 that no changes were made to G21 after October 2020, yet we were requested to comply on two occasions to reduce the number of bedrooms or provide compliance with Chapter 21. The changes to the plans were made at considerable expense, yet there were no amendments made after October 2020 and it was our client's persistence in challenging the evidence of the amendment that led to the admission. This is very concerning that this has occurred over a period of some 8 months.

Notwithstanding this obvious error in the Council assessment and requests for changes, the plans have been further amended with Revision J dated 26 July 2021 addressing the last request to address issues with the design. By way of introduction to the amended plans, Unit 1 has now been reduced from three (3) bedrooms to two (2) bedrooms. This unit and Unit 2 were originally submitted as four (4) bedroom units and then amended to three (3) bedrooms. Unit 2 remains a three (3) bedroom unit.

This amended response requests a variation of the building height plane, as the DCP allows for encroachments, but requires a request to be submitted, as detailed above. The proposed dwellings 3 and 4 are compliant with the building envelope control for the ground floor level.

At the upper floor level, the eaves encroach into the building envelope as shown above (refer to Revision J for further details). It is noted that there are exemptions to the building envelope encroachments to include gutter, fascias, downpipes, eaves up to 0.6m.

Section 5.1.3 of Chapter G13 of the DCP provides the following objectives:

- i. Provide practical building envelopes for development to ensure that the height and scale of new development is not excessive, relates well to the local context/streetscape and is compatible with the existing or desired future environmental character within the locality.
- ii. Minimise the visual impacts of elements of the development that exaggerate the built form and impacts negatively on desired future streetscapes.
- iii. Encourage design that creates desirable living conditions and ensures that the amenity of surrounding properties is properly considered and not adversely impacted.
- iv. Allow adequate separation between dwellings (within the development) and adjoining properties to promote natural light, solar access, ventilation, landscaping and privacy.
- v. Retain the amenity of the public domain.

In respect of the objectives, that part of the dwelling that is encroaching are the eaves and downpipes located at the upper floor. The majority of the dwelling is located well within the envelope control as shown on the amended plans. The eaves are 450mm wide and there is a minor encroachment of part of Unit 3 that is not the eaves but meets the 600mm encroachment allowance. Unit 4 is compliant with the allowance.

It would be noted that the rear section of the property is affected by flooding and that these units have been raised to address this issue. Unit 3 in particular has been raised higher, which has resulted in the encroachment for a very small section of this unit at the rear of the building and would not be discernible from the street and noting that the rear property is heavily vegetated and is zoned RE1 Public Open Space. It is unlikely that anyone within this area or the street would be concerned with the encroachment.

It would be noted that the ground and upper floor ceiling heights are 2.75m. the ceiling heights could be reduced to 2.45m to reduce or have no encroachment. However, best building practice and the Low-Rise Building Code requires a ceiling height of 2.75m for bedrooms for better air circulation/ventilation. The same for the ground floor. It is noted that there is no height control under Clause 4.3 of the LEP and therefore the height control relates to the building envelop/height plane to some extent.

Therefore, it is considered that the encroachment is minor and is consistent with the objectives of minimising building bulk/scale and height (first objective).

The proposed development also minimises the visual impacts, as units 3 and 4 are located some 27m from the front boundary and located behind the front two units. From the street, the view line is narrow and essentially along the driveway and only pedestrians or persons within the complex would view the building. Even so, the encroachment is clearly not discernible (second objective).

The subject zoning allows for a variety of residential accommodation. In any form of higher residential accommodation, even with two-storey dwellings, there is going to be impacts. The impacts in this regard have been minimised by providing the development in two (2) buildings and the separation minimises such impact of building bulk and the design concept has emerged with a different form of development, but at the same time respecting the coastal village forms (third objective).

As stated, the separation of the buildings allows a reasonable amount of solar access penetration to the property to the south. It should be noted that any development to the south of a medium density development will be impacted, and, in this regard, the design has minimised as much as possible. Units 1 and 2 are broken up with the area above garage 2 providing reasonable separation and articulation (fourth objective). The public realm has been maintained (fifth objective).

The variation is relatively minor in the overall context of the development. The minor non-compliance is not foreseen to contribute any adverse amenity impacts to adjoining properties in respect to privacy or overshadowing or building bulk and on this basis the variation should be supported.

Landscaping and Private Open Space

The email identifies that the following need to be addressed in the response. It is noted on **Sheet 19** of Revision J, that the proposed development provides 315.4m² of landscaped area and the control is for 303.48m². Deep soil zone requirement is 101.16m² and 201.11m² is provided. Hence the quantum of landscaped and deep soil is met by the development. The acceptability of the useability of the private open space (POS) area has previously been addressed. We are of the firm opinion that the POS provided for units 1 & 2 are totally acceptable for a medium density development having regard to the location of this property to access to public open space in the immediate area.

In relation to these objectives, we are of the opinion that the proposed landscape area is not inconsistent with these objectives. The controls provide that at least 10% of the site area is to include formal landscaping, and that a further 20% is to be provided, with 35% of the front setback area to be landscaped. We note that landscaped areas can include alfresco areas or other recreational areas/structures.

Clearly the proposed landscaping responds effectively to the site and neighbouring properties and provides for a well-designed landscape treatment, which matches with other developments that have a similar setback. Therefore, the setback proposed is characteristic with existing developments in this part of the medium density area.

In respect of the submission of a landscape plan, the attached prepared by Captivate Landscape Architects provides plans. The plans indicate that the private open space area for Unit 1 will be landscaped will be layered with shrubs and trees to provide an effective screen plant regime for the fence and the development. This layering effect proposes three water gums, with a Lilly Pilli that will screen the fence and then lower-level plants that will provide a landscaped entrance to the development site.

This planting will also screen the front visitor carparking space. The theme is then taken through the development site to provide planting along the fence lines and reduce the amount of hard paving to the site.



Design Philosophy

The philosophy of this design is to integrate and provide a sympathetic and consistent landscape treatment to the road frontage, to integrate the proposed development into the streetscape. This has been used to increase water permeation and therefore efficacy of the landscape treatment to the frontage.

Streetscape:

The proposed landscape design when viewed from the streetscape responds to the existing site and provides regular layered landscape treatment, as well as regular placement of trees, to create visual interest and scale to the proposed development. The streetscape itself is kept clean and simple, followed by the landscape layered treatment of trees, shrubs and groundcovers within the nominated landscape zone.

Response to Site Analysis

The design has considered the site constraints and developed a layout in response to the proposed development works. The creation of a cohesive landscape across the site has resulted in a landscape proposal that is responsive to the site, the development and aims and objectives of the DCP.

The use of layered landscaping, regular tree plantings and minimising the impact of the development on the streetscape and environment and increases the overall landscaped area.

It is considered that the depth of landscaping is consistent with the above objectives by providing deep soil zone areas; will improve the streetscape of the area and is sustainable.

The development is located within a medium density area and the proposed development would be one that residents do not require a large amount of private open space to maintain. The purpose of living in a medium density development of this scale, is to reduce the need to maintain private open space and to enjoy 'pottering' around with minor gardening.

As such, we are of the opinion that the objectives have been met and that Council should accept the amount of POS provided, as it is not contrary to the objectives nor the controls.

Car Parking

Response

In respect of onsite carparking, this aspect was addressed above. Notwithstanding the statements about Chapter G21: Car Parking and Traffic (Version 4) being amended on 26 March 2021, the amended proposal that the development under Revision J, the development provides for 1 x 2 bedroom unit, 1 x 3 bedroom unit and 2 x 5 bedroom units.

The DCP provides that for a dwelling containing no more than 2 bedrooms, 1 space; 3 or more bedrooms, two (2) spaces are required and for developments with 3 or more dwellings, 0.5 visitor spaces are required.

Based on the above requirement, seven (7) carparking spaces are required for the units. In addition, 1.5 visitor spaces are required, making a total of 8.5 spaces. The proposed development provides six (6) spaces for the units and two (2) visitor spaces, which equates to a shortfall of half a space. The Council may round up to require nine (9) spaces and therefore the shortfall would be one space.

The previous version of the DCP, noting the above comments about the DCP not being amended after October 2020, provided that dwellings with more than three bedrooms required two spaces each and 0.5 spaces visitor spaces for dwelling with more than three bedrooms. On this calculation, the development would require six (6) spaces, plus one visitor space, making a total requirement of seven (7).

As stated above, at the initial time of lodgement, the application proposed 2 x 4 bedroom units & 2 x 5 bedroom units. This proposal provided a single garage for Unit 1, a stacked parking for Unit 2 and double garages for Units 3 & 4. Under the DCP four (4) bedroom units required two spaces and therefore non-compliant with the above.

Following Council requesting additional information, particularly in respect of carparking provision, the application was amended to have Units 1 & 2 reduced from four bedrooms to three bedrooms to be compliant with the above DCP control and providing two (2) onsite visitor spaces based on the advice in writing by the Council assessing officer that a reduction in bedrooms would meet the DCP controls. The total parking provision was eight (8) spaces and accordingly provided.

The amended application (Revision J) provides eight (8) spaces. We note that the DCP does not contain a savings provision, and the current DCP controls may apply, which would require nine spaces.

This in our opinion is unreasonable, as the plans have already been further amended to comply, noting the issue of the DCP apparently being amended after October 2020. We submit that following the conflicting advice, that the provision of 8 spaces is reasonable under the particular circumstances of the event of this application.

As stated above, at the time of lodgement of the application, the DCP contained a different carparking rate. There is no available information to ascertain why the DCP was amended to require more carparking spaces.

As stated above, the application has been amended each time to address the Council requests. However, to require a development proposal that was submitted prior to changes to the DCP, which have significant implications in loss of income from the sale of the two front units, is unreasonable and not justified.

If the control was in place prior to the application being lodged that is an entirely different issue and a different development outcome would have resulted. However, as admitted there were no changes to Chapter G21 after October 2020.

As such, we are of the opinion that at the time of lodgement of the application, including the amendment, the carparking control should be the basis of the assessment of the application and under this circumstance the objective has been met.

We are therefore of the opinion that the eight (8) onsite carparking spaces are sufficient for this development and will minimise the potential for on street parking.

It is our opinion that the amount of carparking provided onsite is consistent with the objectives.

Overshadowing

The development of No 44 Duncan Street is typically a long gun-barrel development, except it is a corner allotment. In respect of perceived overshadowing impacts on this approved development, shadow diagrams have been provided on Sheets 16 and 17 of the revised plans.

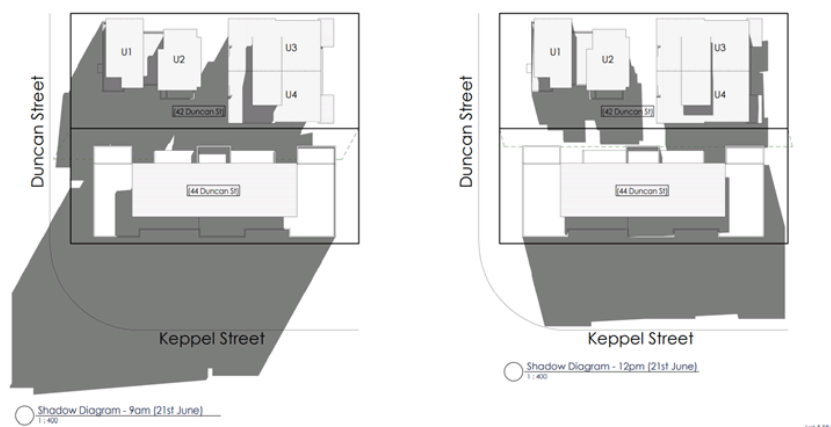
We draw Council's attention to the Planning Principle of sunlight access set by the Land and Environment Court in these matters of overshadowing impacts.

