

Ordinary Meeting

Meeting Date: Monday, 13 March, 2023
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.30pm

Membership (Quorum - 7)
All Councillors

Please note: The proceedings of this meeting (including presentations, deputations and debate) will be webcast, recorded and made available on Council's website, 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.

Shoalhaven City Council live streams its Ordinary Council Meetings and Extra Ordinary Meetings. These can be viewed at the following link

<https://www.shoalhaven.nsw.gov.au/Council/Meetings/Stream-a-Council-Meeting>.

Statement of Ethical Obligations

The Mayor and Councillors are reminded that they remain bound by the Oath/Affirmation of Office made at the start of the council term to undertake their civic duties in the best interests of the people of Shoalhaven City and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act or any other Act, to the best of their skill and judgement.

The Mayor and Councillors are also reminded of the requirement for disclosure of conflicts of interest in relation to items listed for consideration on the Agenda or which are considered at this meeting in accordance with the Code of Conduct and Code of Meeting Practice.

Agenda

1. Acknowledgement of Country
2. Moment of Silence and Reflection
3. Australian National Anthem
4. Apologies / Leave of Absence
5. Confirmation of Minutes
 - Ordinary Meeting - 27 February 2023
6. Declarations of Interest
7. Presentation of Petitions

8. Mayoral Minute

Mayoral Minute

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Notices of Motion / Questions on Notice

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Local Government Act - Section 10A(2)(d)(i) - Commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to reveal commercial-in-confidence provisions of a contract, diminish the competitive commercial value of any information to any person and/or prejudice any person's legitimate business, commercial, professional or financial interests.

CCL23.8 Tenders – Shared User Path and Carpark - Active Transport Improvement at Catherine St, Myola

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MM23.6 Mayoral Minute - Support for Local Print Media: Reinstate New Bush Telegraph as a Service Provider for Council Information Dissemination

HPERM Ref: D23/82335

Recommendation

That Council:

1. Affirms support for a free and independent press in the Shoalhaven and beyond and eschews any attempt at political interference with that principle.
2. Affirms the policy that any decision about placement of advertising is an operational one and should be made by appropriate staff after due consideration of cost effectiveness and potential message penetration to the target audience.
3. Reinstates its annual average advertising to the *New Bush Telegraph* which was cancelled at the Ordinary Meeting 29 October 2019.

Details

Council at its Ordinary Meeting on the 29 October 2019 passed the below resolution:

"That Council immediately stop any funding or advertising in the New Bush Telegraph newspaper." (Pakes/Wells - CL19.310)

For: Gash, Wells, White, Guile, Pakes, Watson, Kitchener & Proudfoot

Against: Findley, Gartner, Digiglio, Alldrick & Levett

A rescission motion (CL19.328) introduced on 26 November 2019 was unsuccessful.

Up until this point Council had regularly advertised in the Bush Telegraph content that was considered interesting to the readership. No other print media was included in the resolution.

The *New Bush Telegraph* began in 1987 as hard copy newspaper, with a community and local issues focus it built to a circulation of about 4,000 and went online at the beginning of 2020.

Patrick Thompson was the editor for 12 years. Patrick had a strong background in environmental and social issues and was a long-standing member of the Colong Foundation (which began as the Colong Committee in 1971), fighting for the protection of Colong Caves in the Southern Blue Mountains.

Patrick passed away on 11 March 2020, just a little more than three months after hauling himself out of a hospital bed to bravely defend his newspaper on the occasion of the rescission motion, which was unsuccessful.

The freedom to make comment and offer an opinion is fundamental to a strong democracy. It's not normal practice to revisit a Council decision but in this instance, the resolution was in error and needs correcting.

In one of the many tributes to Patrick, his sailing friend Stuart Rees made mention of Patrick's great sense of justice and humanity. In recognition of his love of the bush and his lifelong efforts to preserve it, Patrick won the 2020 Shoalhaven Council Environment Award.

This recommendation is presented in the hope that a similar sense of justice will prevail tonight to set this matter right.

MM23.6

MM23.7 Mayoral Minute - Condolence Motion - Mr Allan Dent

HPERM Ref: D23/82555

Recommendation

That Council writes to the Dent family of Huskisson expressing condolences on the passing of Mr Allan George Dent.

Details

Allan George Dent was born in Huskisson in 1924 into the oldest boatbuilding family in the village, and lived there all his life, some 98 years. He occasionally said that perhaps he should have travelled, but he did not mean it, he never wanted to be anywhere else.

He built his home in Currumbene Street in 1943, a block away from his parents' house in Owen Street. He used to say that he didn't know how many people lived in Huskisson, but he knew them all.

Allan had a variety of jobs locally, working at Alf Settree's boat building on Currumbene Creek, at the timber yards for many years, and in later years he drove the school bus.

Allan was well known in the local community, and prided himself on being 'a fair man', although if that if you said that to him, he would have more than likely suggest that so-and-so in the next street was fairer.

In his final years, he closely followed events on the former Anglican church, the site next door to his home. Family lore says that the Dents donated the land for the church, and his forebears, George Dent and James Dent are both named as trustees on the original grant documents.

Allan strongly supported the Huskisson Heritage Association with its campaign to save this iconic site, he was particularly concerned about the old - growth trees which he recalled were fully grown when he was a child. So much so he wrote to Council in 2019, sharing that when he was growing up, it was common knowledge around the town that there were Aboriginal burials on the site, specifically he recalled that the descendants of Jack Campbell, whom he described as 'perhaps the last full blood aboriginal in the area' would visit his parents place before visiting the burial site of their ancestors.

At the age of 90 Allan became the carer of his beloved wife 'Tiny' (Enid) at their home in Huskisson, during his last days Allan was cared for by his daughter Larnie, in Sydney, where he would fret unless they bought him home to Huskisson for occasional weekends.

Allen's stories and sharing of his long family history and fond memories have enriched us all.

The Shoalhaven has lost a fine citizen and on behalf of the Shoalhaven community and Councillors I pass on my sincere condolences.

CL23.60 Report of the Inclusion & Access Advisory Group - 20 February 2023

HPERM Ref: D23/85401

Attachments: 1. Draft Terms of Reference (with track changes) [↓](#)
2. Draft Terms of Reference (clean copy) [↓](#)

IA23.3 Inclusion and Access Advisory Committee Terms of Reference Review

HPERM Ref: D23/19271

Recommendation

That the Inclusion and Access Advisory Group accept the new format and proposed amendments to the Terms of Reference and submit to Council for adoption.

IA23.6 Additional Item - Request for Information - Revenue Raised from Accessible Parking Spaces

Ms Kylie Knight raised an additional item requesting information on the revenue that is raised from Accessible Parking Fines with a view to determine how significant it is & whether that can be reinvested into actioning the DIAP or other support functions for people with a disability.

Recommendation

That the IAAG seek Council's endorsement for a report on revenue raised (from the last Financial Year) from accessible parking fines and the possibility to consider practical use of the funds to support people with a disability be provided to the Group.

Directors Note: This request is outside the scope of the Terms of Reference & therefore outside of the Committees delegation & requires Council approval for this to occur.

Note by the CEO:

The practice of 'ring-fencing' general purpose income (e.g., fines) for specific purposes has not been supported by Council previously. All general purpose revenue is already accounted for in Council's annual budget. Any 'ring-fencing' of general purpose revenue for specific expenditure will result in budget shortfalls. A suggested alternate recommendation for Council is:

Suggested Alternate Recommendation

1. That Council note the IAAG request for a report on revenue raised (from the last Financial Year) from accessible parking fines and the possibility to consider practical use of the funds to support people with a disability be provided to the Group.
2. The IAAG be advised that Council does not support the practice of 'ring-fencing' general purpose income (e.g., fines) for specific purposes as all general purpose revenue is already accounted for in Council's annual budget and that any 'ring-fencing' of general purpose revenue for specific expenditure will result in budget shortfalls.
3. The consideration of additional Council funding to support people with a disability is a matter for future budget deliberations.

CL23.60

IA23.8 Additional Item - Request Presentation from Director City Performance

Ms Kylie Knight addressed a matter that was raised in the last meeting regarding the opportunity for Council to collaborate with Disability Workers to achieve the pruning and maintenance of footpaths and overhanging trees in the Shoalhaven.

It was noted that this matter was raised in Business Arising from Previous Minutes.

Recommendation

That IAAG seek Council's endorsement and invite the newly appointed Director City Performance (currently vacant at the time of publishing) to make a presentation in relation to the contract requirements regarding employment opportunities for Disability Workers to undertake pruning and maintenance of footpaths and overhanging trees to the IAAG.

Directors Note: This request is outside the scope of the Terms of Reference and therefore outside of the Committees delegation and requires Council approval for this to occur. A similar recommendation has also been previously made by the IAAG as noted below:

IA21.3 - Investigate opportunity for targeted employment for people with disabilities:

That:

1. *Council investigate the opportunity for targeted employment within Council for people with identified disabilities.*
2. *The Inclusion and Access Advisory Group receive a report back on the statistics of council's employment.*
3. *Staff source resource options and budgets for annual training programs.*

Part 1 was reported back to the Committee via its Action Table item noting the following comment: *Staff noted that Council is bound by the Merit based system process within the Local Government Act.*

Part 2 was actioned 26 July 2022 – *It was noted that from 532 employee records and the questions relating to identified disabilities 216 employees didn't respond.*

Part 3 – This has been addressed in within the DIAP and was reported back to the Committee with the following comment: *Increased training for staff on disability Awareness is being considered in the review of the Disability Inclusion Action Plan. The training is proposed access a number of functions within council to support increased inclusion across the Shoalhaven for people living with a disability.*

Note by the CEO:

In response to the Directors Note above, the following alternate recommendation is suggested:

Suggested Alternate Recommendation

1. That Council note the IAAG request for a presentation from the yet to be appointed Director City Performance.
2. The IAAG be advised in accordance with the Directors Note above.

CL23.60

Inclusion and Access Advisory Group – Terms of Reference

Adoption Date:	
Amendment Date:	
Minute Number:	
Review Date:	
Directorate:	City Lifestyles
Record Number:	POL22/68hhl

CL23.60 - Attachment 1

Committee – Terms of Reference

1. Purpose

regarding Guided by lived experience and expertise, provide advice and guidance to Shoalhaven City Council to promote an accessible, inclusive and welcoming community that respects independence and human dignity by:

- Ensuring that all residents can participate actively in all aspects of community and civic life and ensure that Council recognises and values the diversity of its community.
- Identifying and addressing barriers preventing people from participating in programs, services and facilities across the City.

And advocate for:

- Adherence to the principles of the Disability Discrimination Act 1992 and the NSW Disability Inclusion Act 2014 which will benefit the community ~~as a whole~~.
- Inclusion in our community through recommendations to improve the built environment, changes in community attitudes and behaviours, and creating better systems and processes for meaningful participation of people of all abilities.

~~The Committee will be guided by the Disability Inclusion Action Plan (2022-26) and other Council strategic documents.~~

Strategic Plan Alignment

Disability Inclusion Action Plan (2022-26)

1. Create positive attitudes and behaviours within community
2. Create accessible and liveable communities
3. Improve access to our systems and processes
4. Support access to meaningful employment.

Community Strategic Plan 2032

Resilient, Safe, Accessible and Inclusive Communities

- 1.1 - Support inclusive, safe and connected communities
- 1.2 - Preserve, support and develop cultural and creative vitality across our communities
- 1.3 - ~~Support~~ community wellbeing through fostering active and healthy communities

2. Interpretation

For the purpose of this document:

- *Member* means a member of the **Committee**
- *Council* means Shoalhaven City Council
- *Chairperson / Chair* means the chairpersons of the **Committee**
- *Elected members* mean the elected Councillors of Shoalhaven City Council

Inclusion and Access Advisory Committee – Terms of Reference

3. Status of the Committee

The Committee provides non-binding advice to Council for consideration.

4. Role

To receive and disseminate information and updates to and from the community about regarding issues of accessibility and inclusion in the Shoalhaven.

To provide and receive information to Council staff and Councillors regarding the reports and presentations made to the Committee.

5. Delegations

Advisory Committees, may make recommendations to Council on all matters within the role outlined above. These recommendations may be submitted via the minutes of each meeting to Council for consideration.

This does not include substantial issues and recommendations (possibly including expenditure or operational matters) that will be reported to Council by a separate report by the appropriate manager.

The Committee does not have the power to incur expenditure (directly or indirectly), or the power to bind Council.

6. Membership

The Group will be chaired by a Councillor, elected by Council. The Group will comprise the following:

- One (1) Appointed Chair (Councillor)
- Three (3) nominated Councillors, additional Councillors may attend as observers, four (4) Councillors in total
- Council's Chief Executive Officer (CEO) or nominee

A maximum of twelve (12) community members which includes:

- Five (5) community members who live with disability (with representation from across the Shoalhaven).
- A maximum of five (5) family, friends and/or carers of people living with disability who have an interest in advocating for improved access and inclusion for all.
- An Aboriginal representative living with disability or their family, friends and/or carer of a person living with disability
- A Youth representative (18 – 25 years) living with disability

A maximum of thirteen (13) non-voting Government and Non-Government Organisations which includes:

- Relevant Government Agencies ((e.g., DCJ, NSW Health, NDIA, Service NSW)

Inclusion and Access Advisory Committee – Terms of Reference

- Service providers/community organisations that support a broad range of people with disabilities (e.g., Flagstaff, Autism NSW, [First Peoples Disability Network Australia and Multicultural Disability Advocacy Association](#)).~~**check for other organisations~~.
- One representative for each of the Federal Member for Gilmore and the State Members for South Coast and Kiama

Members must live or work within the Shoalhaven City Council Local Government Area

Councillor Representatives

Council appoints one (1) Councillor to be the voting Chair of the Group. An additional three (3) Councillors can be nominated to attend the meeting as voting members, All other Councillors are welcome to attend meetings of the Group as observers and contribute to discussions but are not entitled to vote.

If no Councillors are appointed as members, the Chief Executive Officer or nominee represents the elected member to chair the meeting.

- **Community Representative Appointments** Parents/carers of people with disability.
- Person who has lived experience of disability
- Person who is passionate about advocating for access & Inclusion
-

Following an expression of interest, members will be appointed that meet the section 5 membership criteria.

- An Expression of Interest (EOI) process will be conducted to appoint new members into vacant positions
- Vacancies will be advertised locally via media and Council communication networks.
- Council will manage the application process
- An assessment panel consisting of a Council staff member (Community Capacity Builder), the Chairperson of the Group and one (1) Community member will assess the applications and make recommendations for appointments to Council based on set criteria. Each member of the assessment panel will vote on recommendations with a majority ruling.

Council Officers

Council officers may attend meetings to provide specialist professional advice in the area of inclusion and accessibility. Council officers do not have voting rights.

Government Agencies, Community Organisations and Service Providers

The Chief Executive Officer (or nominee) invites a range of Government Agencies, Community Organisations and Service Providers to nominate representatives each.

The nominated agency representatives provide advice in relation to their functions and areas of expertise, however, are non-voting members.

Inclusion and Access Advisory Committee – Terms of Reference

Chair and Deputy Chair

Council appoints one (1) Councillor to be the Chair of the **Committee**. In the absence of the nominated Chair at a particular meeting, the members shall elect a Chair for that meeting.

Terms of Office

The term of the Chair will be one Council term (4) years. Elected members (or their representative) continue as members of the Committee until the next ordinary election of the Mayor, or the next general election of Council, or until the Committee is disbanded or completes its purpose in accordance with these Terms of Reference.

7. Committee Meetings**Agenda**

Agenda will be distributed 7 days prior to the date of the meeting. Councillors and members can contribute to the agenda by writing and submitting a report on a particular issue four (4) weeks prior to the meeting, subject to the approval of the Chair and the relevant Director.

Quorum

Quorum will be seven (7) voting members provided that **a minimum of one (1) Councillor as Chair** or acting chair with voting rights **and four-sic (6) community representatives are present**. No proxy votes are permitted. If a quorum is not present within 30 minutes of the scheduled commencement time, the meeting lapses.

Voting

It is expected that the **Committee**, and any working group, develop recommendations by consensus. If voting is required, a majority shall prevail with the Chair having a casting vote in the case of a tie.

Any votes against will be recorded in the minutes.

Meeting Schedule

In general, meetings should be held **quarterly** or otherwise as determined by the Chair and conducted either in person and/or electronically. **Please note as required the Group can request to meet informally via teams or in person without formal agenda or minutes for the purpose of receiving information only i.e. not making recommendation / resolution.**

Minutes

The Committee shall provide advice to the Council for consideration. The Committee's advice shall be posted on the Council website with minutes reported to the elected Council. Following consideration of the advice from the Committee, any resolution determined by Council, will be posted on the Council website.

Confidentiality And Privacy

Members who may have access to confidential or personal information retained by Council are required to maintain the security of such confidential or personal information and therefore shall not use, or remove any information unless the member is authorised to do so.

Inclusion and Access Advisory Committee – Terms of Reference

Communication

In relation to the communication functions of **Committee**, the following apply:

- Members of the **Committee** are not permitted to speak to the media as Council representatives of the **Committee** unless approved by the Chairperson.
- Where approval has been given by the Chairperson, views and opinions expressed are those of the **Committee** and not of Shoalhaven City Council.
- Where endorsement is required from Shoalhaven City Council, approval must be sought through the formal processes.
- The Chair of the **Committee** is the preferred point of contact for communication between members and Council staff.
- Council will endeavour to utilise the Chair as the primary point of contact to communicate with **Committee** members.

8. Council Staff Responsibility

The Committee's contact within Council is **holds the position of** Community Capacity Builder, within the **City Lifestyles Directorate**. This Directorate is considered to be responsible for ensuring the agenda and presentations remain relevant to the Group's role and presenting the Action Table Report .

Reports requested by or presented to the committee from other departments/Directorates outside of the responsible contact department will be the responsibility of said Directorate. Updates on these actions in the Action Table will be the sole responsibility of said department and Directors will ensure these updates are finalised in a timely manner.

Governance is responsible for administrative support functions of the committee such as collating and distributing the agenda, minutes and notation of apologies.

9. Code of Conduct

All members of the Committee are required to observe the provisions of Council's Code of Conduct and any other policy or requirement applicable to the proper functioning of the Committee.

A breach of the Code of Conduct may lead to the member being expelled from the Committee.

10. Document Control

These Terms of Reference are reviewed at the commencement of each term of Council. Amendments to these Terms of Reference are to be reported to Council for approval. A version history (footnote on front page) is included if amendments have been approved.

11. Other Relevant Documents List

Code Of Conduct

Code of Meeting Practice

CSP

Terms Of Reference Template

Inclusion and Access Advisory Committee – Terms of Reference

DIAP (<https://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D22/273904>)

CL23.60 - Attachment 1

Inclusion and Accessibility Advisory Committee - Terms of Reference

Adoption Date:	
Amendment Date:	
Minute Number:	
Review Date:	
Directorate:	City Lifestyles
Record Number:	POL22/68

CL23.60 - Attachment 2

Committee – Terms of Reference

1. Purpose

Guided by lived experience and expertise, provide advice and guidance to Shoalhaven City Council to promote an accessible, inclusive and welcoming community that respects independence and human dignity by:

- Ensuring that all residents can participate actively in all aspects of community and civic life and ensure that Council recognises and values the diversity of its community.
- Identifying and addressing barriers preventing people from participating in programs, services and facilities across the City.

And advocate for:

- Adherence to the principles of the Disability Discrimination Act 1992 and the NSW Disability Inclusion Act 2014 which will benefit the community.
- Inclusion in our community through recommendations to improve the built environment, changes in community attitudes and behaviours, and creating better systems and processes for meaningful participation of people of all abilities.

Strategic Plan Alignment

Disability Inclusion Action Plan (2022-26)

1. Create positive attitudes and behaviours within community
2. Create accessible and liveable communities
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Community Strategic Plan 2032

Resilient, Safe, Accessible and Inclusive Communities

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- Three (3) nominated Councillors, additional Councillors may attend as observers, four (4) Councillors in total
- Council's Chief Executive Officer (CEO) or nominee

A maximum of thirteen (13) voting community members which includes:

- Seven (7) community members who identify as having a disability (with representation from across the Shoalhaven).
- One Youth representative (18 - 25 years) living with disability

With the remainder of members made up of:

- Family, friends and/or carers of people living with disability who have an interest in advocating for improved access and inclusion for all.
- Aboriginal representatives living with disability or their family, friends and/or carer of a person living with disability. One must be male and one female.
- A community member that identifies as LGBTIQ+ and lives with disability.
- People who are passionate about advocating for access & inclusion

A maximum of thirteen (13) non-voting Government and Non-Government Organisations which includes:

- Relevant Government Agencies (e.g., DCJ, NSW Health, NDIA, Service NSW)
- Service providers/community organisations that support a broad range of people with disabilities (e.g., Flagstaff, Autism NSW, First Peoples Disability Network Australia and Multicultural Disability Advocacy Association).

Inclusion and Access Advisory Committee – Terms of Reference

- One representative for each of the Federal Member for Gilmore and the State Members for South Coast and Kiama

Members must live or work within the Shoalhaven City Council Local Government Area.

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Council appoints one (1) Councillor to be the Chair of the Committee. In the absence of the nominated Chair at a particular meeting, the members shall elect a Chair for that meeting.

Terms of Office

The term of the Chair will be one Council term four (4) years. Elected members (or their representative) continue as members of the Committee until the next ordinary election of the Mayor, or the next general election of Council, or until the Committee is disbanded or completes its purpose in accordance with these Terms of Reference. Youth membership is from 18 – 25 years. When the member turns 26 years of age, their position will be declared vacant.

Inclusion and Access Advisory Committee – Terms of Reference

7. Committee Meetings**Agenda**

Agenda will be distributed 7 days prior to the date of the meeting. Councillors and members can contribute to the agenda by writing and submitting a member report on a particular issue four (4) weeks prior to the meeting, subject to the approval of the Chair and the relevant Director.

Quorum

Quorum will be seven (7) voting members provided that a minimum of one (1) Councillor as Chair or acting chair with voting rights and six (6) community representatives are present. No proxy votes are permitted. If a quorum is not present within 30 minutes of the scheduled commencement time, the meeting lapses.

Voting

It is expected that the Committee, and any working group, develop recommendations by consensus. If voting is required, a majority shall prevail with the Chair having a casting vote in the case of a tie.

Any votes against will be recorded in the minutes.

Meeting Schedule

In general, meetings should be held quarterly or otherwise as determined by the Chair and conducted either in person and/or electronically. Please note as required the Committee can request to meet informally via teams or in person without formal agenda or minutes for the purpose of receiving information only i.e., not making recommendation / resolution.

Minutes

The Committee shall provide advice to the Council for consideration. The Committee's advice shall be posted on the Council website with minutes reported to the elected Council. Following consideration of the advice from the Committee, any resolution determined by Council, will be posted on the Council website.

Confidentiality And Privacy

Members who may have access to confidential or personal information retained by Council are required to maintain the security of such confidential or personal information and therefore shall not use or remove any information unless the member is authorised to do so.

Communication

In relation to the communication functions of Committee the Group, the following apply:

- Members of the Committee up are not permitted to speak to the media as Council representatives of the Committee unless approved by the Chairperson.
- Where approval has been given by the Chairperson, views and opinions expressed are those of the Committee and not of Shoalhaven City Council.
- Where endorsement is required from Shoalhaven City Council, approval must be sought through the formal processes.

Inclusion and Access Advisory Committee – Terms of Reference

- The Chair of the Committee is the preferred point of contact for communication between members and Council staff.
- Council will endeavour to utilise the Chair as the primary point of contact to communicate with the Committee members.

8. Council Staff Responsibility

The Committee's contact within Council holds the position of Community Capacity Builder, within the City Lifestyles Directorate. This Directorate is responsible for ensuring the agenda and presentations remain relevant to the Group's role and presenting the Action Table Report.

Reports requested by or presented to the committee from other departments/Directorates outside of the responsible contact department will be the responsibility of said Directorate. Updates on these actions in the Action Table will be the sole responsibility of said department and will ensure these updates are finalised in a timely manner.

Governance is responsible for administrative and support functions of the committee such as collating and distributing the agenda, minutes and notation of apologies.

9. Code of Conduct

All members of the Committee are required to observe the provisions of Council's Code of Conduct and any other policy or requirement applicable to the proper functioning of the Committee.

A breach of the Code of Conduct may lead to the member being expelled from the Committee.

10. Document Control

These Terms of Reference are reviewed at the commencement of each term of Council. Amendments to these Terms of Reference are to be reported to Council for approval. A version history (footnote on front page) is included if amendments have been approved.

11. Other Relevant Documents List

Code Of Conduct
Code of Meeting Practice
Community Strategic Plan
Terms Of Reference Template
DIAP (<https://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D22/273904>)

CL23.61 Report of the Nowra CBD Revitalisation Strategy Committee - 27 February 2023

HPERM Ref: D23/82941

CBD23.6 Jelly Bean Park - Seats and Bicycle Racks

HPERM Ref:
D23/8328

Recommendation

That Council investigate options to increase the number of seats and bicycle racks in Jelly Bean Park.

CBD23.7 Taxi Rank - Junction Street - (near) Subway

HPERM Ref:
D23/8761

Recommendation

That in relation to relocating the Nowra CBD Taxi rank locations:

1. The CEO (Director City Services) investigate and report back to the Committee targeting the May 2023 meeting on the following:
 - a. Kinghorne Street near Coles/Aldi; and
 - b. Near Telstra building, Stewart Place Bus Terminal.
2. The report include:
 - a. Feasibility of the project
 - b. Funding options for investigation and design
 - c. Funding options for construction

CBD23.8 Egans Lane Amenities

HPERM Ref:
D23/8788

Recommendation

That in relation to the amenities at Jelly Bean Park (Egans Lane), the CEO (Director City Services) investigate and report back to the Committee targeting the May 2023 meeting on the following:

1. Feasibility of the project
2. Funding options for investigation and design
3. Funding options for construction

CBD23.9 Electric Vehicle Parking Stations**HPERM Ref:
D23/8837****Recommendation**

That in relation to Electric Vehicle Charging Stations in the Nowra CBD, the CEO (Director City Services) investigate and report back to the Committee targeting the May 2023 meeting on the following:

1. Council's Policy position on Electric Vehicle charging stations and how it relates to the Nowra CBD
2. Options available to engage with Electric Vehicle charging station providers

CL23.62 Report of the Aboriginal Advisory Committee - 28 February 2023

HPERM Ref: D23/85989

AA23.11 Additional Item - Unions Shoalhaven - Presentation

Clr Kotlash has been contacted by Ms Pat David (Unions Shoalhaven) who requested to come and present to the Committee in relation to what the Union movement is doing around the 'Yes Campaign'.

Recommendation

That the Aboriginal Advisory Committee invite Unions Shoalhaven (Representative Patricia David) to make a presentation to a future meeting in relation to the work they are doing around the 'Yes Campaign'.

Note by the CEO

Council may consider it to be appropriate to request the Aboriginal Advisory Committee to also seek an alternate view on the voice in order to maintain a balanced approach. A suggested alternate recommendation in this regard is as follows:

Suggested Alternate Recommendation

That Council support the Aboriginal Advisory Committee receiving a presentation to a future meeting from Unions Shoalhaven (Representative Patricia David) in relation to the work they are doing around the 'Yes Campaign' and request they also seek a presentation from an appropriate representative in relation to the 'No Campaign'.

CL23.62

CL23.63 ALGA Annual Conference 2023 - National General Assembly - Motions

HPERM Ref: D23/33763

Department: Business Assurance & Risk

Approver: Sara McMahon, Acting Director - City Performance

Reason for Report

This report outlines motions proposed to be submitted for the ALGA Annual Conference 2023 for endorsement by Council.

Recommendation

That regarding the Australian Local Government Association (ALGA) 2023 National General Assembly, Council:

1. Adopt the proposed Motions in the report (1-9) for submission prior to the deadline being Friday 24 March 2023.
2. Note the information included the report with respect to a possible motion on light pollution from streetlights which is not recommended to be submitted as a motion.
3. Determine any additional motions for submission at this meeting.
4. Approve attendance and associated costs for all interested Councillors at the Australian Local Government Association – 2023 National Assembly to be held at the National Convention Centre Canberra from 13 to 16 June 2023, and such attendance be deemed to be Council business.
5. Nominate **a Councillor** as the Council's Voting Delegate for the conference.
6. Nominate **a Councillor** as the Council's Alternate Voting Delegate for the conference.

Options

1. As recommended.

Implications: The Council's submitted motions will be submitted for inclusion in the Business Paper of the 2023 ALGA Annual Conference and attendance at the NGA will be considered approved for Councillors attendance. Council will nominate both a voting delegate and alternate voting delegate.

2. That Council does not accept one or more of the motions as outlined in the report and proposes alternatives.

Implications: Motions will need to be worded and endorsed by the Council

Background

It is recommended that Council authorises Councillors to attend the conference as Council business.

Each Council is provided the opportunity for one voting delegate. It is recommended that the Council determine its nominated voting delegate for the conference by resolution and an alternate is also to be nominated to fill in for the delegate if required.

CL23.63

A workshop was held on 16 February 2023 for the purpose of Council to formulate motions for submission to the conference.

Motions

ALGA has called for the submission of motions. Councils are encouraged to formulate motions submitted in terms of the current policy statements.

Councils are also encouraged to submit motions online as early as possible and before the deadline of 11.59pm on Friday 24 March 2023. The following motions were proposed during discussion at the Councillor Workshop held on 16 February 2023:

MOTION 1: PRODUCTIVITY

This National General Assembly calls on the Australian Government to make a long-term investment in its new Cultural Policy ‘Revive’ to better build the health of our people and our economy.

Background

Rigorous research proves fulsome and strategic investment in the arts provides socio-emotional benefits for individuals and communities, promoting tolerance and understanding, bringing entertainment, engagement and vibrancy to our lives.

Local government contributes 25% of the national spend on the arts and deserves a place at the table to advance the arts. This is vital to ensure exposure to, and active participation in the arts, continues to build communities and play an important role in preventative health.

The Australian Government has recently presented its new Cultural Policy ‘Revive’ which provides a five-year plan intended to renew and revive the arts sector. This is a welcome and vital commitment to deliver a better future for creative workers, arts and culture organisations, but most importantly communities across Australia. While arts play a vital role in our economy, local government needs sustained support to leverage its investment to ensure its communities can enjoy the powerful health, social and educational benefits the arts bring to individuals and society.

MOTION 2: CLIMATE CHANGE AND RENEWABLE ENERGY

This National General Assembly calls on the Australian Government to implement fuel efficiency standards that will secure a pipeline of affordable lower and zero emissions vehicles for Australian communities, councils and business fleets.

These standards must:

- Be mandatory and deliver at least equivalent settings to those in other major markets – to ensure Australia doesn’t stay at the back of the queue for cleaner vehicles.
- Give Australian drivers more choice and affordability than they have today, by bringing a wider range of vehicle types to our shores.
- Support 100% of new vehicles sold in Australia to become zero emissions as soon as possible - sending a strong market signal that Australian communities, businesses and government agencies are ready for zero-emission vehicles.
- Be reviewed and updated approximately every five years. Technology changes fast and it’s imperative we have a continued supply of quality vehicles equivalent to our global peers.

Background

Transport is a significant source of emissions at all levels of government - and is the third highest source of emissions nationally behind only electricity and stationary energy. Local governments are doing what we can to switch to electric vehicles (EVs), but our hands are tied. A lack of supply to Australia, and the strong federal policy to drive it, makes it difficult to transition our fleet, therefore limiting the availability of second-hand vehicles to communities.

We urge the Federal Government to support our access to electric vehicles by legislating strong fuel efficiency standards.

World-class fuel efficiency standards would bring more low and zero emissions vehicles to Australian shores. This will accelerate the transition for councils - and with fleet vehicles entering the second-hand market after three to five years, this ensures communities have access to the best technology at a fair price.

MOTION 3: COMMUNITY WELLBEING

This National General Assembly calls on the Australian Government to work with state governments on a new approach to addressing the gap in provision and access to mental health and wellbeing services between those living in regional / rural Australia versus those living in metropolitan areas, particularly for young people.

Background

Shoalhaven City Council's Community Strategic Plan identifies the increased prevalence of mental health issues amongst our community and sets out the key priority area: Resilient, Safe, Accessible & Inclusive Communities through supporting community wellbeing by fostering active and healthy communities. To do this Shoalhaven City Council is committed to advocating for improved resourcing to meet the growing mental health needs of regional communities.

Local governments are well connected with local Health Districts and community health services and are at the forefront of responding to community identified needs and gaps in broader service provision.

Shoalhaven City Council supports Local Government NSW's call for "increased funding for specialised and appropriate youth and community wellbeing and mental health services to bolster resilience, particularly following disaster". This is a priority issue for regional areas where data indicates, that in regional Australia, and in regional NSW, the mental health experiences of the population are significantly poorer than those in greater cities.

- Regional Australia has 1.2 times the rate of long-term mental health conditions compared with the greater capital cities (10.0% for Regional Australia, 8.1% for the Greater Capital Cities) – ABS Census (2021)
- Regional NSW has 1.6 times the rate of long-term mental health conditions compared with Greater Sydney (10.6% for Regional NSW, 6.6% for Greater Sydney) – ABS Census (2021)

It is also important to note that these challenges are compounded for young people in regional areas across the country. According to Beyond Blue, mental health conditions are experienced by one in seven young people aged four to 17 years in any given year. Half of all the mental health conditions experienced at some point in our lives will have started by age 14 and over 75% of mental health problems occur before the age of 25. This is a target cohort for intervention service support and yet young people in regional areas consistently report barriers to accessing mental health services. The Office for Regional Youth's Youth Insights Report identified that mental health support was one of the top priorities of concern for young people in Regional NSW, particularly the need to increase the availability and reach of mental health support in the state.

Rural and Remote Mental Health (RRMH) identified that there has been increased inequity and disparity between rural/remote and metropolitan Australia's access to mental health support. Roughly a quarter of the population lives outside major cities, but funding is disproportionately allocated to city-centric organisations. Per capita availability of mental health supports and access to Medicare Benefits Schedule (MBS) as funded mental health services decrease with remoteness, this is further impacted by growing populations in regional areas putting a strain on existing health and wellbeing services:

- In Australia between 2019 and 2021, regional areas close to population centres grew at nearly 3 times (2.9) the rate of major cities (population for Inner Regional Australia grew 2.96%, compared with 1.04% for Major Cities of Australia) – ABS Census (2019-2021)
- In NSW between 2019 and 2021, regional areas close to population centres grew at over 5 times (5.1) the rate of major cities (population for Inner Regional NSW grew 2.23%, compared with 0.44% for Major Cities of NSW) – ABS Census (2019-2021)

MOTION 4: COMMUNITY WELLBEING

This National General Assembly calls on the Australian Government to fast-track funding to the states, to enable more financial support to be provided within the state planning framework for frontline homelessness services.