The Planning Principle set by Moore SC in the matter of Benevolent Society V Waverly Council (2010) NSWLEC 1082 is the matter for consideration in respect of sunlight access. This decision of Moore SC revised the previous principle of *Parsonage v Kuring-gai* [2004] NSWLEC 347; (2004) 139 LGERA 354, Roseth SC. The principle is as follows:

Where guidelines dealing with the hours of sunlight on a window or open space leave open the question what proportion of the window or open space should be in sunlight, and whether the sunlight should be measured at floor, table or a standing person's eye

level, assessment of the adequacy of solar access should be undertaken with the following principles in mind, where relevant:

- The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.
- The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.
- Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.
- For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.
- For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.
- Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.
- In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.



The shadow diagrams show the amount of overshadowing to the adjoining development. We note the requirement of the Court to provide sunlight access to the POS of adjoining development for a minimum of 3 hours during the winter solstice. The shadow diagrams clearly show that the balcony areas for the units with a northerly aspect achieve this requirement.

There is an area on the northeastern side that does not achieve this requirement. However, that is the driveway that provides vehicle access to the basement level carparking area and therefore not subject to the requirement. We also note that the POS for this development for the majority of the units within the approved development are located on the southern side and therefore are in shadow for a significant period of the year.

We are of the opinion that the amount of sunlight access to the proposed development is consistent with the above Planning Principle.

Therefore, we respectfully request that Development Application 2020/2312 be approved subject to conditions.

Sincerely yours,

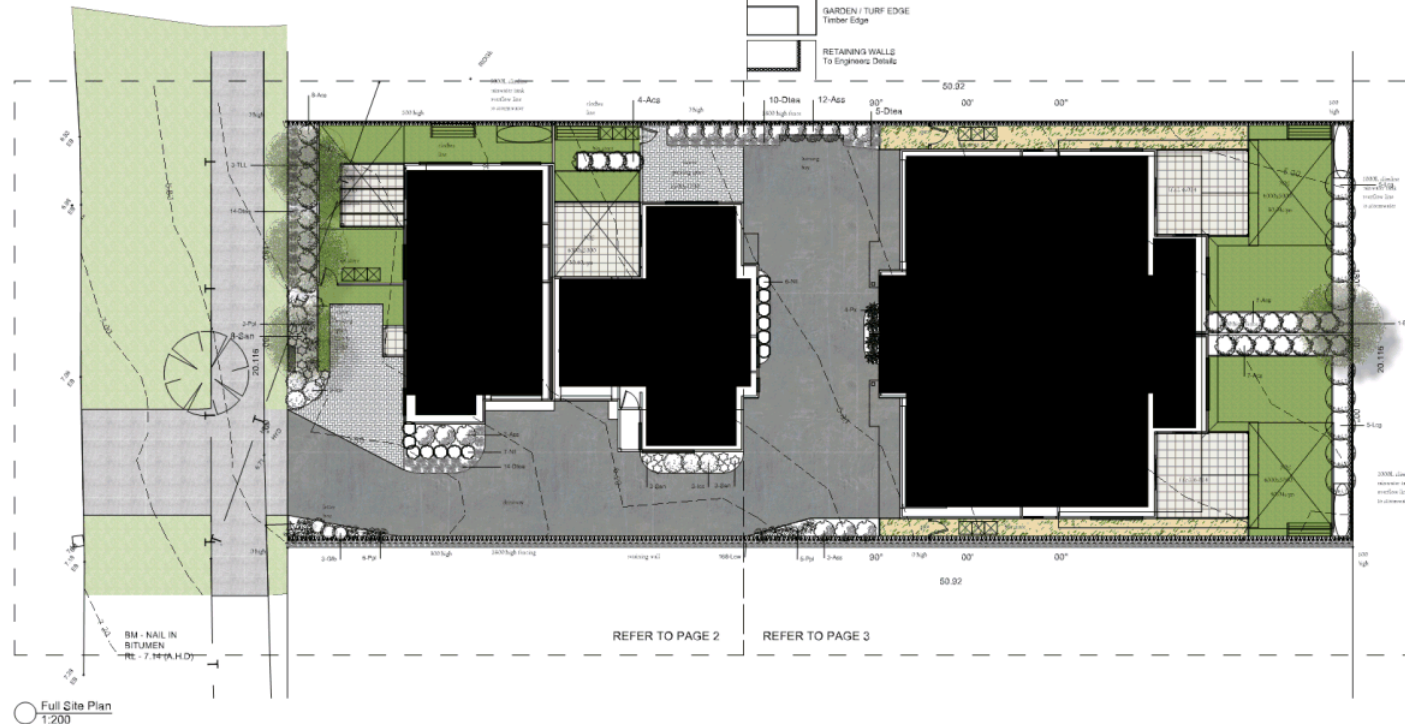
MICHAEL J BROWN
DIRECTOR
MICHAEL BROWN PLANNING STRATEGIES PTY LTD

Planting Schedule						
ID	Qty	Common Name	Botanical Name	Scheduled Size	Mature Height	Mature Spread
Trees						
EE	1	Eumundi Quandong	Elaeocarpus Eumundi	75L1	10m	4m x2
TLL	3	Lupinus Water Gum	Tristaniopsis laurina 'Lupinus'	75L1	6m	5m x2
Shrubs						
As	26	Libby Paly	Acacia Lindh 'Cherry Burglar'	200mm	1.5m	1m
As	18	Adenanthos	Adenanthos pernix 'Silver Silk'	200mm	1.2m	1m
Asb	3	Gravelias	Gravelias Fine Cracker	200mm	0.4m	0.8m
Is	9	Gandy Cornes	Argemone 'Gandy Cornes'	200mm	1.2m	1m
Is	10	Yee Tree	Leptospermum 'Copper Star'	200mm	2m	2m
Nal	13	Nandina	Nandina Laxiflora	200mm	0.7-0.9m	0.7-0.9m
Grasses						
Dis	43	Danella	Danella Tasmanica 'Emerald Arch'	200mm	0.35m	0.55m
Lw	168	Neel Rush	Lomandra confertifolia 'Waguna'	150mm	0.2m	0.2m
Pgl	14	Poa Grass	Pennisetum alopecuroides 'Purple Leaf'	150mm	0.8-0.9m	0.8-0.9m
Perennials						
Px	4	Kanaka Philodendron	Philodendron Xanadu	200mm	0.5-0.8m	0.8-1m

LEGEND	
	PLAIN CONCRETE
	CONCRETE COLOURED
	DECOMPOSED GRANITE
	PAVING / TILES
	PERMEABLE PAVING
	EXISTING TURF AREA
	PROPOSED TURF AREA
	WASTE BIN / CLOTHES DRYING
	COLORBOND FENCE 1800mm HIGH
	GARDEN / TURF EDGE
	RETAINING WALL To Engineering Details



Front Elevation
1:150



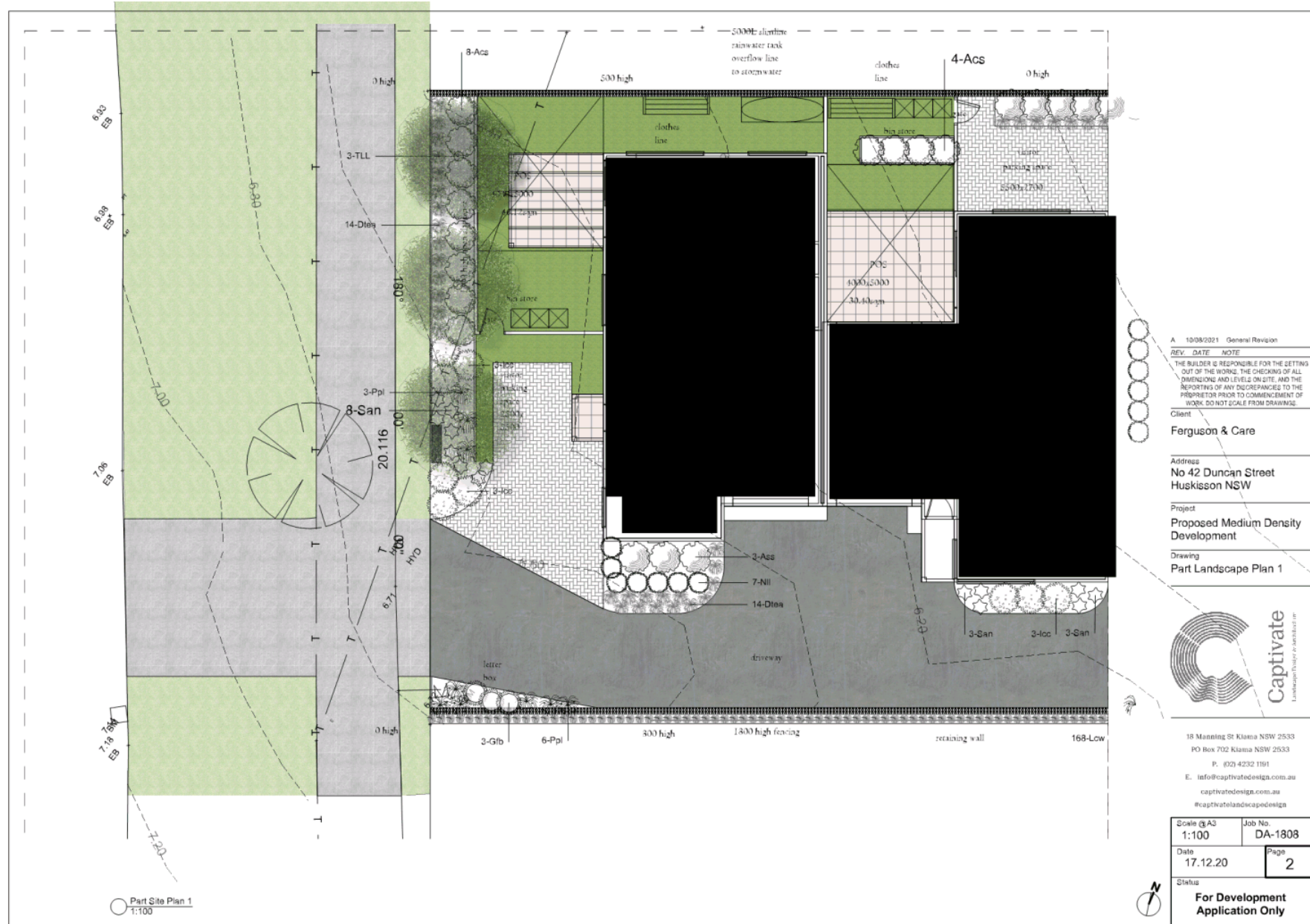
A	10/08/2021	General Revision
REV	DATE	NOTE
THE BUILDER IS RESPONSIBLE FOR THE SETTING OUT OF THE WORK, THE CHECKING OF ALL DIMENSIONS AND LEVELS ON SITE, AND THE REPORTING OF ANY DISCREPANCIES TO THE PROPRIETOR PRIOR TO COMMENCEMENT OF WORK. DO NOT SCALE FROM DRAWINGS.		

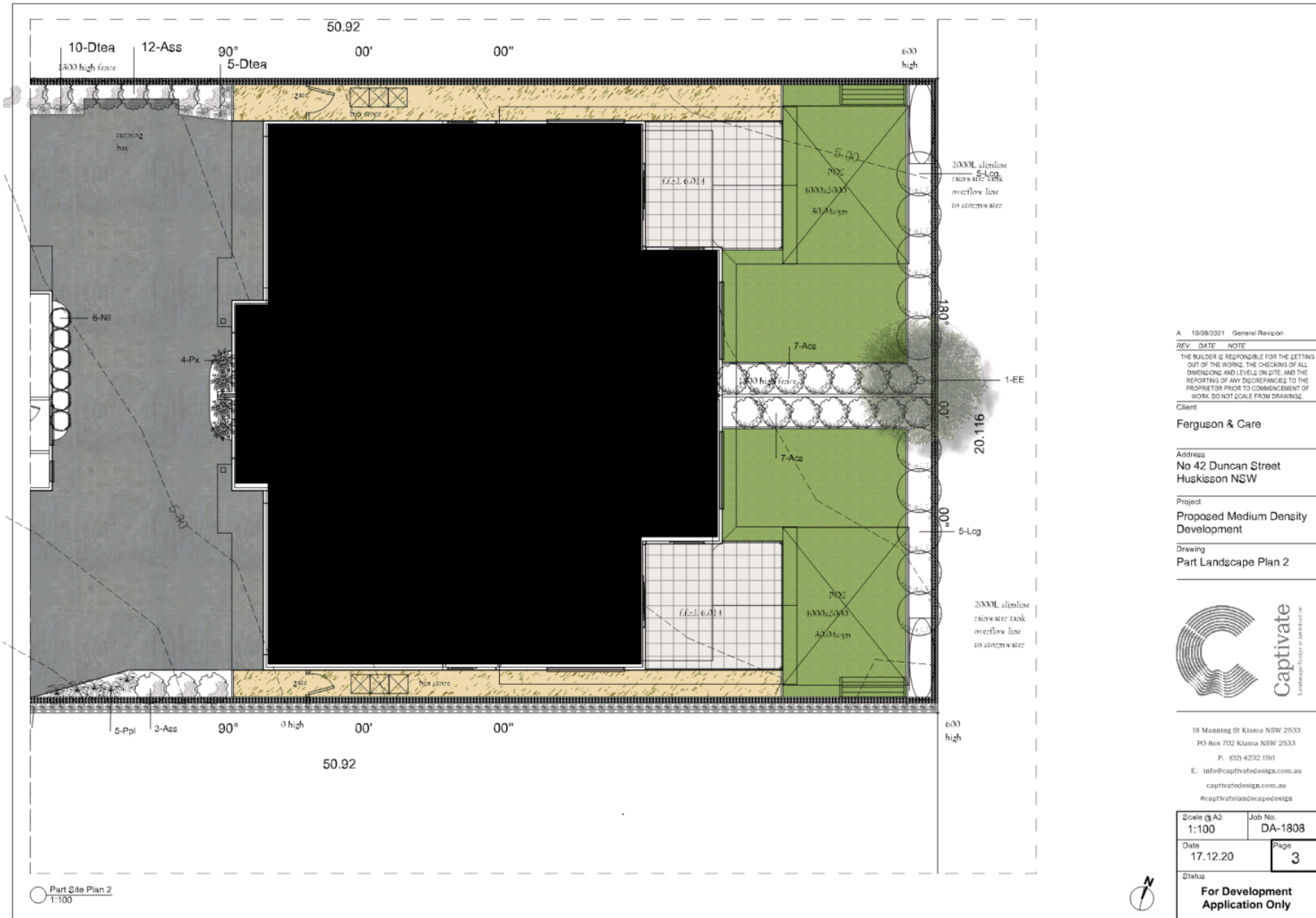
Client	
Ferguson & Care	
Address	
No 42 Duncan Street Huskisson NSW	
Project	
Proposed Medium Density Development	
Drawing	
Title Page	



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Date	Page
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Status	
For Development Application Only	





DE21.122 Development Application - DA21/1392 – Old Southern Rd South Nowra – Lot 2 DP 1065105 & Lot 28 DP 17310

DA. No: DA21/1392/4

HPERM Ref: D21/383231

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments:

1. Determination - Refusal [↓](#)
2. Assessment Report (under separate cover) [⇒](#)
3. Plans - Architectural (under separate cover) [⇒](#)
4. Plans - Landscaping [↓](#)

Description of Development: Staged Residential Flat Building Development (containing 56 Units, and ancillary communal facilities, internal roads and services)

Owner: Care Living Nowra Pty Ltd

Applicant: PDC Lawyers & Town Planners

Notification Dates: 23 August 2021 to 8 September 2021

No. of Submissions: Nil

Purpose / Reason for consideration by Council

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

“The delegation to the CEO be rescinded to determine a development application by refusal until the end of COVID 19 crisis.

The refusal of a development application must only be by Council/Committee resolution.”

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

Recommendation (Item to be determined under delegated authority)

That Development Application No. DA21/1392 for a Staged Residential Flat Building Development (containing 56 Units, and ancillary communal facilities, internal roads and services) pursuant to the Shoalhaven Local Environmental Plan 2014 at Lot 2 DP 1065105 & Lot 28 DP 17310, Old Southern Rd South Nowra be determined by way of refusal for the reasons contained in Attachment 1 of this report.

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Options

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

Implications: The development is unable to proceed as applied for. The applicant can, however, apply for a section 8.2 review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court (LEC) against Council's decision.

2. Approve the DA, subject to the resolution of any outstanding assessment matters.

Implications: Council would need to resolve any outstanding referral matters and provide the grounds to support the proposal, that is, provide reasons to support the development, having regard to section 4.15 considerations. Under some circumstances, third parties (i.e., objectors) can seek a judicial review of Council's decision in the NSW Land and Environment Court.

3. Alternative recommendation.

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



Figure 1 – Location Map

Background

Proposed Development

The application seeks consent for the construction of a staged residential flat building (RFB) development consisting of 56 units across six (6) two-storey buildings, internal roads and parking facilities, communal facilities, and a fire trail in accordance with the architectural and landscape plans provided at Attachments 3 and 4.

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The construction of the development is proposed to be staged in the following format:

- Stage 1: Construction of Block A including:
 - construction of two buildings consisting of a total of 18 units across two levels (16 two bedroom and 2 one bedroom units);
 - internal ingress/egress road to Old Southern Rd;
 - gravel fire tail on the northern rear side of the development;
 - communal waste enclosure servicing the development;
 - communal facilities including the 'Hub' (to be temporarily used as a sales office during Stage 1) and village green; and
 - associated resident/visitor parking facilities including 21 private parking spaces, 13 visitor spaces, and 5 spaces dedicated to the communal facilities (i.e., Hub).
- Stage 2: Construction of Block B including:
 - construction of two buildings consisting of a total of 20 units across two levels (16 two bedroom and 4 one bedroom units);
 - use of the Hub temporarily as a sales office until the completion of the Stage 2 construction works.
 - construction of associated resident/visitor parking facilities including 17 private parking spaces and 2 visitor spaces.
- Stage 3: Construction of Block C including:
 - construction of two buildings consisting of a total of 18 units across two levels (14 two bedroom and 4 one bedroom units); and
 - associated resident/visitor parking facilities including 18 private parking spaces and 13 visitor spaces.

The proposed development requires the removal of 1.22ha of vegetation to permit the construction of the proposed works. Vegetation to be removed includes a mix of trees and grassland vegetation which have been identified as falling under plant community types, Plant Type Community (PCT) 1080 – Red Bloodwood / Grey Gum Open Forest and PCT 1326 – Illawarra Lowland Grassy Woodlands. Given the extent of vegetation being removed from the property, the development was required to enter into the Biodiversity Offsets Scheme and was thus accompanied by the lodgement of a Biodiversity Development Assessment Report (BDAR).

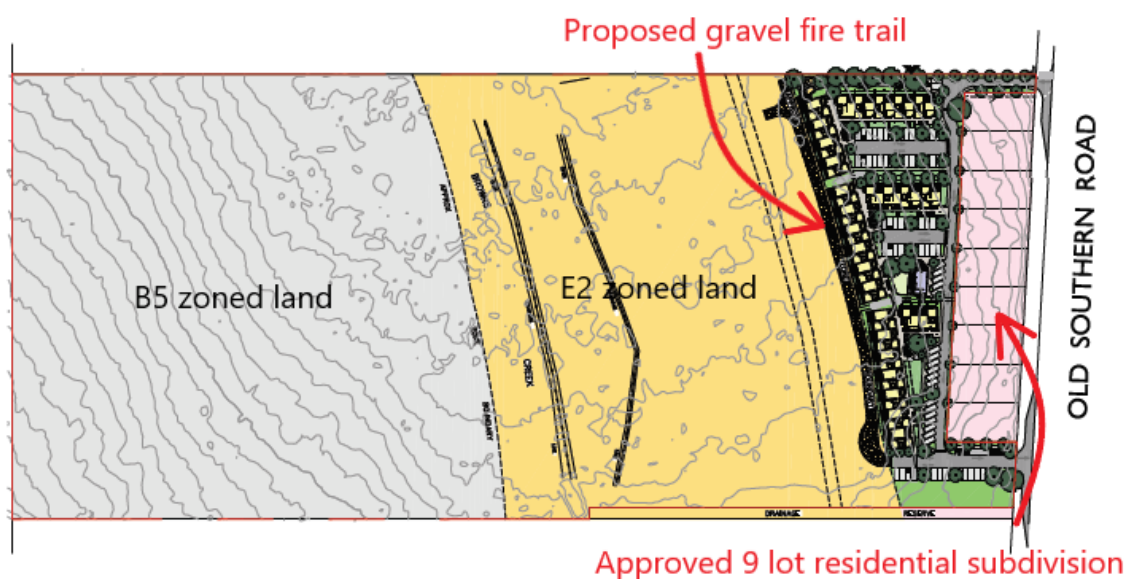


Figure 2 – Site Plan

Figure 3 below shows the development as viewed from the internal driveway looking west. It is noted each block is made up of two buildings, one sited in a north-south orientation and one oriented east-west. The figure below depicts the east-west building for each block on the right of each elevation plan with car park areas in front of Blocks B and C.



Figure 3 – East Elevation Plan

Subject Land

The development site comprises Lot 2 DP 1065105 & Lot 28 DP 17310 (Old Southern Rd South Nowra). Refer to Figure 1.

Site & Context

The development site:

- Has a total combined area across both lots making up the site of 8.16ha (Lot 2 – 4.17ha and Lot 28 – 3.99ha).
- Has a mixed zoning (refer Figure 4) which includes the following:
 - R1 General Residential in the eastern front part of the site adjacent to Old Southern Rd – the vast majority of the proposed development is located within this portion of the site.

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- E2 Environmental Conservation in the central part of the site incorporating Browns Creek – the proposed fire trail ancillary to the proposed development is located within this zone.
- B5 Business Development in the western rear part of the site beyond the Browns Creek – no works are proposed within the part of the site zone B5.
- Has approval under SF10679 for a ten (10) lot Torrens title subdivision development including nine (9) residential lots directly front Old Southern Rd, and a residue lot that wraps behind each of these lots and includes the rear of the property, being the location of the subject site. The subdivision of the nine (9) residential lot subdivision is currently under construction. Each of these lots have a rear boundary abutting the development.
- Is presently vacant and consists of a mix of cleared land in the eastern part to support the residential subdivision development, and vegetated land for the remainder of the site consisting of trees and grassland identified as plant community types PCT 1080 – Red Bloodwood / Grey Gum Open Forest and PCT 1326 – Illawarra Lowland Grassy Woodlands.
- Is traversed by Browns Creek which travels from north to south through the central part of the site.
- Is mapped as being partly flood prone land (i.e., subject to the 1% AEP flood level and flood planning level). The part of the site where the residential flat building development is proposed is not within the 1% AEP flood level but partly within the flood planning level.
- Is mapped as being bushfire prone land (Vegetation Category 2 and Buffer Area).
- Is partly mapped as containing 'Biodiversity – Significant Vegetation' and 'Excluded Land'. The location of the proposed works is outside of the mapped areas which are predominantly adjacent to the Browns Creek.
- Is located within a wider emerging South Nowra urban residential area which would consist of the nine Torrens title lots being constructed adjacent to the development site and further detached residential housing located on the opposite side of Old Southern Rd.