Background

Population Migration

According to the Regional Australia Institute, migration from capital cities to regional Australia increased by 16.6% to reach a new high in the March quarter of 2022. NSW represented 61% of this migration from capital cities, which translated to a 41% inflow into regional NSW. This second highest rate of migration into regional areas is Victoria, with 19% inflow into their regional areas. Regions with a growing population are likely to see increased demand for homes, including rental properties, which in turn create housing competition, pushing up rental prices. The increase in population places pressure on existing housing and homelessness services who struggle to meet the demand of a growing population without a compatible increase in funding.

Housing Stocks

Data from the 2021 census, shows that in Regional NSW for example, 66% of households were purchasing or fully owned their home, 21.7% were renting privately, and 3.8% were in social housing. A high proportion of the population with a mortgage indicates a population with household debt that are vulnerable to changes, including the current significant increases in interest rates which has significantly increased mortgage stress to low-income households. High home ownership in regional towns also means there is lower rental market stock.

Shelter NSW have identified that to appropriately support vulnerable communities, social housing stock should represent at least 5% of private dwellings. Regional Australia Institute have found only five LGAs in regional NSW have this proportion of social housing: Wollongong (8.0%), Shellharbour (6.8%), Newcastle (6.3%), Lithgow (5.4%) and Muswellbrook (5.1%). Overall regional NSW does not have the social housing stock to adequately support housing needs for its vulnerable communities and growing populations.

Impact on frontline homelessness services

With a hugely competitive private housing market and extremely limited social and affordable housing there is major pressure placed on temporary and transitional accommodation providers and frontline homelessness services, with little to no exit options for the people

they assist. Since 2011 there has been a 42% rise in demand for Specialist Homelessness Services, according to Regional Australia Institute.

Successive years of underfunding and an increase of new clients due to population migration and back-to-back crisis, including bushfires, Covid 19 pandemic and floods, means homelessness services in Regional NSW are in desperate need of funding to meet the current overwhelming demand. The Australian Institute of Health and Welfare have identified that homelessness services are currently supporting 27% more clients than funded for.

The homelessness sector has received one-off injections of funding that recognized the increasing demand. But the Social Sector support Fund of \$50 million, and limited modifications to the Job Saver program cannot address years of underfunded service delivery. There was also a significant funding increase to domestic and family violence, however funding for specific demographics is not enough. Funding for frontline homelessness services, especially in regional NSW who have seen a huge impact from population migration, Covid 19, affordable housing crisis, and natural disasters, needs to be fast tracked and within the state planning framework to provide short and long-term support for frontline homelessness services and the vulnerable individuals and families that they support.

MOTION 5: LOCAL GOVERNMENT INFRASTRUCTURE – SOFT PLASTICS

The National General Assembly calls on the Australian Government to collapse soft plastics funding by fast tracking localised projects to combat this and within the strategy include the money taxed to be to be returned to local government entities tasked with full-life cycle waste management.

Background:

The Federal Government National Waste Action Plan (in conjunction with circular economy principles in the National Waste Policy 2018) aim to improve resource recovery, increase the use of recycled materials and build markets for recycled products.

Councils nationwide assume responsibility for the end-to-end management of waste throughout its lifecycle, from kerbside pickup through to landfill and resource recovery centres, as well as site closure and remediated lands management. A task no other standalone industry or government undertakes for our communities, and which is done through specific rates and charges levied at a local level.

With the advent of the National Waste Export Regulation as of 2021, the need to find more efficient processing of recycling streams as well as re-manufacturing processes is now not just a reality but is critical to ensure circular economy principles can be achieved (including the proposition to recover 80% of all waste by 2030).

It is known that for every 10,000 tonnes of waste recycled, 9.2 jobs are created. In comparison, only 2.8 jobs are created where that waste goes to landfill.

The Australian Government, through tax programs imposed on waste generators and short to long term fund allocation, has the ability to assist Council's to increase recycled material recovery efficiencies at local and regional scales, bolstering jobs and further cycling both waste stream products and money through our economy.

It is proposed that the Australian Government consider directly allocating specific funding (directly through, or in addition to the Recycling Modernisation Fund) to Councils who can prove business cases which adhere to the National Waste Policy 2018 and consider streamlined approvals processes that will allow Councils to manage localised remanufacturing proposals and implement discounted buyback schemes for recycled products.

Additionally, Australian Government is called upon to collapse soft plastics funding by fast tracking localised projects to combat this and within the strategy include the money taxed be returned to managers to further develop a waste strategy.

Help us keep materials in local economies for longer.

References:

[National Waste Policy - DAWE](#)

[Hunter Valley submission](#)

MOTION 6: NATURAL DISASTERS – BETTERMENT FUNDING

This National General Assembly calls on the Australian Government to include Betterment Funding in the Natural Disaster Funding arrangements to allow Councils to repair or build-back an asset that can better withstand future natural disasters. Alternatively, that the Betterment Fund become a permanent arrangement to allow Councils to take proactive measures regarding resilience.

Background:

The current Natural Disaster Funding arrangements only allow Councils to repair or build back infrastructure to the standard it was in before the natural disaster and does not allow for councils to build better to withstand future natural disasters.

Councils currently are required to submit a separate application for the Infrastructure Betterment Fund in relation to the Natural Disaster Funding arrangements for each project and this only applies the repair and rebuilding of public assets directly damaged by the 2019/20 NSW Bushfires (AGRN 871), February and March 2021 Storm and Floods (AGRN 954/AGRN 960) and February and March 2022 NSW Severe Weather and Flooding (AGRN 1012). The Betterment Fund has not been listed as an ongoing funding arrangement.

Councils over the last three years, have seen countless projects, where a slight addition to the repair funding would achieve a better outcome regarding future natural disaster events. i.e., raising a destroyed culvert / bridge structure by 1 metre to lessen the impacts of future flooding.

MOTION 7: LOCAL GOVERNMENT INFRASTRUCTURE – HIGH SPEED RAIL

This National General Assembly calls on the Australian Government to support infrastructure such as high-speed rail to support regional growth.

Background

Regional Australia is referred to as the engine room for the national economy, which includes the agriculture, tourism, mining and manufacturing sectors. It is essential that these sectors are continued to be supported to enable growth and employment in Regional Australia.

The provision of adequate infrastructure to regional areas is a key factor in delivering significant and sustainable economic benefits. Infrastructure projects in regional areas not only create jobs during the construction phase, but they also can support long-term growth in employment with subsequent benefits to the economy.

Integrating high-speed rail to Regional Australia can alleviate supply issues, while supporting regional economic development, improving connectivity, driving prosperity and providing social equity. National investment in high-speed rail would assist the nation in reducing emissions and ensuring that regional areas are liveable, sustainable, productive, and resilient. High-speed rail stimulates long term benefits to the economy, specifically from commercial, residential and industrial developments that arise along rail lines. In addition, high-speed rail can significantly boost tourism by reducing travel time and making regional destinations more accessible.

MOTION 8: NATURAL DISASTERS

This National General Assembly calls on the Australian Government to amend its Disaster Recovery Funding Arrangements (2018) in order for advance payments to be provided up front for regional and rural councils, and not in arrears, within one month of a Declared Natural Disaster, so as to avoid impacting unfavourably on councils cash flow.

Background:

Local government has the ability and responsibility to restore the community to “normal” including all individuals, businesses, industry, and tourism following natural disasters. Local government is the level of government closest to the community. One of the functions of local government is to coordinate the implementation of Federal and State Government laws and regulations and so is used to disseminating information from a wide variety of sources in a cohesive manner. Therefore, local government is best placed to manage the delivery of a variety of services and support from the start.

In recovery, there is an urgency to getting funding into areas as soon as possible. For example, announcements of funding availability were made by the Federal and State Governments quickly after the fires impacted significant areas of NSW in 2020 and these were most appreciated. However, in some instances, the application process has resulted in substantial delays in being able to respond.

A readily available funding base will assist in facilitating Local Government to provide urgent assistance to the community.

MOTION 9: NATURAL DISASTERS

This National General Assembly calls on the Australian Government to provide increased funding to support on-the-ground council activities aimed at protecting our local koala population, including:

- 1. Environmental Protection and Biodiversity Conservation Act 1999 (EPBC) strengthening and direct linkage to State Biodiversity Legislation, and**
- 2. Ecosystem preservation measures empowered at a regional and local scale**

Background:

The triggers from EPBC to protect are based on self-identification and reporting mechanisms, as well as the discretionary provisioning of relevant Government Departments to administer and regulate applicable biodiversity measures. Ecosystems, including those that house critical Koala populations, are best identified and managed at a regional and local level via State legislative provisions which are drafted through insight into both local ecologies and impacting activities. Direct translation of EPBC requirements into State legislative instruments, as well as policy provisions will allow ecosystem preservation along with adequate resourcing to regulate activities that will impact Koala populations across Australia.

The following motion was also proposed at the Councillor Workshop, however has not been included in the proposed motions to be submitted to the National General Assembly for the reasons outlined in the below case:

SUGGESTED MOTION: CLIMATE CHANGE AND RENEWABLE ENERGY

This National General Assembly calls on the Australian Government to change legislative requirements to decrease the lighting requirements in cities to combat light pollution.

Background

As Australian cities grow, so too does light pollution in the night sky. One of the main culprits of light pollution is street lighting, where a lot of the light ends up in the sky and not on the ground. Public lighting authorities and local Councils are bound by relevant Australian Standards (mostly AS/NZS 1158 lighting for roads and public spaces series) to ensure sufficient lighting levels are supplied for pedestrian and vehicular safety on and around roads.

In 2020, *AS/NZS 1158.3.1 Lighting for roads and public spaces – Pedestrian area (Category P) lighting – Performance and design* was updated. The update included new performance quantification techniques for lighting design energy efficiency based on international best practice. The calculation methods used in the new AS/NZS 1158.3.1:2020 supplement lighting design requirements specified by the standard. The methods accommodate both non-adaptive lighting, as well as modern technologies that deliver **adaptive** lighting advantages. With new equipment now available, public lighting can be variable rather than static as in the past. Adaptive lighting techniques in the AS/NZS 1158 series include light adjustment such as switching, dimming, brightening, trimming and constant light output (CLO). The control settings of a lighting scheme may change throughout the night and adapt to changes in vehicular, cyclist or pedestrian activity. Note also that AS1158.1.1 (V Category Lighting) was also updated so both standards now have provisions for adaptive lighting schemes. Both new standards also introduced more stringent requirements for the upward waste light ratio (UWLR) of solid-state luminaires (1% down from 3% for standard).

Australian standards also provide for consideration of environmental concerns. Australian Standard *AS/NZS 4282:2019 Control of the obtrusive effects of outdoor lighting* recognises the impact of artificial light on biota. In August 2022, Standards Australia released a draft revised standard for Public Comment: *AS/NZS 4282* which aims to provide a common basis for assessment of the likely effects of developments that involve the provision of outdoor lighting. Obtrusive effects of outdoor lighting are best controlled by appropriate design, and this document is primarily applicable to new systems and is intended to be referenced by relevant authorities and designers of outdoor lighting. It refers to the potentially adverse effects of outdoor lighting on nearby residents, (e.g., of dwellings such as houses, hotels, hospitals), users of adjacent roads (e.g. vehicle drivers, pedestrians, cyclists), and transport signalling systems (e.g. air, marine, rail), on astronomical observations and environmental receivers (such as biodiversity).

In August 2022, Shoalhaven City Council approved to enter into an agreement with Endeavour Energy to implement a Council-funded accelerated street lighting program to change approximately 4,661 residential class streetlights to energy efficient LED technology at a capital cost to Council of up to \$2.45M (MIN22.522). This project will see 100% of Shoalhaven LGAs Street lighting converted to LEDs and is due to commence in 2023. The LED luminaires to be installed by Endeavour Energy have Smart Node functionality, allowing them to be adaptive for example in their light output, run times or sensor activated. Although Shoalhaven Council has not arranged for any of the proposed new 4,661 LED streetlights to be Smart Node activated, there is the ability to retrofit smart controllers to the LED lights at a later date, if requested. This may be suitable for example in areas with sensitive biodiversity habitat, star gazing value, electricity grid constraints, tourism benefits, etc.

It is recommended that given the background information supplied above and mostly referenced from 'Department of Industry, Science, Energy and Resources (DISER) 2021, [User Guide on 2020 energy metrics in AS/NZS 1158 lighting for roads and public spaces](#)', it is **not recommended** to submit this motion to the National General Assembly at this time as there have been several recent changes already made to relevant Australian Standards to combat lighting pollution.

CL23.64 LGNSW Destination & Visitor Economy Conference - 14th Asia Pacific Cities Summit (APCS) & Mayors' Forum

HPERM Ref: D23/70257

Department: Business Assurance & Risk

Approver: Sara McMahon, Acting Director - City Performance

Reason for Report

To consider Councillor attendance at the following conferences:

- a. LGNSW Destination & Visitor Economy Conference scheduled for 29-31 May 2023 in Manly.
- b. 14th Asia Pacific Cities Summit (APCS) & Mayors' Forum scheduled for 11-13 October 2023 in Brisbane, QLD.

Recommendation

That Council

1. Notes the details of the following upcoming conferences:
 - a. LGNSW Destination & Visitor Economy Conference scheduled for 29-31 May 2023 in Manly NSW.
 - b. 14th Asia Pacific Cities Summit (APCS) & Mayors' Forum scheduled for 11-13 October 2023 in Brisbane, QLD.
2. Authorises available Councillors to attend the conferences listed at Part 1 of this recommendation and such attendance be deemed Council Business.
3. Travel, registration fees, accommodation and all reasonable out-of-pocket expenses be met in accordance with its adopted policy.
4. Request Councillors attending the conference to provide a written report within 30 days of returning from the conference.

Options

1. As per the recommendation.
2. That Council limit the number of Councillors attending the Conference and such attendance be deemed Council Business.
3. That Council does not approve Councillor attendance at the Conference as Council Business.

Background

The following conferences are considered relevant to local government, information in relation to the conferences is available at the following links:

- a. [LGNSW Destination & Visitor Economy Conference](#)
- b. [14th Asia Pacific Cities Summit \(APCS\) & Mayors' Forum.](#)

CL23.64

LGNSW Destination & Visitor Economy Conference

Costs associated with the conference are estimated as follows:

- registration: Early bird (COB 3 April 2023 \$1050) Standard \$1250
- travel, accommodation and out of pocket expenses: not yet determined.

The Conference in Manly commences at 1.30pm Monday 29 May 2023 and concludes at 3.15pm Wednesday 31 May 2023 and the following Council Business is scheduled within the period of the conference:

- Audit, Risk and Improvement Committee – 29 May 2023.
- Nowra CBD Revitalisation Strategy Committee – 30 May 2023.

14th Asia Pacific Cities Summit (APCS) & Mayors' Forum

Costs associated with the conference are estimated as follows:

- registration: Mayor \$1560 Delegates \$1780
- travel, accommodation and out of pocket expenses: not yet determined.

The Conference in Brisbane is scheduled for Wednesday 11 October to Friday 13 October 2023. Commencement and conclusion time were not available at the time this report was written. The following Council Business is scheduled within the period of the conference:

- Nowra CBD Revitalisation Strategy Committee – 10 October 2023.
- Councillor Briefing 12 October 2023.

Policy Implications

The Council Members – Payment of Expenses and Provision of Facilities Policy limits attendance at conferences to three per annum per councillor exclusive of any conference arranged by either the State or National Local Government Associations.

An option available to Council is to define the number of Councillors attending a conference and for Council to determine the appropriate Councillors authorised to attend. This option is presented having regard to the increase in Councillor expenses in recent years, so that Council may pro-actively control this area of expenses when appropriate.

Financial Implications:

Funds are available for Councillors to attend conferences within the limits outlined in the [Council's Policy - Council Members – Payment of Expenses and Provision of Facilities.](#)

CL23.65 Ongoing Register of Pecuniary Interest Returns - February 2023

HPERM Ref: D23/48196

Department: Business Assurance & Risk

Approver: Sara McMahon, Acting Director - City Performance

Reason for Report

To provide the Council with the Register of Pecuniary Interest Returns from newly designated persons lodged with the Chief Executive Officer for the period of 1 February to 28 February 2023 as required under Section 440AAB of the Local Government Act 1993 and Part 4.26 of the Code of Conduct.

Recommendation

That the report of the Chief Executive Officer regarding the Ongoing Register of Pecuniary Interest Returns lodged for the period of 1 February to 28 February 2023 be received for information.

Background

Under Section 440AAB of the *Local Government Act 1993* and Part 4.26 of the Model Code of Conduct, newly designated persons are required to complete an Initial Pecuniary Interest Return within 3 months of becoming a designated person.

Section 440AAB (2) of *The Local Government Act 1993* states:

Returns required to be lodged with the general manager must be tabled at a meeting of the council, being the first meeting held after the last day specified by the code for lodgement, or if the code does not specify a day, as soon as practicable after the return is lodged.

Part 4.26 of the Model Code of Conduct states:

Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.

This report is one of a series of reports of this nature which will be provided throughout the year to align with the legislative requirements.

Those persons who have submitted a return within the period in accordance with their obligation to lodge an initial pecuniary interest return are listed below:

Directorate	Name	Designated Position Start Date	Returned
City Development	Tara-Jane Mendoza-Kehlet	16/01/2023	07/02/2023
City Development	Celia Martin	07/12/2022	10/02/2023
City Development	Linda Lisowski	06/02/2023	10/02/2023
City Development	Kane McMillan	20/02/2023	24/02/2023
City Development	Adrian Lawrence	06/02/2023	28/02/2023

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Electronic versions of the disclosure documents (with relevant redactions) are available on the Council website, in accordance with requirements under the *Government Information (Public Access) Act, 2009*.

Risk Implications

A failure of meeting the obligations with respect to the Pecuniary Interest Returns by a designated officer leaves Council at risk of non-compliance with legislative requirements, conflicts of interest and limited transparency.

CL23.66 New Proponent Planning Proposal Request - Lot 5 DP 1225356, Sealark Road, Callala Bay

HPERM Ref: D23/5037

Department: Strategic Planning
Approver: Carey McIntyre, Director - City Futures

Attachments:

1. Proponent PP Report 16/11/22 (councillors information folder) [⇒](#)
2. Biodiversity Development Assessment Report (BDAR) 10/12/20 (councillors information folder) [⇒](#)
3. Integrated Water Cycle Assessment (Stormwater management) 22/11/22 (councillors information folder) [⇒](#)
4. Bushfire Strategic Study 22/7/20 (councillors information folder) [⇒](#)
5. Bushfire Constraints Assessment 14/8/19 (councillors information folder) [⇒](#)
6. Traffic Report 4/11/19 (councillors information folder) [⇒](#)

Reason for Report

To seek Council's direction on a new proponent Planning Proposal (PP) request that has been submitted for Lot 5 DP 1225356, Sealark Road, Callala Bay. The PP request was submitted by PRM Architects Pty Ltd (the applicant) on behalf of the landowners on 20 December 2022.

Council resolved on 27 June 2022 to discontinue a previous PP (PP045) over the land that was originally supported by Council on 5 March 2019. This report provides a fresh assessment of the strategic and site merit of the current proponent PP request in accordance with the NSW Department of Planning and Environment's Local Environmental Plan Making Guideline for Councils consideration.

Recommendation

That Council:

1. Not support the proponents' Planning Proposal request for Lot 5 DP 1225356, Sealark Road, Callala Bay because it lacks the required strategic justification.
2. Advise the relevant stakeholders of this decision.
3. Advise the relevant stakeholders if the NSW Department of Planning and Environment (DPE) subsequently informs Council that it has received a rezoning review request.

Options

1. Support the PP request – submit the PP to the Department of Planning and Environment (DPE) for Gateway determination.

Implications: Subject to DPE issuing a favourable Gateway determination, Council would be responsible for addressing any pre-exhibition requirements, such as Government agency consultation. The PP would then be publicly exhibited, the outcome of which would be reported to Council to determine if the PP should be finalised.

2. Not support the PP request – not submit the PP to DPE for Gateway Determination.

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Implications: The proponent would have the option of requesting a rezoning review through DPE.

Background

The subject land (see **Figure 1**) is on the eastern edge of Callala Bay and the adjoins Jervis Bay National Park to the north, Wowly Creek to the east, Monarch Place, and a Council foreshore reserve to the south and Sealark Road to the west. The subject land is currently undeveloped – as shown in **Figure 1**.



Figure 1 – Subject land – Sealark Road, Callala Bay

The subject land is currently wholly zoned C3 Environmental Management as shown in **Figure 2**. (Note: The NSW Government changed the 'E' prefix for all environment zones to a 'C' prefix on 1 December 2021, via the Standard Instrument LEP.)

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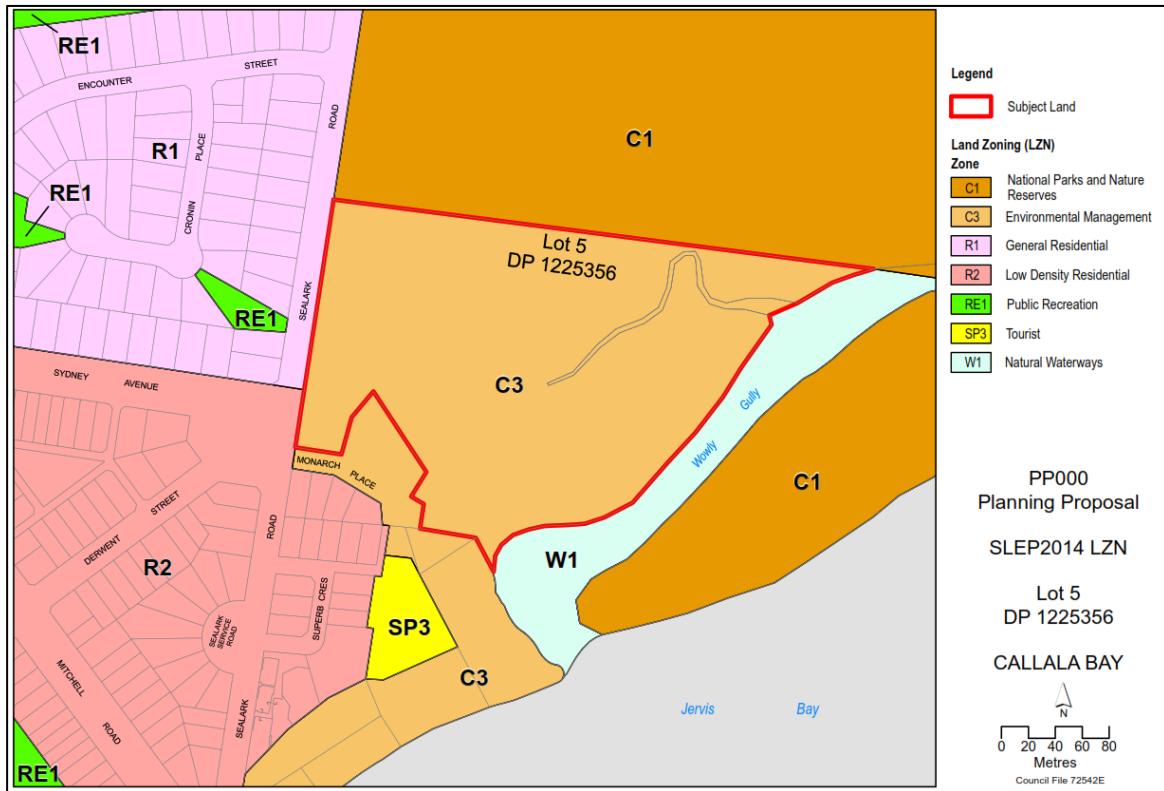


Figure 2 – Current zoning under Shoalhaven LEP 2014

Subdivision and land use zoning history

The subject land was part of Lot 15 in DP 1002772, a residue ('leftover') lot in a subdivision approved by the NSW Land and Environment Court in December 1994 (SF7583).

The subject land was previously zoned *Environment Protection 7(f3) (Foreshores Protection)* under the Shoalhaven LEP 1985 (SLEP 1985).

The NSW Government introduced the Standard Instrument (SI) LEP in 2006 and required all Council's to convert their existing LEPs to the new SI format (to encourage consistency amongst all LEPs across NSW). As part of the resulting city-wide LEP review, the whole of the then subject land was initially proposed to be rezoned *E3 Environmental Management* (under draft Shoalhaven LEP 2009).

In late 2011, during the public exhibition of the draft Shoalhaven LEP 2009, a request to rezone the land parcel formerly known as Lot 15 DP 1002772 (including the subject land) to *R2 Low Density Residential* was received from the landowners.

Council resolved to accept this request on 17 April 2012 and the draft LEP was revised, seeking to rezone approximately 0.75 ha of land north of Monarch Place to *R2*, and the remainder to *E3*. However, this was rejected by the then NSW Department of Planning and Infrastructure due to a lack of strategic justification and the site's environmental constraints. The Department accepted the proposed rezoning of 0.2 ha of land south of Monarch Place to *R2 Low Density Residential*, acknowledging that Monarch Place created an existing boundary to the environmentally significant area to the north (the subject land).

Consequently, the subject land was zoned *E3 Environmental Management* upon the commencement of SLEP 2014. As already noted, the 'E' prefix for the environment zones was changed to 'C' in December 2021, as part of the employment zones reform.

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Previous Planning Proposal – PP045

A previous PP request to rezone Lot 5 DP 1225356 at Sealark Road, Callala Bay, to allow for residential development on the site, was received in January 2019 and reported to Council on 5 March 2019. The Council staff report can be viewed in the archived [business paper](#).

The staff report recommended that Council not proceed with a PP, concluding that it was:

- inconsistent with Council's PP Guidelines, the Shoalhaven Growth Management Strategy (GMS), and the Jervis Bay Settlement Strategy (JBSS); and
- could set an undesirable precedent for other landowners who would like to potentially rezone their land in similar circumstances.

The report also noted that several studies were outdated and would need to be redone.

In response, it was resolved (MIN19.111) that Council:

1. *Support the proponent initiated Planning Proposal request to rezone Lot 5 DP 1225356, Sealark Road, Callala Bay to a mix of residential, recreation and environmental protection zones on the basis that it is considered to be 'minor' in nature and significance in accordance with Council's Planning Proposal (rezoning) Guidelines given the scale of the development that could result.*
2. *Submit the Planning Proposal to the NSW Department of Planning & Environment requesting the initial Gateway determination, noting that additional and updated studies will be undertaken post Gateway to support the Planning Proposal*
3. *Dependent on the outcome of the Gateway determination receive a further report on the Planning Proposal*
4. *Advise the proponents and submitters of this decision.*

A favourable Gateway determination was then issued by the then NSW Department of Planning Industry and Environment (DPIE) on 2 May 2019, authorising the PP to proceed, subject to completing several technical studies including:

- Biodiversity Assessment
- Flood Study
- Integrated Water Quality Management Study – to demonstrate Neutral or Beneficial Impact on water quality
- Aboriginal Cultural Heritage Assessment
- Traffic Study
- Geotechnical Study (including Acid Sulfate Soils)
- Stage 1 Preliminary Contaminated Site Assessment
- Bushfire Hazard Risk Assessment

Most of the required studies were commissioned and managed by the proponent as the process allows. Due to complications associated with the land's low elevation and gentle slope, the flood study and water cycle assessment (stormwater management) were significantly delayed and the final reports were not received until November 2021 (six months after the Gateway had lapsed).

The NSW Department of Planning and Environment (DPE) declined to issue a Gateway extension and instead, terminated the Gateway on 17 December 2021. In doing so, DPE advised:

I acknowledge that significant progress has been made on the planning proposal including completion of studies and investigations required to satisfy Gateway conditions. Unfortunately, I cannot agree to Council's request for an extension of time

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due to the significant time lapsed to date and further work required to exhibit and finalise the planning proposal.

I have therefore determined as the delegate of the Minister, in accordance with section 3.34(7) of the Environmental Planning and Assessment Act 1979, to alter the Gateway determination dated 2 May 2019 for PP-2021-990 to not proceed. The Alteration of Gateway determination is enclosed.

The Department would be willing to consider a revised planning proposal on the Planning Portal when outstanding matters have been addressed. I can advise that work completed to date on the proposed rezoning of the site, including Gateway studies, will be taken into consideration by the Department should a new Gateway determination be sought.

Consistent with DPE's advice and Council's resolution of 5 March 2019, staff updated the PP and submitted it to DPE for comment on 6 April 2022. The matter was then then reported to Council for consideration on 27 June 2022 ([link to staff report](#)).

In response, Council resolved not to seek a new Gateway determination ([MIN22.412](#)) and as such work ceased on PP045.

New PP Request and Supporting Documentation

The new PP request was submitted by PRM Architects Pty Ltd (the applicant) on behalf of the landowners (C, A, A and G. Pintabona, K.A. and G. Sirolli and F. Angeloni) on 20 December 2022.

The proponents' PP request was formally received via the NSW Planning Portal on 20 December 2022, and is accompanied by the following documentation:

- Proponent PP Report 16/11/22 (Councillor Information Folder) – D23/5353
- Biodiversity Development Assessment Report (BDAR) 10/12/20 (Councillor Information Folder)
- [Geotechnical & Acid Sulfate Soils Report 21/8/19](#)
- Integrated Water Cycle Assessment (Stormwater Management) 22/11/22 (Councillor Information Folder)
- [Preliminary Contamination Report 22/8/19](#)
- Bushfire Strategic Study 27/7/20 (Councillor Information Folder)
- Bushfire Constraints Assessment 14/8/19 (Councillor Information Folder)
- [Flood Study Report 22/11/22](#)
- Traffic report 4/11/19 (Councillor Information Folder)
- [NSW Environment Minister Letter 3/8/21](#)
- [Proponent response 15/12/22- further information](#)

Preliminary Assessment

DPE's [LEP Making Guideline](#) states that a PP must have strategic merit *and* site merit to be progressed. Strategic merit is the proposal's consistency with the NSW strategic planning framework, which includes a range of NSW Government and endorsed Council documents, Ministerial directions issued under section 9.1 of the NSW *Environmental Planning and Assessment Act, 1979* and State Environmental Planning Policies (SEPPs). Site merit is the site-specific environmental, social, and economic impacts/cost/benefits of the proposal.

An assessment of strategic and site merit is provided below.

Strategic Merit

Illawarra Shoalhaven Regional Plan 2041 (ISRP)

The key objective in the ISRP is Objective 18 (*Provide housing supply in the right locations*). The ISRP includes the following description in this regard [emphasis added]:

*“The Regional Plan identifies West Lake Illawarra, Nowra-Bomaderry and Bombo Quarry as growth areas. Aside from these areas, the Plan **concentrates new development and intensive uses in existing centres, rather than in the scenic hinterland that defines the coastal rural character of the region.***

*The Plan promotes the **retention of existing scenic and natural areas, and seeks to protect them through an urban growth boundary.** This will be maintained by land use zones that do not permit urban uses or intensive subdivision, and will **ensure that existing centres, not identified as growth areas, do not expand into the surrounding, non-urban hinterlands.**”*

As initial land release areas are now complete or nearing completion, investigation areas identified through the UDP can provide Councils with a longer term and strategic approach to respond to higher than expected housing demand.”

The proponents' PP report does not directly consider whether the proposed residential area is the right location for housing. The report provides the Council resolution of 5 March 2019, as justification in relation to Objective 18 (above). The proponents report does not acknowledge that on 27 June 2022, Council resolved to not progress a PP ([MIN22.412](#)) that involved the same LEP amendments as the current PP request, and was supported by the same environmental and land capability assessments. It should also be acknowledged that the previous Council resolution (in March 2019) of 'support' was made in the absence of any flood mapping.

The proponents' PP report does not demonstrate that the proposal is consistent with Objective 18 the ISRP. Council staff are of the view that the PP request is inconsistent with Objective 18 of the ISRP because this edge of Callala Bay is not specifically identified as a growth area.

Shoalhaven 2032 Community Strategic Plan (CSP)

Priority 2.2 is to 'Manage growth and development with respect for environmental and community values'. The 'outcomes' sought under this priority are:

- *Improved collaborative strategic planning with the community.*
- *Development contributes to and enhances neighbourhood character.*

The proposal is not directly relevant to or aligned with the first point.

In relation to the second point, the proposal seeks to rezone approx. 1.7 ha of land on the eastern edge of Callala Bay from *C3 Environmental Management* to *R1 General Residential* and apply an 8.5 m height of buildings (HOB) control. The proposal could impact on local character both positively (depending on the built form of the resulting development) and negatively (e.g. cut and fill / changes to landform, replacing the existing natural vegetation with residential development, loss of coastal views etc).

The CSP refers to the Local Strategic Planning Statement (LSPS) and the Shoalhaven Growth Management Strategy (GMS) for additional detail. These are discussed below.

Priority 2.3 of the CSP is to 'Protect and showcase the natural environment'. The proposal would potentially facilitate transfer of the most environmentally sensitive part of the subject

land (adjacent to Wowly Creek) to the NSW Environment Minister for management as part of the National Parks system.

Shoalhaven 2040 (Local Strategic Planning Statement - LSPS)

Priorities relevant to this PP request include:

Planning Priority 1: Providing homes to meet all needs and lifestyles

Existing suburbs and villages with limited expansion opportunities need in-fill development to support the supply of housing types and allow people to change homes as their needs change.

Action 1.1: Review the Shoalhaven Growth Management Strategy (including the preparation of a Local Housing Strategy) to identify future dwelling supply, strategic locations for new homes, and required housing type/diversity, with an early outcome being the urgent review of the Milton-Ulladulla Structure Plan'

Refer to discussion of the Growth Management Strategy (GMS) and the Jervis Bay Settlement Strategy (JBSS).

Planning Priority 11: Adapting to natural hazards through building resilience

Action A11.4: Consider and implement any applicable land-use planning recommendations from the NSW Independent Inquiry into the 2019-2020 bush fire season. The most relevant recommendation is #27 of the [final report of the NSW Bushfire Inquiry](#) which is copied below:

- *That Government commit to shifting to a strategic approach to planning for bush fire, and develop a new NSW Bush Fire Policy similar to the NSW Flood Prone Land Policy in order to accommodate changing climate conditions and the increasing likelihood of catastrophic bush fire conditions; to build greater resilience into both existing and future communities; and to decrease costs associated with recovery and rebuilding*

The land is mapped as bushfire prone on the NSW bushfire prone land mapping - see later discussion of Ministerial Direction 4.3 (Planning for Bushfire Protection). The land is flood-affected – see later discussion of Ministerial Direction 4.1 (Flooding).

Shoalhaven Growth Management Strategy (GMS) (V1)

The current GMS was adopted by Council in December 2012 and endorsed by the then NSW Department of Planning in May 2014. The GMS sets out broad principles for planning growth across the city and incorporates several more detailed settlement strategies/structure plans, including the Jervis Bay Settlement Strategy, 2003 (JBSS). As such, the JBSS was effectively re-endorsed and embedded within the GMS. The JBSS discussed below.

Jervis Bay Settlement Strategy, 2003 (JBSS)

The subject land is not specifically identified for investigation in the JBSS - see excerpt below (Map 10A).