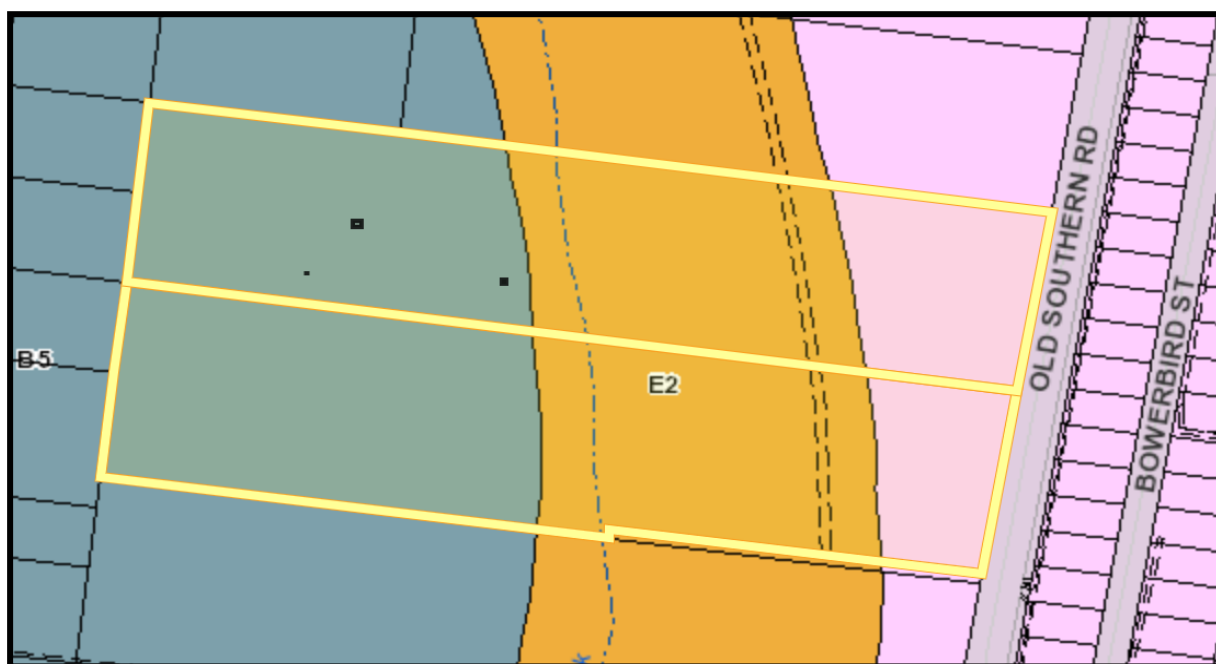


Figure 4 – Zoning Map

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History

The following provides a description of correspondence which took place with the applicant prior to and following the lodgement of the Development Application (DA) with Council:

Event / Action Taken	Date
Pre-lodgement Meeting held with the applicant and subsequent notes provided with recommendations regarding alterations to the design to enable the development to achieve compliance with applicable requirements such as the Apartment Design Guide (ADG), which is a requirement of Councils DCP.	07.10.2020
Formal lodgement of Development Application with Shoalhaven City Council and payment of application fees.	21.04.2021
<p>1st Request for information (RFI) sent to the applicant – with the following matters being requested:</p> <ul style="list-style-type: none"> • amended plans addressing the following: <ul style="list-style-type: none"> ○ secured all-weather car parking be provided to permit compliance with the ADG. This also reflects advice provided to the applicant at pre-lodgement stage. ○ Secured all-weather bicycle parking be provided to permit compliance with the ADG. ○ An improved landscape buffer be provided separating the internal road servicing all residential flat building units from the neighbouring approved nine (9) Torrens title lots. • Request for the fire trail to be amended to enable it to be wholly located within the R1 zoned section of the site – noting that, given it is ancillary and incidental to the residential flat building development, such a proposal is prohibited within its present location within the E2 zone. • Request for all communal facilities including the village green to be included as part of Stage 1 of the development. • Request for review of the approved sewer design to ensure the proposed development is capable of being serviced by this infrastructure. 	06.05.2021
<p>Applicant response to 1st RFI Request provided with the following responses given to Council's request:</p> <ul style="list-style-type: none"> • No amended plans were provided with the following instead being noted: <ul style="list-style-type: none"> ○ No alteration to the design of the parking areas provided. ○ Requested bicycle parking spaces provided on amended Landscape Plans. ○ Amended Landscape Plans provided. • No alteration to the location of the fire trail provided. The applicant advised that the fire trail should be a separately defined use – Emergency Management Facility • Agreement provided that the village green should form part of Stage 1. • Confirmation provided as part of response that there is sufficient capacity within the sewer design to cater for the proposed development. 	07.06.2021
<p>2nd RFI sent to the applicant following consideration of the response – with the following matters being requested (reiteration of matters raised as part of 1st Request that were not adequately addressed):</p> <ul style="list-style-type: none"> • Request for amended plans addressing the following: <ul style="list-style-type: none"> ○ Reiteration of request for secured all-weather car parking to be 	13.07.2021

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Event / Action Taken	Date
<ul style="list-style-type: none"> provided for the development to permit compliance with the ADG. Request for secured all-weather bicycle parking be provided for the development to permit compliance with the ADG, noting that the plans provided did not demonstrate that it would be all-weather. Request for an improved landscape buffer and increased width to 1.5m to match that required for medium density developments per Chapter G13 of the Shoalhaven Development Control Plan 2014 (SDCP 2014). Advice provided to the applicant that Council finds that the fire trail is effectively part of the Residential Flat Building development given it is <i>ancillary and incidental</i> to the overall development (noting that it would not be required were a development not proposed and that it would be for the sole purpose of the development). 	
<p>Applicant response to 2nd RFI Request reiterating their response provided in the 1st Request:</p> <ul style="list-style-type: none"> Request for amended plans addressing the following: <ul style="list-style-type: none"> Applicant advice that the Apartment Design Guide should not apply to the development and that they consider that the proposed parking area complies with the Apartment Design Guide, particularly as it relates to 3J-5. Advice provide that the bicycle parking is located in an accessible location. Applicant reiteration that a 1m vegetation strip separating the internal road from the adjacent residential lots is sufficient <p>Advice provided by applicant reiterating that the fire trail should be a separately defined use and stating why such a trail should be needed.</p>	23.07.2021
Internal and external referrals requested.	23.08.2021
<p>Completion of notification period.</p> <p>The application was notified for a period of two weeks in accordance with the Community Consultation Policy. No submissions were received during the notification period. (Note: the adjoining nine (9) residential lots have not been registered yet and are still on Council record as being under the ownership of Care Living Nowra Pty Ltd.)</p>	08.09.2021
Recommendation for refusal provided to the October Development and Environment Committee Meeting.	

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Issues

Prohibited Use – Residential Flat Buildings within Zone E2 – Environmental Conservation of the Shoalhaven Local Environmental Plan 2014

In accordance with the submitted architectural plans located at Attachment 3 to this Report, the proposed development is primarily contained within the R1 General Residential Zone in accordance with the Shoalhaven Local Environmental Plan (SLEP) 2014, where such a development is permissible with consent – see land use table below:

2 Permitted without consent

Home occupations

3 Permitted with consent

*Attached dwellings; Boarding houses; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Exhibition homes, Exhibition villages; Group homes; Home-based child care; Home businesses; Home industries; Hostels; Jetties; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Registered clubs; **Residential flat buildings**; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Sewerage systems; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Water supply systems*

4 Prohibited

Farm stay accommodation; Any other development not specified in item 2 or 3

However, part of the residential flat building development (being the ancillary gravel fire trail – see Figure 2) is located within the adjoining E2 Environmental Conservation Zone pursuant to the SLEP 2014 – where such a development is a prohibited use – see Land Use Table below:

2 Permitted without consent

Nil

3 Permitted with consent

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

4 Prohibited

*Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); **Residential flat buildings**; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

As such there is difficulty with the road as it is fundamentally a prohibited use [being intrinsic to the development of a residential flat building(s)] and cannot be approved in its present form.

Council's position that the fire trail is not a separately defined use but subservient to the overall purpose of a Residential Flat Building development is further clarified in the NSW Land and Environment Court decision ***Site Plus Pty Limited v Wollongong City Council and anor [2011] NSWLEC 1371***, where Brown ASC dismissed an appeal for use of part of a disused quarry for a resource recovery facility. The decision has relevance to the subject application as it required use of a road over adjoining property to which the overall proposed use was prohibited on this particular land:

"26 The question of permissibility arises from the proposed access to Lot 2. The proposal provides for access from Five Islands Road over Lot 41 and 42 to Lot 2. While Lot 2 is not landlocked and has a street frontage to Jarvie Road, access to this street is not proposed. Access over Lot 41 is via an existing right of way, and access over Lot 42 (owned by the council) forms part of the lease of Lot 2 that the applicant proposes to enter into, if approval to the development application is granted.

27 There was agreement that the proposed development is permissible, and that there was also agreement that the proposed development was a prohibited use on Lot 41 and 42 as it was not included in Schedule 2. The only reference in Schedule 2 being to Lot 2.

31 Mr Clay SC, for the second respondent, relies on the decision in Chamwell Pty Limited v Strathfield Council (2007) 151 LGERA 400, where access was provided to a shopping complex and ancillary facilities on commercially zoned land over land zoned residential. In this case it was held that the access was part of the purpose of a shopping complex, and as such, prohibited in the residential zone.

32 In considering the competing submissions, I agree with the conclusions of Mr Clay. The general approach to characterisation for planning purposes is best set out by Preston CJ in Chamwell, where his Honour includes the relevant cases and relevantly states, at 27 and 28:

27. In planning law, use must be for a purpose: Shire of Perth v O'Keefe (1964) 110 CLR 529 at 534-535, and Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (1993) 80 LGRA 173 at 188. The purpose is the end to which the land is seen to serve. It describes the character which is imparted to that land at which the use is pursued: Shire of Perth v O'Keefe (1964) 110 CLR 529 at 534.

28. In determining whether land is used for a particular purpose, an enquiry into how that purpose can be achieved is necessary: Council of the City of Newcastle v Royal Newcastle Hospital (1957) 96 CLR 493 at 499-500. The use of land involves no more than the 'physical acts by which the land is made to serve some purpose' at 508.

The decision by Brown ASC in **Site Plus Pty Limited v Wollongong City Council and anor [2011] NSWLEC 1371 and other cited cases**, form the basis for the position that the fire trail is appropriately categorised as part of the overall development for the purpose of an RFB.

Having regard for the above, the proposed use being 'Residential Flat Building' is permissible with consent within Zone R1 – General Residential however is prohibited within Zone E2 – Environmental Conservation.

Applicant's Submission

The applicant has made the following submissions regarding the location of the fire trail within the E2 zoned portion of the land and has advised that it should be considered as a completely separate and independent function to the residential flat building development and should be a separately defined use known as an 'Emergency Services Facility'. This use is defined by the SLEP 2014 as follows:

"emergency services facility means a building or place (including a helipad) used in connection with the provision of emergency services by an emergency services organisation".

In particular, the applicant made the following comments:

“The fire trail is proposed as an emergency services facility, which is permissible in the E2 zone. The Rural Fire Service is an emergency service facility.

While it is recognised that the proposed fire trail will service the residential development proposed, it is not accurate to say that it will solely benefit this development. The fire trail will provide maintenance access, as well as firefighting access to the western part of the site to the benefit of all residential development in the area.