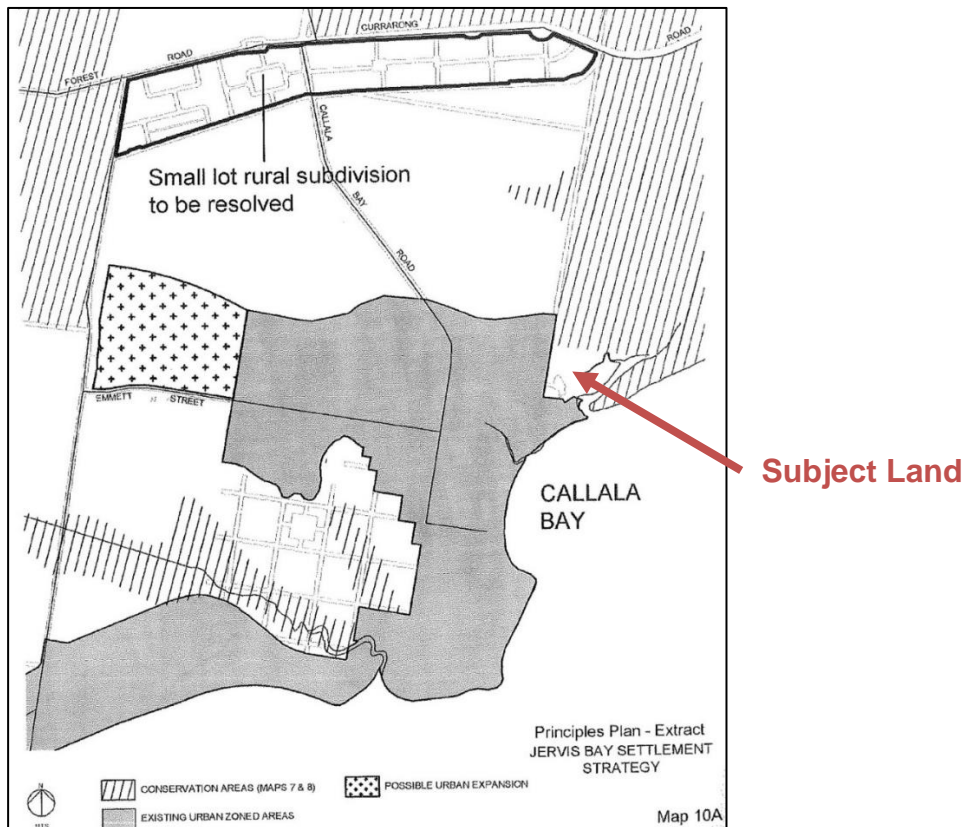


Figure 3- Map 10A, Jervis Bay Settlement Strategy (JBSS).

The only land identified in the JBSS for investigation in the broader Callala Bay area is the land between the existing residential area and Callala Beach Road on the northern side of Emmett Street. This investigation area was the subject of the Halloran Trust Planning Proposal that was concluded (rezoned) by DPE in October 2022. The resulting LEP amendment will ultimately enable up to 400 dwellings, subject to addressing the requirements of Part 6 (Urban Release Areas) involving preparation of a site-specific Development Control Plan, and provision of essential state and local public infrastructure.

The PP is considered to be not consistent with the JBSS because the land is not specifically identified as a potential rezoning investigation area.

While it is acknowledged that the subject land is adjacent to the existing residential area, the proposal would be reliant on a significant amount of cut and fill earthworks to manage flooding and enable stormwater treatment. These issues are discussed later in this report.

Consistency with Section 9.1 Ministerial Directions

The following commentary considers the consistency of the PP with the relevant Section 9.1 Ministerial Directions.

1.1 Implementation of Regional Plans

As discussed earlier, the PP is considered to be inconsistent with a key objective of the ISRP (provide housing supply in the right locations) because this edge of Callala Bay is not an identified growth area.

3.1 Conservation Zones

The PP is potentially consistent with this Direction because the area proposed to be zoned R1 General Residential is not known to contain any threatened species and endangered ecological communities. A Grey-headed Flying-fox was observed within the subject land, but

this was not considered to represent a significant constraint due to this species' mobility and extensive range.

3.2 Heritage Conservation

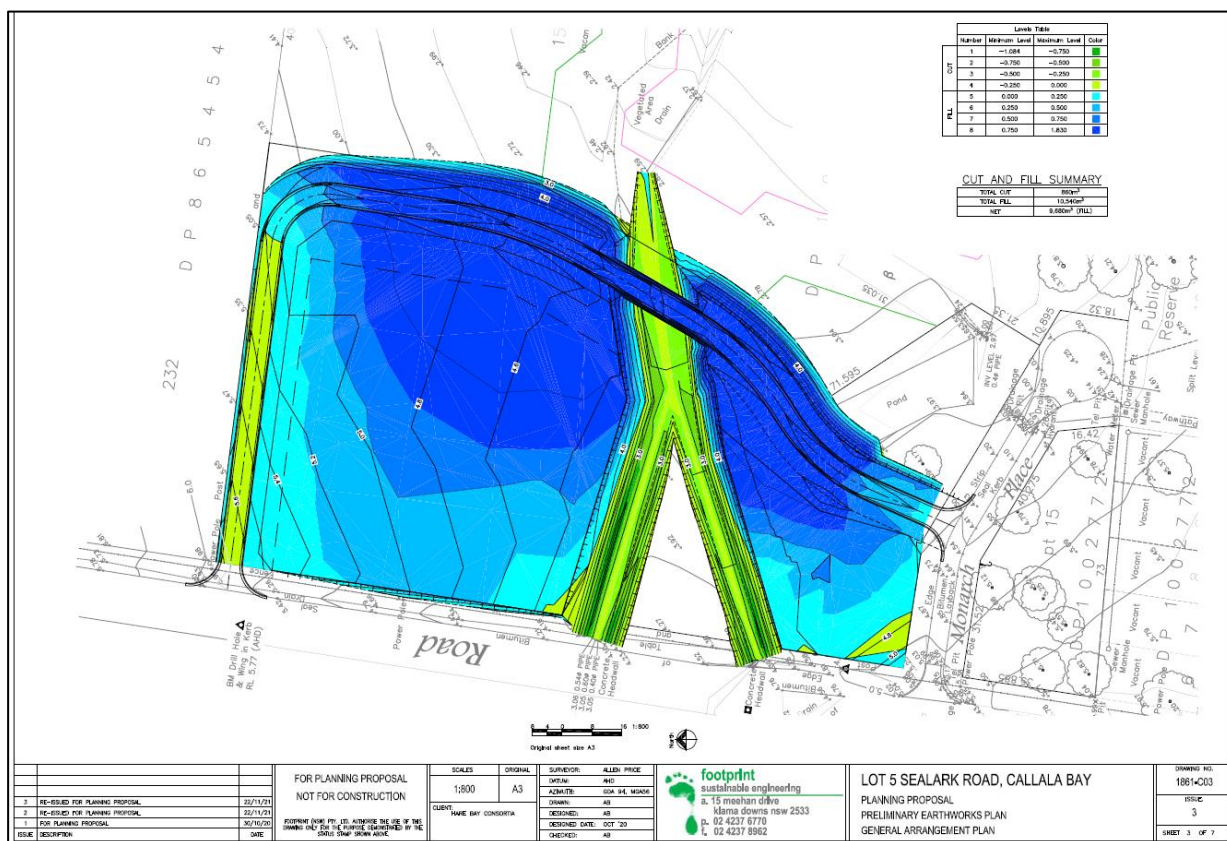
This Direction requires PPs to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The PP is supported by an Aboriginal Cultural Heritage Assessment (ACHA). No Aboriginal objects, sites, or areas with potential to retain subsurface archaeological deposits were identified, nor were any Aboriginal cultural issues or sensitivities identified by the RAPs consulted in the assessment. The Jerrinja Local Aboriginal Land Council (LALC) would be consulted as part of the exhibition process if a PP proceeds.

4.1 Flooding

This Direction requires PPs to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and that the provisions of an LEP that apply to flood prone land are commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

The PP is seeking to rezone land within the flood planning area to a residential zone. The proposed residential area is dissected by two existing stormwater drainage channels which directs floodwater away from the upslope residential area and merge within the proposed footprint. The drainage channel will also be rezoned to residential (as opposed to SP2 Infrastructure) consistent with the Department's [LEP practice note PN 10-001](#).

The proponent intends to excavate/deepen the drainage channel and to fill the adjoining area where housing is proposed to an average depth of 700-800 mm – see **Figure 4** below. Subject to completing this earthwork, the area intended for housing, on either side of the channel, would be above the flood planning area.



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The PP is considered to be inconsistent with this Direction, but this inconsistency is arguably minor subject to completing the excavation and filling associated with the post-development scenario. However, accepting this as a minor inconsistency based on substantial earthworks would potentially set a precedent for other flood prone land across the City.

4.2 Coastal Management

This Direction requires PPs within the coastal zone to be consistent with the Coastal Management Act, the NSW Coastal Management Manual and associated Toolkit; NSW Coastal Design Guidelines 2003; and any relevant Coastal Management Program. A PP must not rezone land which would increase development within a coastal vulnerability area or on land affected by a current or future coastal hazard.

The PP is not seeking to increase development within a coastal wetland, coastal vulnerability area, or land affected by a current or future coastal hazard.

4.3 Planning for Bushfire Protection

This Direction requires PPs on bushfire prone land to have regard to Planning for Bushfire Protection 2019 and include controls that avoid placing inappropriate developments in hazardous areas and ensure that bushfire hazard reduction is not prohibited within an asset protection zone (APZ).

The PP is supported by a bushfire assessment which incorporates a Strategic Bushfire Assessment. The proposal has been designed to incorporate a perimeter road, APZ etc and appears capable of complying with PBP 2019. The RFS would be consulted prior to exhibition if the PP proceeds.

4.4 Remediation of contaminated land

This PP is supported by a Preliminary Site Investigation report which found that minimal human related activity has occurred on the site other than passive recreational activities.

The following potential Areas of Environmental Concern (AEC) were identified:

- The drainage depression associated with the historical use of herbicides and ongoing use as stormwater drains (AEC1).
- Areas with the potential for illegal dumping (AEC2).

This PP is consistent with this Direction noting that further investigation including soil sampling would be undertaken at development application stage, as recommended.

4.5 Acid Sulfate Soils

The PP is supported by an Acid Sulfate Soils (ASS) Assessment which concluded that a formal ASS management plan is not required for the site based on soil sampling and analysis. Any future development application will have to address Clause 7.1 (acid sulfate soils) of the Shoalhaven LEP 2014.

5.1 Integrating Land Use and Transport

The PP will provide a limited number of additional dwellings on the edge of Callala Bay. Future residents are likely to be reliant on private cars for transport due to the limited availability of public transport and limited employment opportunities within the village. The existing and proposed network of roads and paths will provide a range of cycling and walking options locally.

5.2 Reserving Land for Public Purposes

A letter dated 3 August 2021 from the NSW Environment Minister to the proponent, confirms that NSW National Parks & Wildlife Service (NPWS) will accept the proposed C2-zoned land subject to a one-off payment by the proponent to 'complete works and transition the land to a

national park'. The letter states that the land would only be rezoned to C1 National Park after the land has been acquired.

The C2-zoned land would need to be transferred to NPWS via a Voluntary Planning Agreement (VPA) between the landowner and the NSW Environment Minister. Any VPA would need to be progressed concurrently with a PP and be signed and registered on title prior to notification of the LEP amendment. This approach would ensure a mechanism is in place to transfer the land prior to it being rezoned. The timing of the LEP amendment could potentially be impacted if the VPA delayed. The PP is considered to be not inconsistent with this Direction.

6.1 Residential Zones

The PP will provide some additional housing on the edge of Callala Bay; however, this will involve an expansion of the current urban footprint. The existing infrastructure and services within the village will be utilised. A new perimeter road and upgraded stormwater infrastructure is proposed to be provided at subdivision stage.

9.2 Rural Lands

This Direction applies to PPs that:

- will affect land within an existing or proposed rural or conservation zone (including the alteration of any existing rural or conservation zone boundary) or
- change the existing minimum lot size on land within a rural or conservation zone.

Environmentally sensitive land identified in the proponents' supporting BDAR includes a Threatened Ecological Community (TEC) and a 100 m buffer to the coastal wetland, will be rezoned to C2. This environmentally sensitive land will be added to the Jervis Bay National Park via a VPA.

The supporting flood study and integrated water cycle assessment indicate that the proposed development area will need to be filled to an average depth of 700-800 mm to manage stormwater and flooding while achieving a neutral or beneficial effect on water quality.

The PP is not inconsistent with clause (5) because it will not result in land use conflict between residential and other rural land uses.

State Environmental Planning Policies (SEPPs)

The PP is generally consistent with the applicable state environmental planning policies (SEPPs).

SEPP (Primary Production) 2021

The proponents' supporting Integrated Water Cycle Assessment indicates that the proposal would have a neutral or beneficial effect on water quality. On this basis, this PP is not inconsistent with Part 2.5 Sustainable aquaculture.

SEPP (Resilience and Hazards) 2021, Chapter 2: Coastal Management

- The proponents' Integrated Water Cycle Management Plan indicates that the pre-development water quality and flow regime would be maintained. This would be assessed in more detail at development application stage for the subdivision.
- The proposal would not reduce access to the foreshore (which is accessed via Monarch Place).

Summary of strategic merit

The elements of the PP that are consistent with the strategic planning framework include:

- Would potentially enable a range of housing types that are permissible in the *R1 General Residential* zone, adding to the supply and diversity of housing available in the locality.
- Any additional housing would utilise the existing services in Callala Bay.
- The most environmentally sensitive part of the subject land would be rezoned from *C3 Environmental Management* to *C2 Environmental Conservation* and this land is proposed to be transferred to the NSW Environment Minister for management as part of the NSW National Parks System via a Voluntary Planning Agreement (VPA).
- In respect of the Resilience and Hazards SEPP, Chapter 2: Coastal Management: the proponents' Integrated Water Cycle Management Plan indicates that a neutral or beneficial effect (NorBE) on water quality can be achieved.

The elements of the PP that are inconsistent with the strategic planning framework include:

- Is inconsistent with objective 18 of the ISRP because this edge of Callala Bay is not identified as an urban expansion area.
- Is inconsistent with the JBSS (and hence the GMS) because subject land is not specifically identified for investigation.
- Inconsistent with s.9.1 Ministerial Direction 4.1 (flooding). The proponents' PP states that this inconsistency is arguably minor if the post-development scenario is accepted. Council resolved not to seek a Gateway determination for this proposal in June 2022, in part due to concerns around flooding.
- Council most recently considered the same supporting studies in June 2022, that accompany the current PP request and resolved not to pursue the zoning outcomes that is again now being sought. Hence, Council's resolution in 2019 is irrelevant. Furthermore, the extent of flood prone land was unknown in 2019 when a decision of support was made.
- The proposal could potentially create an undesirable precedent noting the above comments in relation to the ISRP, JBSS and flooding (precedent is discussed further under Policy Considerations).

Site Merit Assessment

Biodiversity

The proposed residential area has disturbed heath vegetation that has been periodically slashed over many years.

The proponents' supporting Biodiversity Assessment Report (BDAR) indicates that while it is not possible to locate a development footprint within an area that has no biodiversity values, the proposed residential area is generally contained within the most disturbed part of the site. The vegetation within the proposed residential area does not conform to any Endangered Ecological Communities (EEC) listed under the NSW *Biodiversity Conservation Act 2016* (BC Act) or the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (Eco Logical Australia, 2020).

The BDAR states that one threatened species was observed within the subject land; the Grey-headed Flying-fox, which was not considered to represent a significant constraint due to this species' mobility and extensive range. The BDAR also states that the proposed residential area does not contain any suitable roosting areas.

Three other threatened species were recorded in the eastern part of the subject land that will be rezoned to C2 Environmental Conservation (ibid.):

- Gang-gang Cockatoo
- Square-tailed Kite
- White-bellied Sea-eagle

The proponents' BDAR states that the development footprint does not support any hollow-bearing trees, raptor nests, permanent water or rock habitats, nor any other habitat resources that are not widely available in surrounding areas.

Local amenity

Potential impacts on local amenity include:

- loss of views, particularly impacting on adjacent residences west of Sealark Road
- noise during and after construction of the development
- traffic and car parking

Strategies to minimise visual impacts could include appropriate landscaping and use of vegetation to soften the impacts, and building height controls. Note: an 8.5 m maximum height of buildings is proposed on the subject land.

Local character

The Shoalhaven Local Character Assessment prepared by Roberts Day, lists the following local character elements of Callala Bay to be *retained*:

- Emmett Street as the settlement 'centre' with shops and services
- Spacious and green character
- Some pedestrian infrastructure and signs of active transport

And the following elements to be *improved*:

- Sense of connection to the waterfront
- Retail centre which is slightly tired in appearance
- Treatment of entry points, particularly the transition from rural road to village setting
- Amenities and services for existing and future residents

Local character would potentially be negatively impacted by replacing 1.7 ha of disturbed heath on the coastal fringe of the Callala Bay village with housing and modified landform resulting from the importation of fill.

However, the resulting small increase in population will potentially help provide additional economic stimulus to local shops and businesses.

Flooding

The subject land is relatively flat and low lying, and is subject to flooding. See **Figure 5** below.