The proposed fire trail provides a fuel-reduced area directly adjacent to the building. It serves as part of the firebreak as well as providing a physical platform from which fire suppression and mitigation related activities may be undertaken by firefighting agencies.

The trail also provides vehicular access to the E2 zoned portion of the site that is subject ongoing monitoring and management under the approved vegetation management plan”.

Discussion

The above position is not supported for the following reasons:

- Council’s consideration regarding the characterisation of the fire trail being part of the primary purpose of a residential flat building is based upon an established legal position formed as part of NSW Land and Environment Court decision **Site Plus Pty Limited v Wollongong City Council and anor [2011] NSWLEC 1371**.
- The fire trail would not be constructed were it not for the residential flat building development being proposed, which demonstrates that it is entirely ‘subordinate’ and ‘reliant’ on the development. In accordance with the SLEP 2014, it is therefore required to be considered as ancillary to the development (residential flat buildings) and therefore cannot be classified as a separate independent and primary land use.
- The fire trail only extends to the boundaries of the development site and thus services *no other properties* besides the subject site and the residential flat building development. There is no overriding purpose or community benefit for the fire trail other than to service the proposed development on the subject site only.
- Residential flat buildings are prohibited within the E2 Environmental Conservation Zone and therefore the ancillary and incidental fire trail is not permitted to be considered for approval.
- Given the proposal is described as a prohibited use, it also results in non-compliance with the objectives for the Environmental Conservation Zone as follows:

Objective	Comment
<i>To protect, manage and restore areas of high ecological, scientific, cultural, or aesthetic values.</i>	Inconsistent. The construction of a gravel fire trail ancillary to a residential flat building does not assist in the protection, management, and restoration of areas of high ecological, scientific, cultural, or aesthetic values.
<i>To prevent development that could destroy, damage, or otherwise have an adverse effect on those values.</i>	Inconsistent. The construction of a gravel fire trail ancillary to a residential flat building does not assist in the prevention of damage to or destruction to those values.

<i>To protect water quality and the ecological integrity of water supply catchments and other catchments and natural waterways.</i>	Inconsistent. The construction of a gravel fire trail ancillary to a residential flat building does not assist in the conservation or restoration of native vegetation.
<i>To protect the scenic, ecological, educational, and recreational values of wetlands, rainforests, escarpment areas and fauna habitat linkages.</i>	Inconsistent. The construction of a gravel fire trail ancillary to a residential flat building does not assist in the protection of scenic, ecological educational and recreational values of wetlands, rainforests, escarpment areas and fauna habitat linkages.
<i>To conserve and, where appropriate, restore natural vegetation in order to protect the erosion and slippage of steep slopes.</i>	Inconsistent. The construction of a gravel fire trail ancillary to a residential flat building does not assist in the conservation or restoration of native vegetation.

Non-Compliance with Chapter 2 – General Environmental Considerations of the Shoalhaven Development Control Plan 2014 (SDCP 2014)

Council is required to take into consideration the provisions of Chapter 2 General Environmental Considerations of the SDCP 2014, in particular as it relates to ‘Crime Prevention Through Environmental Design’ (CPTED) principles.

CPTED incorporates basic design principles which contribute to the safety and security to users and the community and seek to minimise crime risk. There are four broad principles of CPTED: surveillance, access control, territorial re-enforcement, and space management.

As part of Council’s considerations as to whether the proposed development achieves compliance with the CPTED principles, the development is required to demonstrate compliance with the following objectives:

- “i. enhance and improve community safety;*
- ii. encourage a built environment that encourages a sense of community safety;*
- iii. address community safety and crime prevention;*
- iv. minimise crime risk in the City of Shoalhaven; and*
- v. prevent the opportunity for crime and antisocial behaviour.”*

Council’s assessment of the proposal has concluded that the proposal does not adequately demonstrate compliance with the CPTED principles specifically with regard to the proposed at grade carparking areas.

Applicant’s Submission

“The proposed development achieves compliance with the design guidance for objective 3J-5 and it is considered the proposed layout achieves an improved CPTED outcome by avoiding enclosed entrapment spaces (basements) outside of high traffic and CBD areas. Should Council require secured access to the parking areas the design could be amended to include gates across the entry and exit points from Old Southern Road.”

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Discussion

The assessment concludes that the proposed development does not satisfy the objectives for CPTED and therefore represents a departure to Chapter 2 of the SDCP 2014 for the following reasons:

- Providing at grade car parking, located at the rear of the nine (9) residential lots facing Old Southern Road, which is accessible for all, provides areas of concealment and provides opportunity for crime and antisocial behaviour, is directly contrary to the objectives for CPTED.
- Alternatively, the provision of secured, all weather car parking (i.e., such as a basement car park, garaging in association with dwellings) would provide for appropriate levels of access control through security access doors / boom gates, individual doors, etc. However, the applicant has not proposed any methods of access control to separate the proposed on-grade parking area from the general public.
- The construction of secured all weather car parking would also afford the opportunity for better passive surveillance of the car parking area through the use of CCTV cameras. Given the wide expanse of on-grade parking proposed, opportunities for CCTV coverage of the entire car parking area are minimal.
- The construction of secured, all weather car parking also affords the opportunity for the level of lighting within the car parking to be managed and also for any light spill to be avoided. The applicant has not submitted a car parking lighting plan which explains how the wide expanse of on-grade parking would be appropriately lighted for security purposes.
- The assessment finds that any extensive on-grade lighting regime could potentially cause considerable amenity impacts due to light spill affecting the neighbouring nine (9) Torrens title lots which are adjacent to the car park and internal driveway areas.
- The assessment finds that there are improved options for space management available. The relocation of on-grade parking to a secured, all weather facility would provide increased opportunity for internal communal recreation facilities – which would result in the improvement in function of the space and increase the opportunities for passive surveillance within the development

Non-Compliance with Acceptable Solution 2.2 and Performance Criteria P2.2 of Chapter G3 – Landscaping Design Guidelines of the Shoalhaven Development Control Plan 2014

The proposed development is required to be assessed against the applicable provisions of Chapter G3: Landscaping Design Guidelines. In general, Chapter G3 requires that any development other than a single dwelling house is required to be accompanied by a Landscape Plan prepared by a qualified designer. Such a Landscaping Plan has been submitted by the applicant (refer Attachment 4 to this Report).

The Landscape Plan is also required to address specific criteria within Chapter G3 which includes Acceptable Solution A2.2 and Performance Criteria P2.1 and P2.2, which states the following:

“The landscape plan must:

- *Relate to the site plan for the proposed development.*
- *Address P2.1 and P2.2.*
- *Include the landscape plan and planting schedule requirements at Section 6.1 of this Chapter, as appropriate to the scale of the development”.*

The submitted landscape plan relates to the site plan associated with the development and has been accompanied by a planting schedule consistent with the requirements. However,

Council is required to also assess the landscaping against Performance Criteria P2.1 and P2.2 of the Chapter G3 as follows:

“The landscape plan:

- Is designed to meet user requirements taking into account maintenance, exercise opportunities, shade provision and aesthetic quality.*
- Enhances the appearance of the streetscape through the provision of substantial landscaping to the street frontage.*
- Integrates the development into the streetscape”.*

“The landscape plan:

- Specifies the location and species of trees, shrubs, and ground cover.*
- Uses vegetation types and landscaping styles that blend the development in with the streetscape*
- Complements the functions of the street and reinforce desired traffic speed and behaviour.*
- Is an appropriate scale relative to both the street reserve width and the building bulk.*
- Considers personal safety (safety by design) by ensuring good visibility and lighting at dwelling entries, along paths and driveways and avoids shrubby landscaping near thoroughfares.*
- Contributes to energy efficiency and amenity by providing substantial shade in summer especially to west facing windows and open car park areas and admitting winter sunlight to outdoor and indoor living areas.*
- Improves privacy and minimises overlooking between dwellings.*
- Minimises risk of damage to proposed buildings, overhead and underground power lines and other services.*
- Minimises the risk of damage due to bushfire if the land is within a bushfire prone area as mapped by Council.*
- Retains or plants mature shade trees to assist in reducing the urban heat effect.*
- Reduces the removal of native vegetation and dominant locally occurring native trees”.*

Assessment has highlighted that the proposed 1m wide landscape strip between the proposed development and the adjoining nine (9) residential lots (excerpt shown at Figure 5) does not comply with the DCP controls.

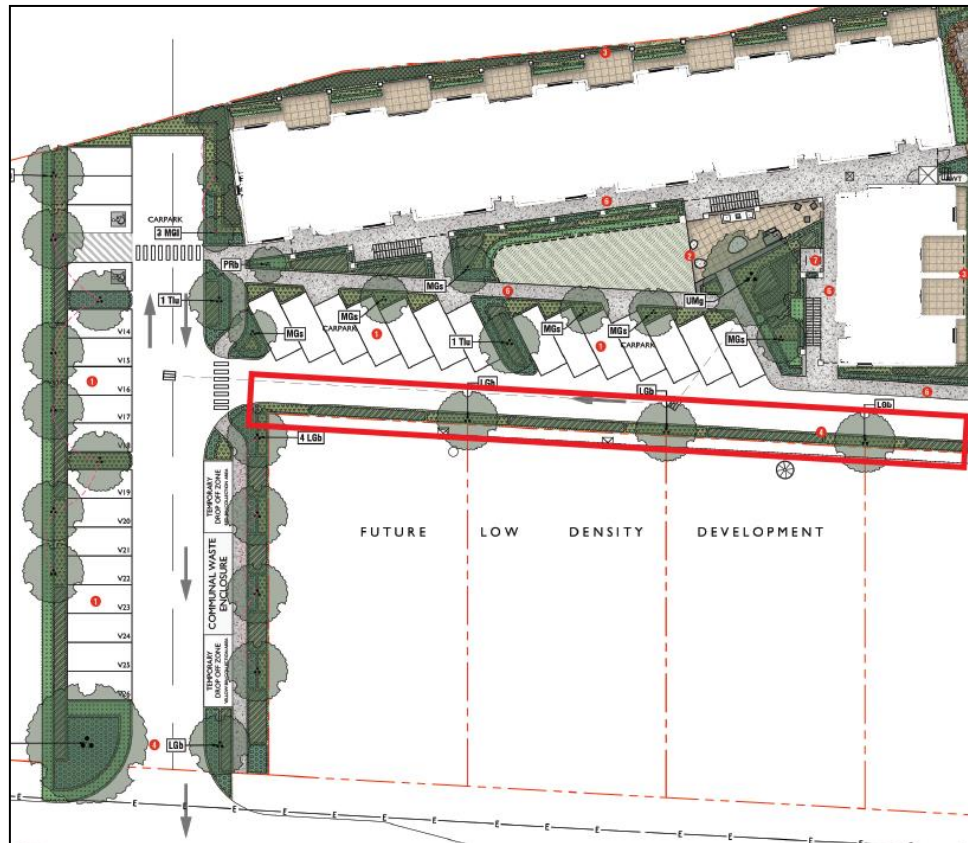


Figure 5 – Excerpt of proposed Landscape Plan highlighting proposed 1m strip landscaping

Applicant's Submission

"We believe the densely vegetated 1m landscape strip provided is acceptable given the low traffic volumes and location of the site."

Discussion

The development is non-compliant with Performance Criteria P2.1 and P2.2 of Chapter G3 – Landscaping Design Guidelines for the following reasons:

- The proposed landscaping does not minimise overlooking of the proposed building towards neighbouring properties (being the nine approved and under construction Torrens title residential allotments).
- The narrow nature of the landscaping strip, being only a depth of 1m, separating the Torrens title lots from the adjoining internal road and nearby two storey RFBs will provide inadequate screening, noting the Landscape Plan is shown to consist of only hedge species and a single tree per every 20m of road length.
- The landscaping strip separating the adjoining Torrens title lots and internal road is not considered to be of an appropriate scale relative to both the street reserve width and the building bulk. This is given the internal road is likely to service a minimum of 504 vehicle trips per day (based upon a minimum of nine vehicle trips per dwelling as specified by the RMS Guide to Traffic Generating Developments) and the considerable impacts upon amenity that would be created should an insufficient buffer, including landscaping be provided within this location.