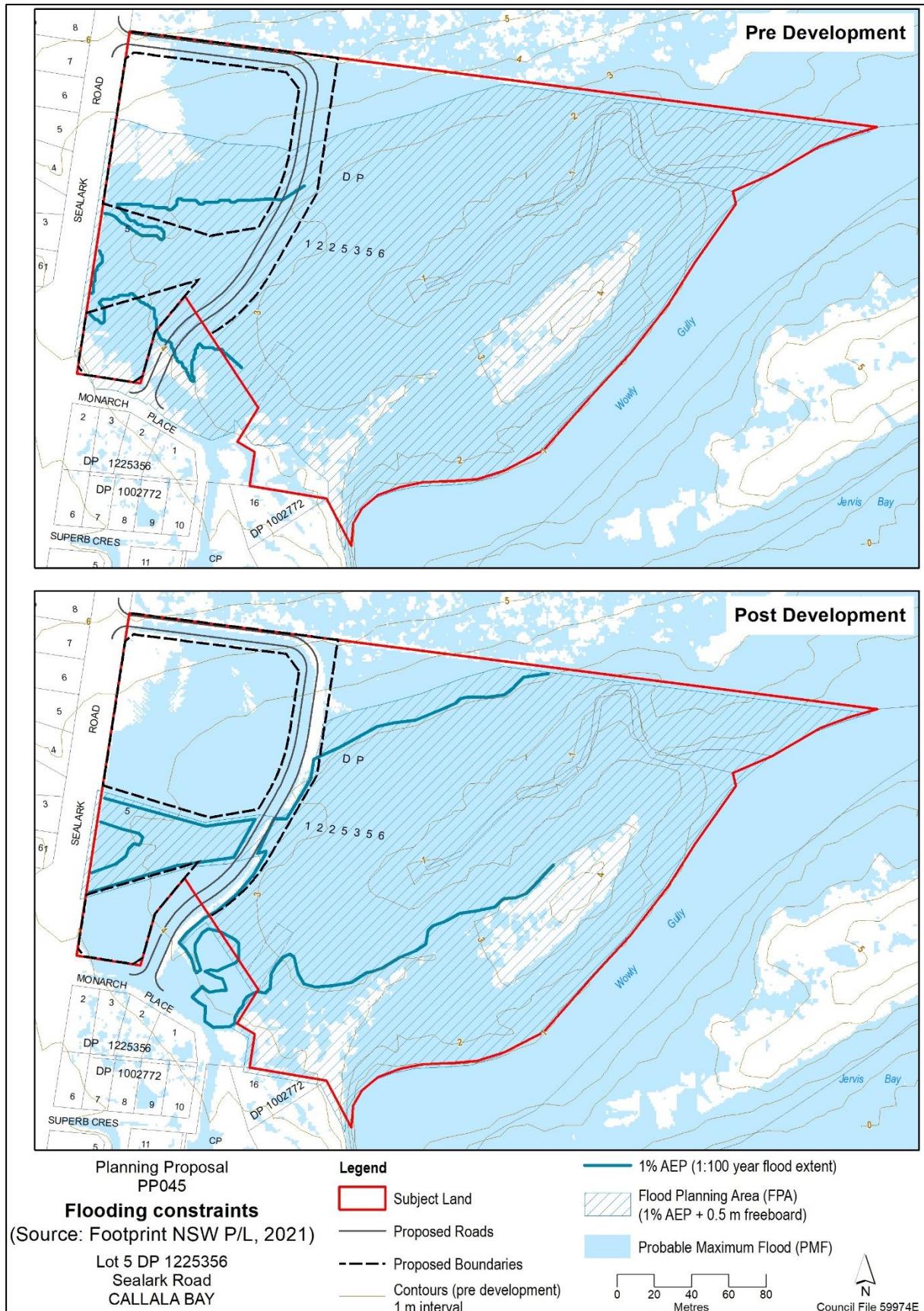


Figure 5 - Flooding constraints map prepare for the previous PP (PP045), pre and post-development.

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To resolve the flooding constraints and enable stormwater to be managed so that water quality in Wowly Creek is not adversely impacted in the longer term, the proponent proposes to undertake earthworks to raise the height of the residential area (and part of the proposed perimeter road) to an average depth of 700-800 mm, and to excavate the open drains (refer to **Figure 5**). This would raise the proposed residential area above the flood planning level (1 in 100 year flood level plus 0.5 m freeboard) while also providing the necessary vertical fall to discharge stormwater into the proposed bioretention basins (to be designed at development application stage). The impacts of this are discussed further below.

Impacts of cut and fill earthworks

The potential impacts of earthworks involving cut and fill would include:

- Construction impacts including noise and dust, and erosion risk / water quality impacts. Note: the proponents' Integrated Water Cycle Management Plan indicates that water quality would not be negatively impacted post construction. A Soil and Water Management Plan would be required prior to any work proceeding and would document erosion control measures to be implemented during the construction phase.
- Changes to stormwater and flooding behaviour (positive and negative). Excavating the channel would improve drainage and reduce localised inundation. The proponents' flooding consultant, Footprint (NSW) P/L advised Council that:

Figure 8.4 of the Flood Study Report demonstrates that the proposed development will not cause adverse flood impact on adjacent properties. In fact, the modelling demonstrated that the 1% AEP flood level in the upper portion of the drainage channel through the site is likely to decrease by up to 300mm, which is anticipated to result in a reduction of flooding and increased serviceability within Sealark Road to the benefit of the wider community. Similarity in the PMF event Figure 9.4 shows that the proposed development is not likely to have adverse impact on adjacent properties.

- Impacts on visual qualities in the immediate area, including the natural landscape and views. The extent to which the ground level is proposed to be raised should be considered in context of the existing landform and landscape.

Stormwater and water quality

The proponents' Integrated Water Cycle Assessment indicates that there would be no net increase in exports of sediment, nitrogen or phosphorus in runoff, i.e. that a neutral or beneficial effect (NorBE) on water quality can be achieved. This is based on the following land use assumptions (refer to p23 of the [Integrated Water Cycle Assessment](#)):

Pre-development scenario:

- Open drains classified as *100% pervious 'natural' land use*
- Proposed residential area (excluding the drains) classified as *100% pervious 'residential' land use*

Post-development scenario:

- Open drains classified as *'natural' land use*
- Proposed building envelopes, surrounding APZ areas classified as *100% pervious 'residential' land use*

Summary of site merit issues

- The environmentally significant land is proposed to be rezoned from C3 Environmental Management to C2 Environmental Conservation. This land is proposed to be added to the NSW National Parks system via a Voluntary Planning Agreement (VPA).

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- The proposed residential area has relatively low biodiversity value: it does not support any hollow-bearing trees, raptor nests, permanent water or rock habitats, nor any other habitat resources that are not widely available in surrounding areas.
- The subject land is relatively flat and low lying, and subject to flooding. To address the flooding constraints and allow stormwater to be managed, the proponents propose to apply a significant quantity of imported fill and to excavate the existing vegetated open drains.
- The extent of earthwork needed to make the land more suitable for housing creates risks such as dust and noise pollution (during construction), erosion/sedimentation (primarily during construction), and impact on visual amenity and local character.
- The proponents' PP contends that the potential environmental impacts can be appropriately managed.

Conclusion

The land is currently zoned *C3 Environmental Management* and is the residual land resulting from the subdivision of residential land to the south, including Monarch Place.

In 2019, the Council resolved to support a similar PP over the land, notwithstanding the conclusion of the staff report that the proposal was inconsistent with strategy. Importantly however, no information on flooding was available at that time. The previous PP was progressed in accordance with the 2019 resolution. In 2022, Council considered the findings of the proponents' current flood study (and other reports produced since the 2019 decision) and resolved to not progress the PP. Hence, this report presents a fresh review of the proposal's strategic and site merit.

The proponents' information suggests that the proposal will not impact on the environment and that the land's most significant hazard (flooding) can be resolved by placing an average of 700-800 mm of imported fill across the area where housing is proposed, and by excavating the two open vegetated drains that dissect and merge within the proposed residential area.

The key concerns with this PP are:

- A lack of strategic justification. Callala Bay is relatively isolated and is not identified as a growth area, with the exception of land identified for investigation in the Jervis Bay Settlement Strategy (JBSS). The subject land is not identified for investigation in the JBSS or any other adopted/endorsed strategy.
- The proposed residential land is almost entirely flood prone. The extent of earthwork proposed by the proponents to address this constraint would potentially give rise to similar proposals elsewhere.
- Potential impacts on Wowly Creek and associated environments.

It is concluded that the PP lacks the required strategic merit, hence it is recommended that Council not support the PP request. Site merit is considered marginal, the main concern being the extent of earthwork required to make the land more suitable for housing.

Community Engagement

Two community submissions have been received in relation to the current PP request. The submissions are summarised below. Copies can be provided to Councillors on request.

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Submitter	Issue
Adjoining landowner (Sealark Road)	<ul style="list-style-type: none"> • Unable to compile a detailed objection due to time constraints • Lacks strategic and site merit • Is inconsistent with the JBSS because the land is not identified as a potential residential area • Is inconsistent with the ISRP • Subject land is residual from land that has already been developed (Monarch Place) – owners having a ‘second bite of the cherry’ • Potential impacts on Wowly Creek and associated state-protected wetland • Flora present is not commonly seen and may be significant (attached photos) • PP would set an undesirable precedent
Callala Bay Community Association (CBCA)	<ul style="list-style-type: none"> • Proposed further removal of environmental zoning protections would degrade the land and Wowly Creek • Landowners previously accepted the current environmental zoning which the proposal now seeks to undermine • Claims the PP has been timed to coincide with holidays • Would welcome the lands being gifted to NSW NPWS

Policy Implications

A decision to support the PP request would have the following policy implications:

- Because the land is not specifically identified for investigation in the GMS or JBSS, supporting this PP request would potentially weaken Council's ability to reject other similar requests to rezone land that is not identified for investigation (e.g. on the edge of other urban areas). To highlight this point, in recent months, staff have responded to requests from at least two other separate landowners in the Callala Bay / Callala Beach area, who would like to have their land rezoned despite it not being identified for investigation.
- A precedent would potentially be set where substantial filling might be proposed to make flood prone land flood free. Similarly to above example, there have been several enquiries about pursuing PPs on flood prone land in recent years. The s.9.1 Ministerial Direction on flooding allows minor inconsistencies to be supported. This PP would potentially set the bar for what is regarded as a minor inconsistency.

Financial Implications

Should Council resolve to support the PP request, the proponent would be required to pay the applicable fees for proponent-initiated PPs, which aim to achieve 100% cost recovery.

Risk Implications

If Council resolves to not support the PP request, it is anticipated that the proponent will apply to DPE for a rezoning review. Should this transpire and the rezoning review succeeded, Council would be precluded from being made the Planning Proposal Authority (PPA) – refer to Figure 5 of DPE's [Local Environmental Plan Making Guideline](#). Thus Council would not be responsible for managing the resulting PP process. This role would fall to the Independent Planning Panel (with support from DPE).

CL23.67 Proposed Voluntary Planning Agreement - Dedication of Land and Associated Works - 25 Moss Vale Road, Bomaderry

HPERM Ref: D23/51623

Department: Strategic Planning

Approver: Carey McIntyre, Director - City Futures

Reason for Report

The reason for this report is to seek a resolution from Council to exhibit and enter into a Voluntary Planning Agreement (VPA) with the developer (South Coast Community Housing) and landowner of 25 Moss Vale Road, Bomaderry.

Recommendation

That Council delegate authority to Council's Chief Executive Officer, or his delegate, to

1. Prepare the draft VPA and associated Explanatory Note for the dedication of approved Lot 7 and associated works at 25 Moss Vale Road, Bomaderry.
2. Publicly exhibit the draft VPA and associated Explanatory Note for a minimum period of 28 days as required by legislation.
3. Enter into the Voluntary Planning Agreement consistent with the terms in this report, except where objections or substantial issues are raised as a result of public notification, in which case the Voluntary Planning Agreement is to be reported to Council before it is entered into.

Options

1. As recommended.

Implications: The proposed VPA will result in a positive public benefit through the dedication of land that will extend an existing riparian/natural area network, facilitate screen planting and effective management/maintenance of the required drainage infrastructure. The execution of the VPA is one of two deferred commencement conditions in the consent, and the resolution of this matter will progress the development of the site which is considered a good outcome.

2. Adopt an alternative recommendation.

Implications: An alternative recommendation may affect the timely delivery of the development. This option is not preferred as the dedication of the land and associated works is considered a positive benefit.

Background

On 20 December 2022, consent was granted for the demolition of the existing cattle yard and new seven lot subdivision at 25 Moss Vale Road, Bomaderry (Lot 1 DP 520502, Lot 129 DP 3060 and Lot 110 DP 131219). Figure 1 shows the subject land and Figure 2 shows the approved subdivision layout.

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Figure 1: 25 Moss Vale Road, Bomaderry (the Site)

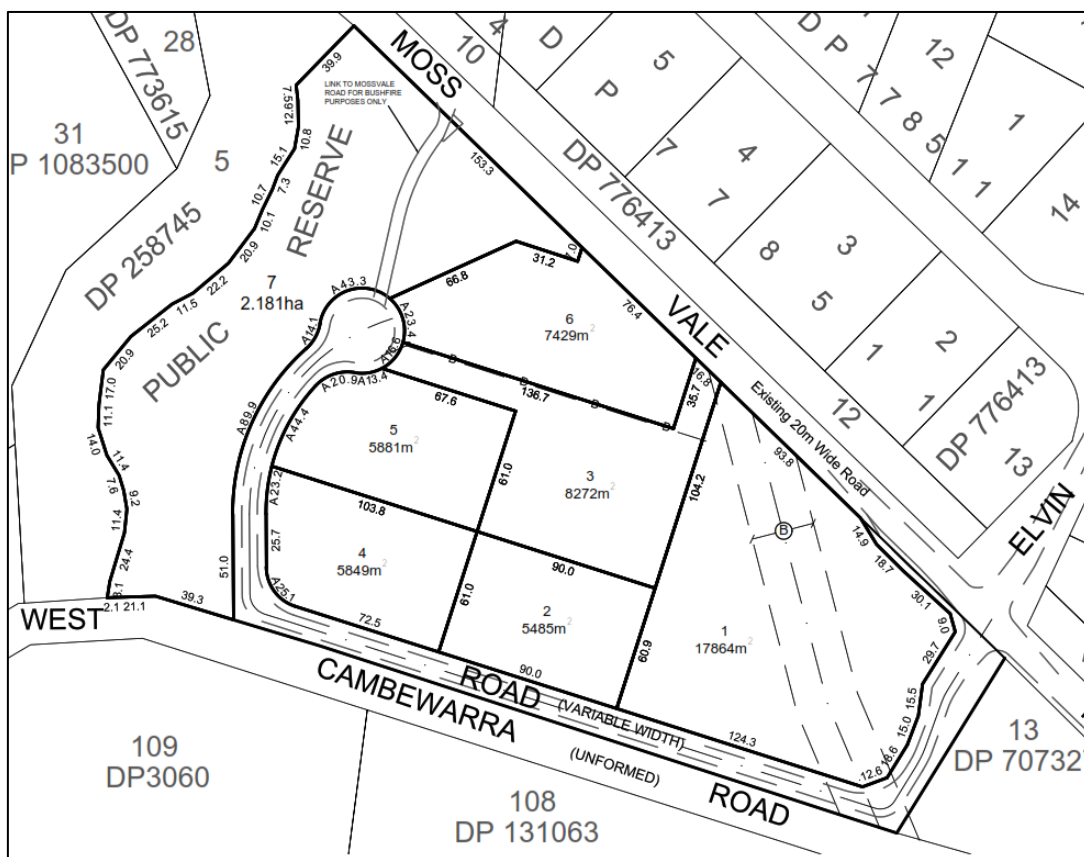


Figure 2: Approved Subdivision Plan (Allen Price and Scarratts)

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Prior to the issuing of the consent, the developer offered to enter into a VPA for the dedication of Lot 7 (Figure 2) to Council. The area will include (roughly shown in Figure 3) the following:

- Natural area - This area is part of the riparian network that leads into the Bomaderry Creek Nature Reserve.
- Screen planting area - It is noted that some of this planting area may be impacted by the widening of Moss Vale Road in the future and will also need to meet relevant asset protection zone requirements.
- Operational drainage area - The construction of the drainage device and associated landscaping will be undertaken by the developer prior to the issue of the subdivision certificate and does not form part of the proposed VPA.

The proposal has merit, particularly as it provides an opportunity to expand, rehabilitate and better manage the existing riparian network in this location.

The development consent requires the VPA to be entered into prior to the consent becoming operational (i.e., a deferred commencement condition).

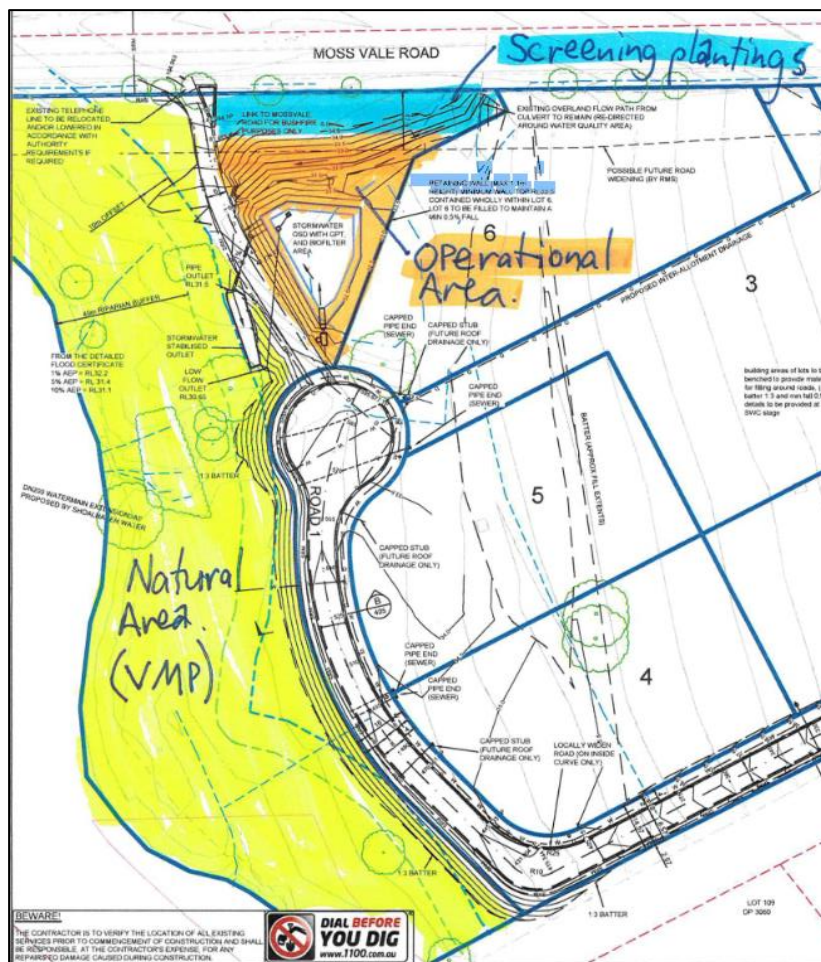


Figure 3: Proposed Elements of Land to be Dedicated (Allen Price and Scarratts)

Delegation Opportunities

In accordance with Council's [Planning Agreement Policy](#), Council may resolve to delegate authority to Council's Chief Executive Officer, or his delegate, to prepare, publicly notify, enter into and register the Planning Agreement. It is recommended in this case that Council extend delegation for the above functions, unless there are objections or substantial issues

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raised as a result of public notification, in which case Council will receive a further report prior to finalisation.

Recommendation

Due to the public benefit realised from the dedication of the land and associated works, it is considered in Council's interest to proceed to prepare and publicly exhibit the draft VPA for review and comment.

Community Engagement

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

Financial Implications

In accordance with Council's [Planning Agreement Policy](#), the Developer will cover Council's costs (direct and incidental) relating to the preparation and entering into the agreement (including associated legal costs and independent costings) and enforcing the agreement.

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CL23.68 Report Back - Measures to Increase Housing Availability in Shoalhaven - Short Term Rental Accommodation Focus

HPERM Ref: D22/409781

Department: Strategic Planning

Approver: Carey McIntyre, Director - City Futures

Attachments: 1. Mayoral Letter, September 2022 - Vacant Dwelling Appeal [↓](#)

Reason for Report

Report back to Council on potential actions that could be taken to influence existing housing availability and increase the amount of available Affordable Rental Housing in Shoalhaven, focussing on Short Term Rental Accommodation (STRA).

Recommendation

That Council

1. Progress the affordable housing investigation work initiated by the Council resolution of 14 November 2022 (MIN22.849), using funding received from the Regional Housing Strategic Planning Fund and formally thank the NSW Government for the funding (\$200,000).
2. Strongly request, in association with other interested Councils and Local Government NSW, that the NSW Government bring forward the foreshadowed two-year review of the Short-Term Rental Accommodation (STRA) planning provisions contained in the State Environmental Planning Policy (Housing) 2021 and that Councils be given greater ability to set the relevant provisions (number of days and areas) in their Local Government Areas.
3. Continue to strongly advocate to both the Commonwealth and NSW Government for holistic legislative changes and interventions to assist with the provision of additional social and affordable housing and the management of STRA, including, but not limited to the following:
 - a. Ability to better identify, generally regulate and separately rate STRA.
 - b. Significant increased funding for and delivery of additional social and affordable housing.
 - c. Adjustments to relevant fiscal and taxation settings associated with housing, particularly related to STRA.
 - d. Reforms to provide better protection for renters.
 - e. Increased funding for homelessness and transitional housing support

Options

1. As recommended.

Implications: Focusses on getting the NSW Government to bring forward the foreshadowed two year review of the STRA planning provisions in the State Environmental Planning Policy (Housing) 2021, progressing the affordable housing work that Council resolved on 14 November 2022 (MIN22.849) with the assistance of funding

received from the NSW Government's Regional Housing Strategic Planning Fund and continuing to advocate to government for more holistic legislative changes and interventions to assist with affordable housing and to better manage STRA.

2. Try to pursue further a rating approach and a Planning Proposal (PP) to better regulate STRA and also create an associated fund to assist with additional affordable housing in Shoalhaven.

Implications: Is not currently legally possible to pursue a rating approach for STRA accommodation and it is also likely to be difficult and costly to pursue a PP at this point, with an uncertain outcome given the experiences of other Councils that have considered or attempted similar.

3. As determined by Council

Implications: will depend on the nature of any alternate approach.

Background

Following consideration of a Mayoral Minute, it was resolved (MIN22.577) on 12 September 2022 that Council:

1. *Receives a report from staff in a timely manner on potential proactive actions that can be taken to influence the availability of existing housing and increase the amount of affordable housing available in Shoalhaven, that specifically considers the following opportunities/potential Council actions:*
 - a. *Special rate variation (SRV) to create an affordable housing fund.*
Note: including how relevant Short Term Rental Accommodation (STRA) properties could be identified; options to create a specific rating category for STRA properties and the associated administrative process, including any legislative impediments, for the movement of relevant properties; the processes required to establish and administer the SRV; and the creation of a restricted reserve account where all funds raised through the SRV are to be used for the purpose of generating additional perpetual affordable housing in Shoalhaven.
 - b. *Land use planning options to better manage the amount of STRA available within Shoalhaven and its use/operation.*
Note: including the potential for mapping and/or other provisions in Councils Local Environmental Plan and other planning documents to prohibit, cap/limit or allow the continuation of STRA in Shoalhaven.
 - c. *Run a campaign to reach non-resident ratepayers and STRA owners to urge them to consider renting their dwellings longer term to contribute to the local rental accommodation market and assist in the provision of additional much needed affordable housing opportunities.*
Note: including all possible practical and cost-effective ways of reaching relevant owners, such as direct mail outs, and the potential associated costs.
4. *Considers the potential impact of any actions that are ultimately pursued in this regard on the visitor economy of the City (including research if necessary) and achieve a supportable balanced outcome, if possible, for the future.*

This report back to Council arising from the resolution is presented in sections consistent with the parts of the resolution.

The report has also been timed to be informed by the current and pertinent experiences of Byron Shire Council which is further advanced in its attempts to better manage STRA within its Local Government Area (LGA).

Brief Overview – Current STRA Legislative Framework

The current NSW wide legislative provisions related to STRA sit within the State Environmental Planning Policy (Housing) 2021 (the Housing SEPP). The provisions came into effect on 26 November 2021 and under them STRA can currently be undertaken in dwellings (non-hosted) in Shoalhaven as ‘exempt’ development 365 days a year, within the following conditions:

- Dwelling is lawful,
- Meets the fire safety standards and bushfire provisions,
- Registered on the NSW STRA Register (supported by Industry Code of Conduct), and
- Strata bylaws that allow ban on holiday letting.

The 365 days per year provision is currently the standard NSW wide, except for Ballina, Byron, defined LGAs in Sydney, and certain land in the Clarence Valley and Muswellbrook LGA’s. In these areas non-hosted STRA is restricted to a maximum of 180 days per year.

As part of the proposed STRA planning reforms in 2018, the NSW Government asked all regional councils to select either the 180-day or 365-day policy option. Council opted at that point to proceed with the 365-day option and reserved the right to consider a future reduction in the number of days. Current and related NSW Government material confirms that requests to amend the day limit will be considered as part of broader reviews of the Housing SEPP.

The NSW STRA Register is currently used to register residential accommodation such as houses, units and similar used for STRA. Registered properties need to comply with fire and safety requirements and agree to follow the Code of Conduct (administered by NSW Fair Trading).

More information on the current NSW-wide STRA planning framework, including the Code of Conduct, is available [here](#).

Byron Bay Example

Byron Shire Council has acknowledged the need to manage STRA in its LGA since at least 2015, where an early Planning Proposal (PP) attempted to address the management of STRA. Several reforms to the STRA planning framework have since occurred, including the current STRA provisions in the Housing SEPP permitting a maximum of 180 days per 365-day period for non-hosted STRA.

Late in 2022, Byron Shire Council exhibited a second PP that sought to amend the current Housing SEPP provisions and effectively split the LGA into two areas:

- Most of the LGA - reducing the ‘day cap’ for non-hosted STRA to 90 days per year.
- Certain Mapped Precincts (identified as having high visitation and tourist areas) – unrestricted with STRA permitted 365 days per year. These include parts of Byron Bay, Suffolk Park, and Brunswick Heads.

The second PP was supported by a detailed Economic Impact Analysis (URBIS, 2021), peer reviewed by Dr Peter Phibbs.

The intended outcomes of the proposed changes are the better management of the impact of STRA on permanent rental housing supply and associated considerations (local or neighbourhood character, community values etc.), whilst still also supporting a sustainable visitor economy. The PP suggests the changes have the potential to deliver a 27% increase

in long term rental and owner-occupied dwellings without significant impacts on the visitor economy.

Given the large number and the nature of submissions received by Byron Shire Council in relation to the PP and the potentially significant economic impacts on local businesses, the NSW Minister for Planning referred the matter to the Independent Planning Commission (IPC) for review before finalisation of the PP. On 13 December 2022, Byron Shire Council's delegation for finalising the PP was withdrawn by the NSW Government, and further advice sought from the IPC on:

- *Status of housing and rental affordability and availability in the LGA, including the impact of non-hosted STRA and recent flood events*
- *Recommendations to improve housing affordability and rental availability.*
- *Economic contribution of the STRA industry and any potential economic implications associated with the introduction of the proposed 90 and 365-day dwelling caps.*
- *Whether it recommends the Minister should finalise the PP, with or without amendments, or whether any further information may be required.*

The IPC held public hearings into the matter between 21 and 23 February and accepted written submissions until 2 March 2023. The NSW Government's acceptance of the proposed changes and the outcomes of Byron Shire Council's work remain unknown.

Byron Shire Council also considered the potential for a Special Rate Variation/rating approach for STRA. Representatives of Byron Shire Council have advised this was considered difficult to achieve, confirming that Council instead developed and adopted an Affordable Housing Contribution Scheme in August 2022. More information on this Scheme is available online ([link](#)).

The challenge for Byron Shire Council appears to be the high bar set to justify the PP, specifically the proposed limitation of STRA to 90-days for some areas, including the amount of supporting information required. It is also understood to have been challenging as the NSW Government continually changed its requirements, resulting in five years of data collection and preparation of detailed analysis with an associated cost exceeding \$200,000.

Randwick Example

Randwick City Council prepared a PP recommending comprehensive updates to its Local Environmental Plan (LEP), including a proposed limit on the number of days of non-hosted STRA to 90 days. Similarly, to Byron Shire Council, Randwick City Council's objectives for the proposed changes were to minimise impacts on rental availability, residential amenity, and character.

In issuing the Gateway determination for the comprehensive update, the Department of Planning & Environment (DPE) conditioned the removal of the proposed STRA policy change. In response to this condition (and other matters) Randwick City Council submitted a Gateway Review Request, leading to referral of the PP and Gateway Determination to the IPC.

DPE, in its presentation to the IPC, concluded that, in the absence of supporting economic and social analysis, a one-off exclusion from the 180-day non-hosted provision (to 90-day) would be premature, given its intended two year review of STRA provisions in the Housing SEPP.

The IPC's Report found that the STRA Register had been established as a key data collection tool to assist in understanding the economic impacts of STRA, including on the private longer term rental market. It also noted the STRA Register's role to inform decisions about future regulatory settings, including the planned review of the STRA provisions in the Housing SEPP.

The IPC agreed with the view of the DPE to not delete the STRA condition on these grounds, i.e., further monitoring is required and the planned review of the Housing SEPP. The proposed changes to STRA in the Randwick LGA have not occurred and the provision of the Housing SEPP continue to apply.

***Comment** – The process that Byron Shire Council is attempting to conclude has been drawn out, contested, costly and is still not resolved. As such it does not provide any confidence to other councils that there is the ability or a straightforward process to adjust current STRA controls to better suit their area or circumstances, despite the indications that this would be possible when the reforms were first initiated.*

Based on the above example from Randwick, the NSW Government is indicating that the two-year review (November 2023) of the STRA provisions in the Housing SEPP presents the appropriate opportunity for Councils and others to consider changes or exemptions. See further comments in this regard later in the report.

The IPC review in regard to Byron Shire Council's STRA Planning Proposal (comments closed 2 March 2023) could establish precedent outcomes for other councils considering or wishing to pursue adjustments to the day limits or similar that apply in their LGA's.

Resolution Part 1(a) - Special Rate Variation (SRV) and Potential Affordable Housing Fund

• Identification of Potential STRA Properties

The 2021 Census data showed that Shoalhaven had 12,794 unoccupied dwellings (23% of total dwellings) on Census night. This represents a decline in the rate of unoccupied dwellings from previous Censuses (2016 = 24% and 2011 = 26%).

It is important to acknowledge that not all of these dwellings are used formally for STRA and are unoccupied or vacant on Census night for a range of reasons e.g. holiday/second homes, deceased estates, residents temporarily living elsewhere, vacant possession for sales, under renovation, deliberately left empty etc.

Historically, it has been suggested that there are between 4,000 and 5,000 holiday homes in Shoalhaven. The following data highlights the current differences in recorded/suggested STRA numbers in Shoalhaven:

Data Source	No of STRA Properties
NSW Register (January 2022)	3,628 Includes hosted (952) and non-hosted (2,676)
NSW Register (January 2023)	3,930 Includes hosted (955) and non-hosted (2,975)
AirDNA Website (January 2023)	4,508 Number is dynamic in response to active listings 96% are entire home rentals
Localis Data (August 2022)	4,536 Includes hotels, motels, bed and breakfasts, and holiday homes
Media article referencing Shoalhaven (June 2022)	4,131

Thus, even with the STRA Register that has been in place since November 2021, it is still currently not possible to reliably and definitively identify **all** properties that are being used as STRA.

Comment – Currently development consent or a similar formal approval is not required for the STRA use of an existing dwelling and from the above data it appears that not all STRA in Shoalhaven is picked up on the required NSW Register.

As such under the current legislative and regulatory settings, it is not possible to definitively identify all properties in Shoalhaven that are being used for STRA to support a SRV or similar.

- STRA Rating Category Options

Advice was obtained on whether Council could charge STRA properties higher rates by creating a subcategory (holiday letting or similar) of 'residential' rates, with a higher rate in the dollar and subject to a Special Rate Variation (SRV). Advice was also sought on whether there were other ways this could be done within current legislation.

Under the *Local Government Act 1993* (NSW) (LG Act) there are currently four rating categories that are available for use: *farmland*, *residential*, *mining* and *business*. These categories may also, at a council's discretion, be further divided into subcategories 'in accordance with' the LG Act.

Before making a rate, 'a council may determine a sub-category or sub-categories for one or more categories of rateable land in its area.' The sub-category for 'residential' may however only be determined according to:

- (i) *whether the land is rural residential land, or*
- (ii) *whether the land is in a centre of population, or*
- (iii) *whether the land is in a residential area or in part of a residential area.*

A subcategory may be determined in accordance with (iii) only if 'the council is satisfied on reasonable grounds that it is necessary to identify residential areas because of significant differences between the areas in relation to access to or demand for, or the cost of providing, services or infrastructure'.

The advice concluded that:

- The LG Act does not currently enable Council to sub-categorise a rateable parcel of land according to its use for the purpose of STRA.
- It may be possible to create a sub-category if the STRA premises are in the same geographical area, however it could only do so if there was a significant difference between that area and other residential areas in relation to access to or demand for, or the cost of providing, services, or infrastructure. Further, there would be no way of applying a lower rate to land within that area that is not used for the purpose of STRA.
- There is currently no other way that the Council could levy a different ordinary rate on parcels of land where the only basis for doing so is that they are being used for STRA.

The advice noted that Council could potentially categorise such land as 'business' if the dominant use of the land is not for residential accommodation but for a 'guest-house', however there is no definition of 'guest-house' in the LG Act (or any other relevant Act). The Land and Environment Court has also not considered the meaning of the term in this context so it is uncertain what form of STRA would be captured. In addition, there are difficulties in establishing whether the dominant use was for a guest-house or for residential accommodation.

In a relevant article in the Sydney Morning Herald dated 2 October 2022, reporting on Randwick City Council's decision to investigate rate variations or other appropriate responses to STRA, it was also noted that:

'Office of Local Government spokesman said NSW councils were not currently permitted to charge different rates for properties used as short-term rental accommodation'.

Other Councils around Australia have also been considering or are pursuing similar approaches whereby a special rate or similar (e.g., Bed Tax) is applied to relevant properties, including:

Hobart – Differential rates for short-stay visitor accommodation and vacant residential land.

Brisbane – New rating category. Short-term rental for more than 60 days a year will be required to pay the 50% higher rates.

Randwick – considered a report on rating options and possible other responses to short-term letting on 28 February 2022 and resolved to write to the NSW Government advocating for the introduction of a 'bed tax' or other schemes to be remitted to councils to address the impacts of STRA on local communities. More information on this decision is available [here](#).

Comment – It is not currently possible to separately rate STRA properties without a range of interrelated changes to relevant legislation. Council could consider advocating, with other councils and possibly Local Government NSW, for more holistic and integrated changes to enable STRA properties to be better identified and to also allow for separate rating categories.