Non-Compliance with Acceptable Solution 32.2 and Performance Criteria P32.2 of Chapter G13 – Medium Density and Other Residential Development of the Shoalhaven Development Control Plan 2014

In accordance with Chapter G13 – Medium Density and Other Residential Development of the SDCP 2014, residential flat building developments consisting of up to two storeys such as that proposed on the site, are required to consider the provisions of the Apartment Design Guide (ADG) per Acceptable Solution A32.2 as follows:

“A32.2 Where SEPP 65 does not apply (see clause 4 of SEPP 65), the development must be designed in accordance with the Apartment Design Guide.”

A full assessment of the proposed development against the Apartment Design Guide is contained in the Assessment Report at Attachment 2 to this Report. However, Council notes that non-compliances with three objectives of the Apartment Design Guide which are summarised as follows:

Objective 3C-1 Opportunities for people to be concealed should be minimised.

The provision of on-grade parking (which represents a non-compliance with Objective 3J-5) has resulted in the following issues which represent a concern from a CPTED perspective and could potentially lead to the concealment of people:

- As opposed to basement parking which has more appropriate means of access control such as the use of boom gates and/or fob only access for residents, on grade parking does not have the same opportunity for access control where spaces can be accessed by the general public or anyone walking past.
- Similarly, garages and access thereto are controlled by occupants. Many modern garages have an internal access point. (The design of the development however will influence how a development is characterised (legally defined) and thus assessed.)
- Use of CCTV cameras within a development decreases the opportunity for concealment given the level of surveillance it provides and also acts as a deterrent to criminal behaviour where people may otherwise be looking for opportunities for concealment. Given the wide expanse of on-grade parking proposed, opportunities for CCTV coverage of the entire car parking area are minimal, which therefore creates possibilities for concealment.
- The applicant has not submitted a car parking lighting plan which explains how the wide expanse of on-grade parking would be appropriately lit for security purposes. This lighting has potential amenity impacts for adjoining residences and as such should be assessed prior to determination.
- The distance of the parking spaces to resident front doors exceeds 50m for some dwellings. Given the extent of this separation, opportunities for concealment are created given the lower level of surveillance afforded to residents of their parking spaces.
- The relocation of on-grade parking to a secured, all weather facility would provide increased opportunity for internal communal recreation facilities – which would result in the improvement in function of the space and increase the opportunities for passive surveillance within the development.

Objective 3D-3 Communal open space should be well lit.

A detailed lighting design plan is required to demonstrate compliance with CPTED principles and gauge potential impact on adjoining properties.

In the absence of a plan, Council cannot be satisfied that the communal open space areas, pathways leading from car parks to buildings, and other internal areas would be sufficiently lit.

Given the location of the nine (9) Torrens title lots within close vicinity to facilities such as the internal road, there is also concern that extensive lighting of all on-grade areas of the

development would potentially lead to light spill / nuisance for neighbours and thus negative amenity impacts for future residents of those lots.

Objective 3J-5 – On-grade car parking should be avoided.

The applicant has provided wide expanses of on-grade parking in a situation where the provision of such parking is avoidable, representing a non-compliance with Objective 3J-5.

Council made the following requests for the provision of secured, all-weather parking be provided by the applicant:

- Pre-Lodgement Meeting Notes issued to applicant dated 7th October 2020.
- 1st RFI sent to applicant on 6th May 2021.
- 2nd RFI sent to applicant on 13th July 2021.

Despite Council's repeated requests for the provision of a secure, all-weather parking facility, application as lodged provides the same on-grade parking design as was presented at pre-lodgement stage and has not altered the development to permit compliance with the objective.

Council notes that the non-compliance with the objective has resulted in the following issues being present with regard to the design of the development as it relates to the on-grade car parking:

- It results in an impracticable design having regard for the significant length residents are required to walk to get from their designated car space to the front door – with no weather protection. The distance in some instances is greater than 50m. This is of particular concern for elderly residents and young families, particularly in instances of inclement weather.
- Remote car parking, lack of cover i.e., weather protection and associated inconvenience of such an arrangement are not commensurate with modern living expectations and standards in newly designed and modern developments. This goes to providing a reasonable and basic level of amenity for occupants, regardless of socio-economic status. Further, garaging and the like can also provide for storage of household items (assuming appropriate design and dimensions).
- It results in a less attractive design appearance, in that the car parking areas represents one of the most visible design elements of the development as highlighted in Figure 6 below.
- The inclusion of on-grade parking has resulted in the total footprint of the development being expanded, which has resulted in the need for the fire trail to be located within the E2 Environmental Conservation zoned portion where such a development is prohibited.
- The areas presently taken up by on grade parking would be reclaimed for use as part of the development – which would be an improved and more efficient design outcome. Such areas could be utilised for further residential development or the provision of an improved network of recreational and communal areas. This would possibly enhance residential amenity of occupants.
- The design results in concerns from a CPTED perspective, given the lack of access control, the lack of lighting, and the lack of night-time surveillance opportunities.

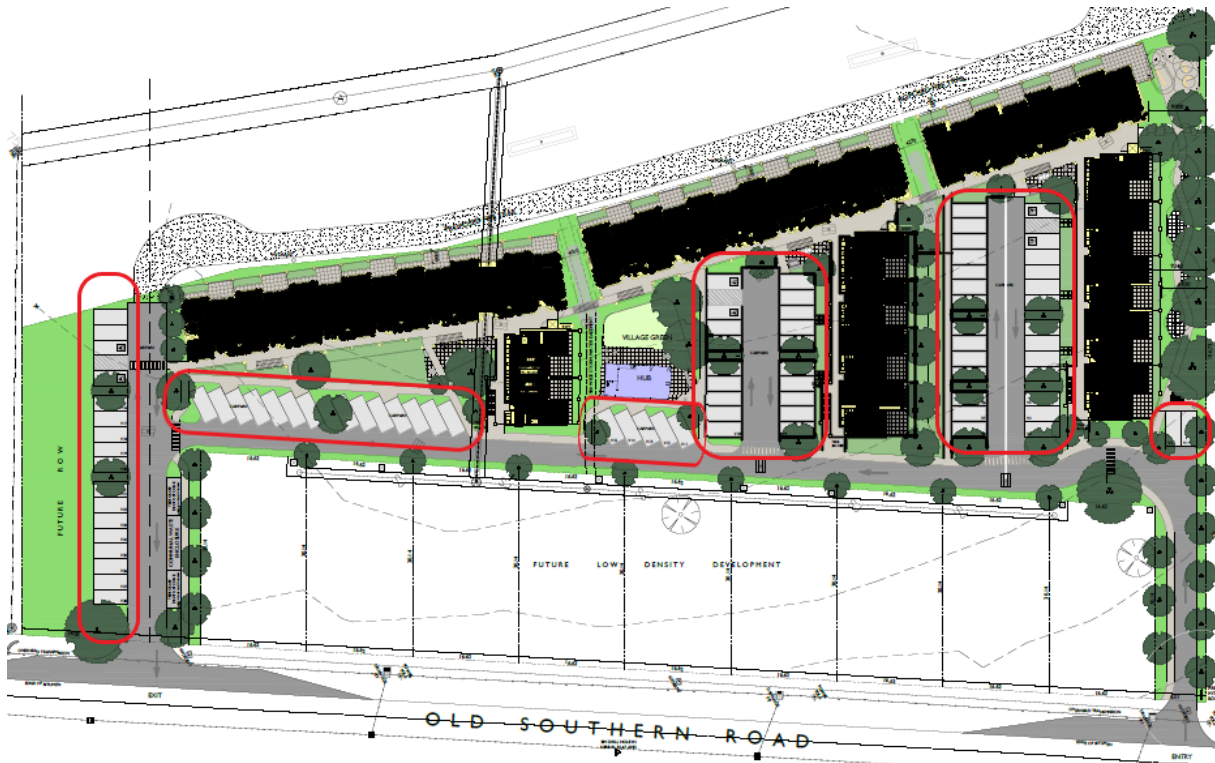


Figure 6 – Site Plan highlighting proposed parking areas (See also Attachment 4 (Landscaping) to this report)

Applicant's Submission

"It should be noted that the proposed development is intended to provide affordable housing to residents of the Shoalhaven. As mentioned in the SoEE the open, at-grade parking spaces are considered appropriate for this style of development for the following reasons:

- *It reduces construction costs, allowing for the final product to be delivered as a more affordable housing option;*
- *Reduces environmental impacts by limiting excavations and minimises maintenance costs; and*
- *Provides greater opportunity for passive surveillance than basement parking and with appropriate landscaping offers reduced opportunities for concealment thereby resulting in a better outcome with reference to crime prevention through environmental design principles.*
- *Parking spaces are sealed, line marked and located in areas where passive surveillance is available".*

Discussion

Attachment 4 contains the landscaping plans and site layout (particularly the car parking layout and distribution across the site) in additional detail.

Noting that the proposed development does not achieve compliance with Acceptable Solution A32.2 of Chapter G13 – Medium Density and Other Residential development of the SDCP 2014 and applicable provisions of the ADG, City Development also found that the proposal did not achieve compliance with Performance Criteria P32.2 of Chapter G13, which states the following:

"Development is liveable, protects surrounding amenity and promotes resident amenity".

DE21.122

The proposed development is found to be non-compliant with the Performance Criteria P32.2 of Chapter G13 for the following reasons:

- The proposed development is not considered to protect surrounding amenity as the buffer between the development and the nine (9) adjacent Torrens title lots is considered to be inadequate for amenity and liveability to be maintained.
- Resident amenity is not promoted by the provision of on-grade parking which has a significant impact upon the amenity of the site and reduces the amount of communal recreation space which would otherwise be available.
- The design creates opportunities for concealment, noting the lack of lighting, access control, and night time surveillance proposed.
- The car parking design reduces amenity for residents, noting that some residents will have a path or travel distance of up to 50m from their designated parking space to their front door. This is considered unacceptable noting that some residents may be elderly, or have young children, and is inappropriate to protect residents in times of inclement weather.

It is further noted that the proposal is not for affordable housing. The EP&A Act defines affordable housing as follows—

“affordable housing means housing for very low-income households, low-income households or moderate-income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.”

The justification that the proposed parking layout is for the purposes of affordable housing is inaccurate as the proposal has not been lodged utilising the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009*, there is no proposal to restrict any portion of the development to be used for the purposes of affordable housing, and it is not proposed to be managed by a registered community housing provider.

Furthermore, there is **no mechanism** in which Council can require the development to be used for the purposes of affordable housing.

If the development truly is intended for *very low-income households, low-income households, or moderate-income households*, ‘affordable housing’ should not be a reason for substandard design and poor amenity, but conversely should be an imperative for adhering to CPTED principles, ensure the design creates a safe environment for all, and deters crime.

Noncompliance with the SDCP Performance Criteria and Acceptable Solutions, and the Apartment Design Guide, form reasons for the recommended refusal of the application.

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:

Nil public submissions were received in relation to Council’s notification of the development.

The notification was made for a period of two weeks between 23rd August 2021 and 8th September 2021 in accordance with Council’s Community Consultation Policy with letters being sent to surrounding property owners.

Financial Implications:

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

Legal Implications

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

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

Summary and Conclusion

The assessment of the application has identified that the proposal is partially prohibited development with regard to the proposed gravel fire trail situated within the E2 Environmental Conservation Zone, and there are several departures to SDCP 2014 and the ADG which result in poor design outcomes, unacceptable residential amenity for future residents and impacts on the amenity of the adjoining residential subdivision.

The applicant has provided a response to the matters outlined which includes a planning basis to each item.

While design changes could be made to resolve the issues, for instance in the form of a basement car park, relocation of the fire trail within the R1 General Residential zoned land, and improved landscaping; the applicant has not shown a willingness to make significant amendments to the design, despite Council staff providing opportunity for this to occur.

As the application as it stands is not currently considered capable of support it is recommended the proposal be refused for the reasons outlined in the attached draft determination notice at Attachment 1.



Address all correspondence to: The Chief Executive Officer,
PO Box 42, Nowra NSW 2541 Australia
shoalhaven.nsw.gov.au/contact | 1300 293 111

shoalhaven.nsw.gov.au     

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

Environmental Planning and Assessment Act, 1979
DA21/1392

TO:

PDC Lawyers & Town Planners
PO Box 214
WOLLONGONG NSW 2520

being the applicant(s) for DA21/1392 relating to:

Old Southern Road, SOUTH NOWRA – Lot 2 DP 1065105 & Lot 28 DP 17310

REFUSED USE AND/OR DEVELOPMENT:

Staged Residential Flat Building Development (containing 56 Units, and ancillary communal facilities, internal roads and services)

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:

DE21.122 - Attachment 1

Determination Notice by way of Refusal - Page 2 of 3 – DA21/1392

REASONS FOR REFUSAL

1. The proposed development of a Residential Flat Building and the ancillary fire trail is a prohibited land use within Zone E2 Environmental Conservation in accordance with the Shoalhaven Local Environmental Plan 2014. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979)
2. The proposal is non-compliant with the objectives for Zone E2 Environmental Conservation in accordance with the Shoalhaven Local Environmental Plan 2014. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979)
3. The proposal is non-compliant with Chapter 2 – General Environmental Considerations, Section 5 of the Shoalhaven Development Control Plan 2014, particularly as it relates to non-compliance with Crime Prevention Through Environmental Design (CPTED) principles. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979).
4. The proposal is non-compliant with Acceptable Solution 2.2 and Performance Criteria P2.2 of Chapter G3 – Landscaping Design Guidelines of the Shoalhaven Development Control Plan 2014. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979).
5. The proposal is non-compliant with Acceptable Solution A32.2 and Performance Criteria P32 of Chapter G13 – Medium Density and Other Residential Development of the Shoalhaven Development Control Plan 2014, particularly as it relates to non-compliance with the Apartment Design Guide. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979)
6. The application has not satisfactorily demonstrated that the proposal would not have an adverse impact the surrounding built environment (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979)
7. The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use. (Section 4.15(1)(c) of Environmental Planning and Assessment Act, 1979)
8. Having regard to the above matters, the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979)

RIGHTS OF REVIEW AND APPEAL**Determination under Environmental Planning and Assessment Act, 1979**

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

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

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

Approvals under Local Government Act, 1993

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

Determination Notice by way of Refusal - Page 3 of 3 – DA21/1392

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

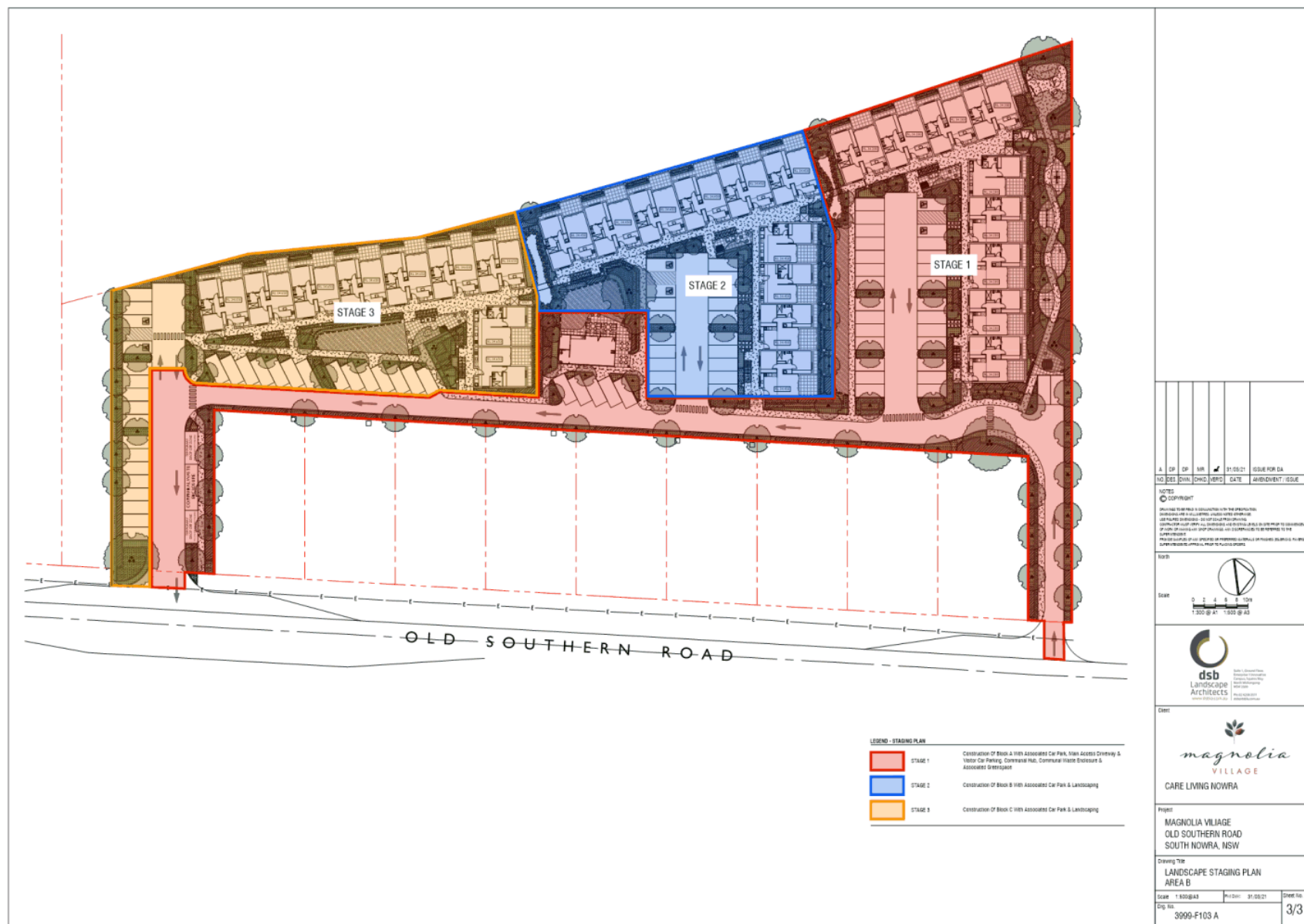
Privacy Notification

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).









DE21.123 Millards Creek Flood Study

HPERM Ref: D21/393323

Department: Environmental Services

Approver: Phil Costello, Director - City Development

Reason for Report

To provide Council with an update on the Final Millards Creek Flood Study report and seek Council adoption of the completed Millards Creek Flood Study.

Recommendation (Item to be determined under delegated authority)

That Council receive this report for information and adopt the completed Millards Creek Flood Study.

Options

1. Council receive this report for information and adopt the Millards Creek Flood Study.

Implications: Nil.

2. Council could choose to provide an alternative recommendation for consideration.

Implications: This option could delay the adoption of the Final Flood Study report, result in additional project costs and / or prevent the completion of a Flood Study within the project timeframe.

Background

The Millards Creek catchment and associated tributaries are located in Ulladulla, and discharge to the Tasman Sea through the Ulladulla Harbour.

The objectives of the Millards Creek Flood Study was to improve the understanding of flood behaviour and impacts, and better inform management of flood risk in the study area in consideration of the available information. The Flood Study also provides a sound technical basis for any further studies such as the completion of a Floodplain Risk Management Study & Plan (FRMS&P). The scope of the Millards Creek Flood Study included investigating both riverine and overland flooding within the Millards Creek catchment.

The need for a Flood Study for the Millards Creek catchment was identified as part of Council's floodplain program. The study outputs will inform decision making for investing in the floodplain, managing flood risk through prevention, preparedness, response and recovery activities, and informing and educating the community on flood risk and response to floods.

Current Status of the Project and Flood Study Outcomes

The Draft Millards Creek Flood Study report was presented to the Southern Floodplain Risk Management Committee (FRMC) on 31 March 2021. The FRMC endorsed the commencement of the public exhibition and community consultation of the Draft Millards Creek Flood Study report.

The public exhibition and community consultation was undertaken from 12 April to 7 May 2021.

The Millards Creek Flood Study report has been updated as required based on the outcomes of the public exhibition and community consultation phase.

The key findings from the Flood Study include:

- Flood inundation is generally confined to waterways such as Millards Creek rather than properties. This flooding becomes very hazardous in larger events such as the 1% AEP.
- The risk to property is generally low other than some small pockets with a higher flood risk such the piped sections of waterway between Warden Street and Spencer Street.
- Some roads are overtopped and access is cut, with some areas likely to become isolated during larger flood events.
- The Princes Highway at Millards Creek is inundated in fairly frequent events (10% AEP and upwards) but to shallow depths - the key mechanism here is from runoff flowing along the highway from the north and south and ponding at the bridge.
- Overland flooding is expected through Ulladulla High School in larger events however the hazard remains low.
- There are several areas where roadways become significant flowpaths such as the Princes Hwy, St Vincent St and Burrill St South - with high hazard due to the steepness of these roads.
- Some existing properties are impacted by overland flooding.
- Sea level rise has minimal impact on future flood risk in this catchment.

The Final Millards Creek Flood Study report has been completed. The outcomes of the public exhibition and community consultation were presented to the Southern FRMC on 11 August 2021 and the FRMC endorsed the adoption of the Millards Creek Flood Study by Council.

The Final Millards Creek Flood Study report can be accessed on the following link <https://doc.shoalhaven.nsw.gov.au/displaydoc.aspx?record=D21/129205>.

Following the adoption of the Millards Creek Flood Study, Council will upload this Flood Study report and associated mapping to Council's website and GIS systems. This flood information will then be available via Council's online mapping, Section 10.7 Planning Certificates and Flood Certificates, and be considered for future developments in accordance with the Shoalhaven Local Environmental Plan 2014 and relevant Development Control Plan (DCP) chapters.

The outcomes of the public exhibition and community consultation phase identified that there would be merit in progressing the Millards Creek Flood Study through to a FRMS&P. Following the adoption of the Millards Creek Flood Study, Council intends to apply for grant funding from the Department of Planning, Industry and Environment (DPIE) to complete a FRMS&P for the Millards Creek catchment in accordance with the overall priorities included in Council's forward Floodplain Program. Where possible, this study will include additional waterways in the Ulladulla urban area such as Racecourse Creek, Mollymook Creek and Narrawallee Creek, which are also expected to have flood emergency response considerations.

Community Engagement

The first round of community consultation was undertaken between December 2018 and January 2019. A project Get Involved website was created to inform the community about the

Flood Study. This page was designed to get feedback from community about their flooding experience within the catchment.

The Draft Millards Creek Flood Study report was presented to the Central FRMC on 31 March 2021. The FRMC endorsed the commencement of the public exhibition and community consultation of the Draft Millards Creek Flood Study report.

The public exhibition and community consultation was undertaken from 12 April to 7 May 2021.

The following forms of community engagement were undertaken during the public exhibition and community consultation phase:

- Media release to inform the community of the community engagement period.
- Mail out to all property owners and residents within the study area of the Flood Study.
- An online questionnaire available through the projects Get Involved website to seek feedback from the community.
- Community drop in session attended by Water Modelling Solutions, Council's Flood Engineers, Floodplain Risk Management representative from DPIE and members from the NSW State Emergency Services (SES). This drop in session was held at the Ulladulla Civic Centre on 22 April 2021.

During the public exhibition period, a survey was made available via the Millards Creek Flood Study Get Involved webpage. In summary, there were 257 visits to the Get Involved web page during that period and five surveys completed. The interaction with the page also included 64 downloads of either the study report, fact sheet or mapping.

Key feedback from the survey included:

- Requests for Council to maintain vegetation in the creek and remove fallen trees, weeds, debris and general rubbish.
- Concerns regarding the historic design of urban stormwater network in urbanised parts of the catchment and some damaged sections of the urban stormwater network.
- Concerns regarding erosion at stormwater outlets that enter the creek.
- Comments about debris blockage at the North Street Bridge commonly occurring.
- Comment that erosion issues in the creek were noted but not examined in the document. Erosion at stormwater outlets and accumulated sediment captured upstream of the weir on Millards Creek was mentioned. It was requested that a study be undertaken to identify sediment sources in the catchment and a program developed to effectively manage these.

The above comments did not require any changes to the Flood Study report or technical analysis. Comments received will, however, be considered during the development of a FRMS&P in the future and the Coastal Management Program (CMP) which will set a long-term strategy for the coordinated management for Shoalhaven's coastline and estuaries. The community feedback was also provided to the relevant Council sections for further consideration as required.

Financial Implications

The Millards Creek Flood Study is 2/3 funded by DPIE and 1/3 funded by Council. There have been no increases in project cost beyond the original approved funding.

All project deliverables associated with the Millards Creek Flood Study have been completed within the DPIE grant funding term.

Policy Implications

The scope of the Millards Creek Flood Study included investigating both riverine and overland flooding within the Millards Creek catchment.

Whilst DCP Chapter G9 and G10 cover riverine flooding, Council does not currently have a policy with regard to flood specific development controls that apply to locations mapped with overland flooding.

The inclusion of overland flooding in the Millards Creek Flood Study provides an opportunity for Council to develop a policy on overland flooding and associated minor amendments to *DCP Chapter G9: Development on Flood Prone Land*, to provide appropriate flood specific development controls for new and redeveloped buildings located in areas that have been identified as comprising overland flooding.

Council is currently working on an overland flooding policy and minor amendments to DCP Chapter G9 which includes catchment specific development controls for areas identified as comprising overland flooding, such as a lower freeboard to be used to determine the Flood Planning Level. These documents will be reported to Council following their completion.

Risk Implications

The study outputs will inform decision making for investing in the floodplain, managing flood risk through prevention, preparedness, response and recovery activities, and informing and educating the community on flood risk and response to floods.

DE21.124 Currarong Creek Flood Study

HPERM Ref: D21/393454

Department: Environmental Services

Approver: Phil Costello, Director - City Development

Reason for Report

To provide Council with an update on the Final Currarong Creek Flood Study report and seek Council adoption of the completed Currarong Creek Flood Study.

Recommendation (Item to be determined under delegated authority)

That Council receive this report for information and adopt the completed Currarong Creek Flood Study.

Options

1. Council receives this report for information and adopt the Currarong Creek Flood Study.

Implications: Nil.

2. Council could choose to provide an alternative recommendation for consideration.

Implications: This option could delay the adoption of the Final Flood Study report, result in additional project costs and / or prevent the completion of a Flood Study within the project timeframe.

Background

The Currarong Creek catchment and associated tributaries are located in Currarong, and discharge to the Tasman Sea.

The objectives of the Currarong Creek Flood Study were to improve the understanding of flood behaviour and impacts, and better inform management of flood risk in the study area in consideration of the available information. The Flood Study also provides a sound technical basis for any further studies such as the completion of a Floodplain Risk Management Study & Plan (FRMS&P). The scope of the Currarong Creek Flood Study included investigating both riverine and overland flooding within the Currarong Creek catchment.

The need for a Flood Study for the Currarong Creek catchment was identified as part of Council's floodplain program. The study outputs will inform decision making for investing in the floodplain, managing flood risk through prevention, preparedness, response and recovery activities, and informing and educating the community on flood risk and response to floods.

Current Status of the Project and Flood Study Outcomes

The Draft Currarong Creek Flood Study report was presented to the Central Floodplain Risk Management Committee (FRMC) on 21 April 2021. The FRMC endorsed the commencement of public exhibition and community consultation of the Draft Currarong Creek Flood Study report.

The public exhibition and community consultation was undertaken from 3 May to 28 May 2021.

The Currarong Creek Flood Study report has been updated as required based on the outcomes of the public exhibition and community consultation phase.

The key findings from the Flood Study include:

- Flood inundation is generally confined to waterways such as Currarong Creek rather than properties.
- The risk to property is generally low other than some small pockets with a higher flood risk such as the caravan park.
- Floodwater overtopping Currarong Road (20% AEP events and upwards) will cut off the evacuation route and result in the eastern section of Currarong becoming isolated.
- Some existing properties are impacted by overland flooding, mostly in the steeper areas of Currarong to the east of Currarong Creek.
- Currarong Road is inundated by fairly frequent flood events at Plutus Creek (immediately to west of Currarong) which is consistent with feedback from the community through the consultation phase. A flood investigation for Plutus Creek has been undertaken with a key outcome comprising a significant upgrade of the Plutus Creek culvert capacity as part of the current Currarong Road upgrade works. This will significantly increase the level of service against flood inundation and improve flood evacuation of Currarong.
- Sea level rise has minimal impact on future flood risk in this catchment.

The Final Currarong Creek Flood Study report has been completed. The outcomes of the public exhibition and community consultation were presented to the Central FRMC on 11 August 2021 and the FRMC endorsed the adoption of the Currarong Creek Flood Study by Council.

The Final Currarong Creek Flood Study can be found on the following link: <https://doc.shoalhaven.nsw.gov.au/displaydoc.aspx?record=D21/142537>.

Following the adoption of the Currarong Creek Flood Study, Council will upload this Flood Study report and associated mapping to Council's website and GIS systems. This flood information will then be available via Council's online mapping, Section 10.7 Planning Certificates and Flood Certificates, and be considered for future developments in accordance with the Shoalhaven Local Environmental Plan 2014 and relevant Development Control Plan (DCP) chapters.

The outcomes of the public exhibition and community consultation phase identified that there would be merit in progressing the Currarong Creek Flood Study through to a FRMS&P. Following the adoption of the Currarong Creek Flood Study, Council intends to apply for grant funding from the Department of Planning, Industry and Environment (DPIE) to complete a FRMS&P for the Currarong Creek catchment in accordance with the overall priorities included in Council's forward Floodplain Program.

Community Engagement

The first round of community consultation was undertaken between December 2018 and January 2019. A project Get Involved webpage was created to inform the community about the Flood Study. This page was designed to get feedback from community about their flooding experience within the catchment.

The Draft Currarong Creek Flood Study report was presented to the Central FRMC on 21 April 2021. The FRMC endorsed the commencement of the public exhibition and community consultation of the Draft Currarong Creek Flood Study report.

The public exhibition and community consultation was undertaken from 3 May to 28 May 2021.

The following forms of community engagement were undertaken during the public exhibition and community consultation phase:

- Media release to inform the community of the community engagement period.
- Mail out to all property owners and residents within the study area of the Flood Study.
- An online questionnaire available through the projects Get Involved website to seek feedback from the community.
- Community drop in session attended by Water Modelling Solutions, Council's Flood Engineers, Floodplain Risk Management representative from DPIE and members from the NSW State Emergency Services (SES). This drop-in session was held at the Currarong Progress Hall on 12 May 2021.

During the public exhibition period, a survey was made available via the Currarong Creek Flood Study Get Involved webpage. In summary, there were 119 visits to the Get Involved web page during that period, with 5 surveys completed and 3 email submissions received. The interaction with the page also included 10 downloads of either the study report, fact sheet or mapping.

Key feedback from the survey included:

- Concerns regarding siltation of the creek and a notable increase in the growth of the mangroves on the western / northern side of the creek. Concerned that "reduced water outflow through the creek" is increasing the potential for flooding.
- Concern that the footbridge and road bridge create a choke area for floodwaters, and that sand dunes at the northern side of the creek opening further narrow the creek.
- Recommended construction to widen the creek and improve the water flow at the road bridge is required, combined with periodic / annual dredging of the creek.
- Requested that maintenance budget be allocated to ensure "the creek is dredged as required and that stormwater channels are freed up of vegetation and debris to allow free flow of water from north and east Currarong that naturally flows into the creek".
- Concern that "the health of the waterway has been deteriorating since the 1950's. Urgent action is required to dredge the creek now, until a longer-term solution can be implemented".
- Request that "SCC needs to clean all drains to ensure that floodwaters have an escape route to the sea. This needs to be done to all drains in Currarong, particularly those in Walton Way".
- The key area of concern with regard to flooding is the location in which Plutus Creek crosses Currarong Road. This is a known issue that has been investigated via a separate Flood Investigation and the outcomes of this flood investigation will result in larger culverts installed at Plutus Creek which will significantly increase the level of service of Currarong Road to flood inundation.

The above comments did not require any changes to the Flood Study report or technical analysis. Comments received will, however, be considered during the development of a FRMS&P in the future and the Coastal Management Program (CMP), which will set a long-term strategy for the coordinated management for Shoalhaven's coastline and estuaries. The community feedback was also provided to the relevant Council sections for further consideration as required.

Financial Implications

The Currarong Creek Flood Study is 2/3 funded by DPIE and 1/3 funded by Council. There have been no increases in project cost beyond the original approved funding.

All project deliverables associated with the Currarong Creek Flood Study have been completed within the DPIE grant funding term.

Policy Implications

The scope of the Currarong Creek Flood Study included investigating both riverine and overland flooding within the Currarong Creek catchment.

Whilst DCP Chapter G9 and G10 cover riverine flooding, Council does not currently have a policy with regard to flood specific development controls that apply to locations mapped with overland flooding.

The inclusion of overland flooding in the Currarong Creek Flood Study provides an opportunity for Council to develop a policy on overland flooding and associated minor amendments to *DCP Chapter G9: Development on Flood Prone Land*, to provide appropriate flood specific development controls for new and redeveloped buildings located in areas that have been identified as comprising overland flooding.

Council is currently working on an overland flooding policy and minor amendments to DCP Chapter G9 which includes catchment specific development controls for areas identified as comprising overland flooding, such as a lower freeboard to be used to determine the Flood Planning Level. These documents will be reported to Council following their completion.

Risk Implications

The study outputs will inform decision making for investing in the floodplain, managing flood risk through prevention, preparedness, response and recovery activities, and informing and educating the community on flood risk and response to floods.

DE21.125 Development Application - DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138

HPERM Ref: D21/415340

Department: Certification & Compliance

Approver: Phil Costello, Director - City Development

Reason for Report

To advise that Council consider the separate confidential report on this matter.

In accordance Section 10A(2)(g) of the NSW Local Government Act 1993, advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Recommendation (Item to be determined under delegated authority)

That Council consider the separate confidential report on this matter in accordance with Section 10A(2)(g) of the NSW Local Government Act 1993.

Options

1. As recommended

Implications: Consider a separate confidential report on the matter.

2. An alternate recommendation as determined.

Implications: Staff will advise Council's legal representatives on the proposed way forward.

Background

This matter relates to a Land and Environment Court appeal of the determination of DA20/1494.

Community Engagement

No formal community engagement is required

DE21.125

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.