- *Creation of a restricted reserve account where all funds raised through the SRV are to be used for the purpose of generating additional perpetual affordable housing in Shoalhaven.*

Given that it is not currently legally possible to separately rate STRA, the creation of an associated restricted reserve to assist with perpetual affordable housing in Shoalhaven has not been considered further or progressed at this point.

However, on 14 November 2022, Council also resolved to:

1. *Prioritise the envisaged five-year review of its adopted Affordable Housing Strategy (2018) in 2023 to identify and confirm the work Council can undertake to contribute to improving housing affordability and increase the supply of affordable (rental) housing.*
2. *Concurrently with the review of the adopted Strategy, investigate in detail the potential to establish an "Affordable Housing Development Contribution Scheme". This work should identify the viability of such a scheme, opportunities and mechanisms to apply it, and the work required to implement it in Council's planning documents, including the Local Environmental Plan, Development Contributions Plan, and a new policy governing the use of Voluntary Planning Agreements to achieve this aim.*
3. *As the work on Parts (1) and (2) proceeds, consider the establishment of a restricted reserve for the provision of various forms of affordable housing, housing for seniors and people with a disability, and crisis and transitional housing. The use of the reserve to provide these types of housing to be in partnership with recognised community housing and homelessness services operating in Shoalhaven.*

In December 2022, Council's application to the NSW Government's Regional Housing Strategic Planning Fund for \$200,000 to facilitate a range of work to identify and respond to affordable housing need was successful. Council will contribute a further \$30,000. This funding will be used to progress the intent of Council's 14 November 2022 resolution and will include the preparation of a reviewed and updated Affordable Housing Strategy (Part 1) and the detailed investigation of an Affordable Housing Contribution Scheme (Part 2), including the establishment of the resolved restricted reserve for affordable housing.

The funding received will also allow other related work to be undertaken, including high-level modelling of various scenarios for the management of STRA to understand potential effects on housing availability and affordability and the visitor economy.

Comment - Given that it is not currently possible to pursue an SRV in this regard and separately rate STRA properties, the establishment of a restricted reserve has not been investigated/progressed further at this point.

Council subsequently resolve to pursue a review of the Shoalhaven Affordable Housing Strategy and investigate the establishment of an Affordable Housing Development Contribution Scheme during 2023 and alongside this work to consider the establishment of a restricted reserve. Further work will be undertaken in this regard through this year.

Resolution Part 1(b) - Land Use Planning Options

Currently STRA is 'exempt' development for up to 365 days per year in Shoalhaven under the Housing SEPP. However, owners/operators of STRA properties need to register the property and comply with a Code of Conduct, among other requirements. This sets a process for the management of problematic properties.

At the time the STRA provisions were being established by the NSW Government it was understood that it would be possible in the future for councils to request or pursue options to reduce the number of days non-hosted STRA could occur in their LGA (whole or parts of) based on a sound evidence base, potential impacts (e.g. will it actually help with housing affordability/availability, any associated tourism impacts etc.), and detailed community engagement.

It is also currently not possible to expressly prohibit STRA either Citywide or in defined areas.

Council's early submission on the STRA planning reforms foreshadowed that Council may revisit the 180-day policy option at a future time and sought clarification on what information would be needed to support this. No specific feedback was received in response to this request.

Council could theoretically pursue a PP to amend the STRA provisions in the Housing SEPP that apply to Shoalhaven. This would be similar to the approach that Byron Shire Council commenced and could include the following options/variations:

- Reduce the number of days throughout Shoalhaven to 90 or 180 days,
- Identify key tourism precincts/areas and retain these at 365 and reduce the remainder of the City to 90 or 180 days, or
- Mix of the above.

However, based on the experiences of Byron Shire Council, it is anticipated that defining precincts or areas to have less or more days per year will be a difficult process involving detailed justification and community engagement, with no certainty of an outcome. Byron Shire Council's experiences also confirm the amount of information needed to justify a PP of this nature is likely to be considerable in terms of time and funding.

The success of limiting STRA in an attempt to increase housing availability and affordability also remains unknown. There is no current evidence demonstrating that such limitations result in the immediate addition of STRA properties to the private rental market. Multiple outcomes can result, including the alternative use of current STRA properties as family holiday homes (i.e. they remain unavailable) and negative impacts on the visitor economy, a significant contributor to Shoalhaven's employment opportunities and economic performance. The proposed modelling work funded by the Regional Housing Strategic Planning Fund will provide more information on these considerations later in 2023.

Initial feedback on a possible PP to limit STRA was sought from DPE's Southern Region Team. The following advice was provided in November 2022:

As you can appreciate the STRA policy is a relatively new one and the Department is keen to see how it is working in practice. The Department intends to review the policy over the next year or so and consultation with Councils will be an important part of this review.

As such, the Department is not encouraging planning proposals to change STRA policy at this time and would prefer to work through any issues holistically through the upcoming review process.

Similarly, a November 2022 news article recorded the following response from DPE to a similar request made by Eurobodalla Shire Council:

- *Not aware of any evidence or modelling undertaken by councils that would suggest lowering the day cap is likely to improve supply of long-term rental accommodation.*
- *Previous economic investigations undertaken as part of Byron Shire's PP suggested lowering the caps only has a minor positive impact on increasing long-term rental availability.*
- *Will consider the issue of day caps for non-hosted (short-term rental) activities across the state as part of its policy review.*
- *Anticipated review will happen within two years of the commencement of the policy.*

Council has been collaboratively lobbying the NSW Government on this issue with Local Government NSW. The following motion was submitted by Council and carried at the 2022 Local Government NSW Special Conference:

That Local Government NSW asks the NSW Government to consider legislative tools to assist councils with the impact of short-term rental platforms on local communities with respect to long-term rental availability.

The NSW Department of Customer Service subsequently responded as follows:

The regulatory framework for short term rental accommodation (STRA) is primarily the responsibility of the Minister of Planning, Minister for Homes. However, the Department of Customer Service has been integral to developing and implementing components of the framework and will have some role in administering the regulatory framework. These components include the Code of Conduct for the STRA industry established under the Fair Trading Act 1987 and the Exclusion Register to enable the compliance aspects of the Code of Conduct to have effect.

It is understood that DPE are monitoring data on the Planning Portal (Registrations) for consideration in a 2-year review of the SEPP.

The land use planning options regarding STRA are part of a broader regulatory framework that has been established by the NSW Government. As such, it is important for any changes to be considered and pursued more holistically to ensure a coherent outcome across the State.

Comment – *Council could at this point resolve to pursue a PP to adjust or revise the STRA planning provisions that apply in Shoalhaven. However there is limited certainty that this approach would be successful given the current experiences of Byron Shire Council and others. It is also likely that any PP would require detailed supporting information and justification and this would be costly and time consuming to prepare, without any certainty of an outcome.*

Detailed work and community engagement would also be needed regarding the areas or precincts where different caps may be applied and the cap number. All of this work may not result in an actual outcome given the NSW Government's confirmed approach to consider this matter as part of the intended two-year review of the Housing SEPP later this year.

Council should consider advocating, possibly along with other councils (e.g. Eurobodalla and Bega Valley) and Local Government NSW, for the planning review to be brought forward given current concerns, and for it to also consider the associated mechanisms that currently

apply to STRA, such as the register to determine whether it is working as intended, and the suite of related mechanisms that are needed to better manage STRA and its associated impacts (e.g. specific rating of STRA).

Resolution Part 1(c) - Absentee Owners/Vacant Dwellings Campaign

The attached Mayoral Letter (**Attachment 1**) was sent out with Council's October 2022 rates instalment notices. It made an appeal to owners of vacant properties to consider making their properties available to long-term renters and providers of Affordable Rental Housing. The Mayors of Eurobodalla Shire Council and Bega Valley Shire Council are understood to have also written similar letters.

A total of 43,877 letters were sent to property owners. The Mayoral campaign resulted in a number of direct responses to Council (approximately 38), of which four were referred on at the time for further consideration regarding actual rental.

Feedback on outcomes arising from the letter was sought from the two organisations who were specifically referenced in it, Southern Cross Housing and Salt Care. They provided the following information:

Southern Cross Housing - received 15 enquiries as a result of the letter and extended their thanks for this initiative. To date, they have secured two long term leasehold properties and there are some that are still being negotiated. Noted they are always open to negotiating with private landlords for long term housing and are happy for future referrals of ratepayers from Council. However, they also flagged that some of the reasons for not proceeding with all the offers where:

- Properties did not meet their asset standard,
- Unsuitable locations for tenants to access employment, services and support,
- Owners made decision not to proceed,
- Unreasonable expectations of rental returns,
- Properties were provided as furnished, noting long term tenants have their own furniture.

Salt Care – provided the following overview of the responses they have received:

<i>Approach</i>	<i>Quantity</i>	<i>Outcome</i>
Phone calls received	35	15 houses offered for lease
Emails received	12	05 houses offered for lease
Office visits	04	01 houses offered for lease
Houses Leased	02	

Was noted that from the Mayoral call out around 20 people are willing to lease Salt their homes, but unfortunately they do not currently have the funds to pay for more support workers to work with these homes at this stage. Salt will continue to pursue additional funding to assist in this regard and will keep Council updated.

Thus to date, the Mayoral Letter has directly resulted in four houses being made available for long term rental through the two organisations. It is also not known how many properties may have been rented out longer term through local real estate agents or similar as a result of the letter.

There is the potential for more houses to be made available or provided for affordable rental, but this is subject to a number of factors, including the availability of funding/resources to support the people who may be placed in the rental properties.

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***Comment** – The Mayoral letter has resulted in some dwellings being transferred from STRA to the long-term rental market. It also importantly generated media interest and helped raise general community awareness of housing availability and affordability issues. As part of the recently announced broader ‘Year to Thrive Together’ campaign a further property owner accommodation call out will be considered during September-October 2023.*

One of the factors that is possibly limiting the possible further uptake of potentially available dwellings is the need for additional funding to support people or families who are housed in these dwellings. Council could consider advocating for Increased funding for homelessness and transitional housing support.

Resolution Part 2 - Considering potential impact of any actions on the visitor economy of the City.

It is clear from the experiences of other councils that have pursued policy changes in this regard that detailed work will be required to support and justify any proposed changes. This supporting work will need to consider both the potential impact on housing affordability and availability and impacts on the visitor economy. The experiences of Byron Shire Council in this regard are pertinent and the work that was required or undertaken to support their proposed approach has included:

- [Economic Impact Assessment](#) – URBIS, 2021
- [Peer Review, Economic Impact Assessment](#) – Dr Peter Phibbs, 2021

When the NSW Government were consulting on the proposed STRA reforms in 2018/19, Council reserved the right to make future requests to adjust the number of days STRA could be available.

Confirmation was sought at that time that the opportunity would be available as indicated and that when a Council sought to consider reducing the number of days what justification (economic impact etc.) would be required. To date, this has not been confirmed or provided. It is important for DPE to be clear about what will be required to support any proposed reduction in the number of days either as part of a Council initiated PP, or that might be requested as part of the two-year review of the provision in the SEPP, so that there is clarity given likely costs and timeframes associated with research of this nature.

The funding received from the NSW Government’s Regional Housing Strategic Planning Fund will be used, in part, to undertake some initial economic modelling on the influence of STRA on housing supply and visitor (and broader) economy in Shoalhaven. The high-level results from this may be available later in 2023.

***Comment** – At this point, Council has not undertaken any detailed research or similar. Depending on the approach taken (e.g. Pursuing a PP) it will be also important for DPE to be clear on what is required to consider and support any proposed changes, given likely costs and timeframes associated with detailed research of this nature. It will also be important for any research to consider impacts on both housing affordability/availability and the visitor economy to see whether a balanced outcome can be achieved or is possible. Council should request that DPE provide clear advice to Councils on what will be required (research or similar) to support future amendments or adjustments to the number of days STRA can be undertaken.*

Discussion - Broader Issues and Other Options

STRA is not the sole cause of current housing issues. It is however a contributor and symptom of some of the broader issues at play in the housing market in Australia.

An [ABC Article](#) from 28 December 2022, discusses whether STRA is really affecting housing supply as much as suggested and talks about some of the other bigger issues at play, such as, the need for more social and affordable housing. Data reported in this article shows there were 251,000 STRA registered across the country in September 2022, down from a peak of

just short of 400,000 in December 2019. The data was gathered from active listings on all holiday rental sites and shows that STRA takes up about 2% of the overall housing stock across the country. It also notes that in coastal regional areas the take up of STRA is higher and there is impact on supply. The article suggests, looking at the overall numbers, that blaming and identifying STRA as a major cause of Australia's rental and affordability crisis, particularly after COVID-19, is perhaps a distraction from the real issues at play.

There is an acknowledged need for a greater focus on provision of more social housing supplied by government, as well as secured affordable housing provided by the community housing and private sectors. This is a clear focus of [Council's Advocacy Projects 2023 document](#)

Council has been strongly advocating for the renewal/redevelopment of the NSW Government's social housing stock within Shoalhaven to create much needed additional social and affordable housing. To assist, Council staff are currently finalising a 'collaboration agreement' with NSW Land & Housing Corporation (LaHC). The agreement provides an opportunity to agree on a shared set of housing priorities across the LGA, as well as a framework to meet regularly and discuss/resolve various issues. Discussions have also occurred recently with Landcom, who now have an increased regional focus, regarding possible involvement in Shoalhaven.

The update of Council's Affordable Housing Strategy will identify the contemporary need for Affordable Rental Housing in Shoalhaven and, in response, identify solutions to increase the supply of Affordable Rental Housing and improve housing availability. Council's work on increasing the supply of homes to market also continues, with the current focus the delivery of approximately 3,000 new homes in the Nowra-Bomaderry Regional Release Area and the early growth planning for new homes in Milton, Ulladulla and surrounds.

The Commonwealth and State governments have a key role in encouraging owners of STRA properties to return these properties to the long-term rental market. These governments have opportunities to adjust taxes albeit with potential adverse impacts on regional tourism and jobs.

Thus, in addition to the potential for balanced reforms to STRA regulations, there is a need for governments to look at and consider (or test) the current policy settings associated with housing generally, including:

- Relevant taxation and related reforms.
- Seriously tackling the supply side of housing crisis by building more social and affordable housing.
- Providing better protection for renters. This could help limit the impact where properties shift between holiday letting and regular leases.

***Comment** – Council will continue to advocate for the Commonwealth and State governments to meaningfully tackle the supply side of the current housing crisis by building more social and affordable housing. This is consistent with Council's current advocacy position.*

Council should also consider making representations in regard to the other broader matters that impact on affordable housing including taxation reforms and better protection for renters.

Conclusion

Given the experiences of Byron Shire Council and others, it is not currently possible to pursue much of the intent of the Council resolution of 12 September 2022 (MIN22.577) with any certainty as legislative changes are needed to be able to pursue changed rating and land use planning options associated with STRA. It is also likely that without clarity from the NSW Government that pursuing any planning changes at this point would require detailed supporting information and associated costs and would take some time to progress, without any lack of certainty.

CL23.68

As such at this point, the work initiated by the subsequent Council resolution of 14 November 2022 (MIN22.849) will be progressed using the funding obtained through the NSW Governments Regional Housing Strategic Planning Fund.

It is recommended that Council strongly request that the NSW Government bring forward the two-year review of the current STRA planning provisions in the Housing SEPP. The review is foreshadowed to commence later this year, however given the current focus on STRA and affordable housing in a range of local government areas it would be appropriate to bring it forward and it be carried out as soon as possible. These representations should be made in association with other Councils and Local Government NSW depending on their interest. As part of the review, Councils need to be given greater ability to help set the STRA planning provisions (number of days and areas) and the NSW Government needs to provide clear guidance on what supporting information is needed in this regard, noting the need for any changes to be consider the range of potential impacts on affordable housing and the tourist economy.

There is also a need to continue to advocate to governments for more holistic legislative changes or interventions in regard to both affordable housing and STRA. These include the ability to better identify and rate STRA (or consider other similar options such as a 'bed tax'), considerable increase in the funding for and delivery of additional social and affordable housing, adjustments to the fiscal and taxation settings associated with housing and rental reforms.

Community Engagement

Specific community engagement has not been undertaken at this point. Depending on what results from this report, specific community engagement would or may be required, for example if the preparation of a Planning Proposal or similar is resolved.

Policy Implications

Should Council resolve to try to adjust the STRA provisions applying in Shoalhaven, this will require the preparation of a PP to amend the relevant provisions on the Housing SEPP.

Financial Implications

If a PP is pursued to attempt to amend the relevant STRA provisions in the Housing SEPP, this will need to be supported by detailed work in this regard including economic impact/viability assessment and associated planning and community engagement work to define precincts/areas where lesser day limits may be pursued.

Given the experiences of Byron Shire Council this could be expensive and time consuming, particularly if general clarity is not forthcoming from the NSW Government on what is required in the way of justification or research to support any adjustment to the STRA provisions applying in an area.



Amanda Findley
Mayor

PO Box 42, Nowra NSW 2541 Australia
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amanda.findley@shoalhaven.nsw.gov.au



28th September 2022

Dear Shoalhaven Ratepayer,

Thank you for taking the time to read this letter, I'm reaching out for your help on an important issue our city is facing.

The Shoalhaven, like many other Local Government Areas, is experiencing an unprecedented housing availability and affordability crisis, and while we are doing what we can to advocate for additional affordable housing in the Shoalhaven, the reality is Council has limited powers to assist the people directly impacted.

We know though, that many houses in our city are currently vacant for a variety reasons whether that be deceased estates, holiday houses or short term/holiday rentals and my appeal is to the owners or managers of these properties.

I ask that you please consider making your property available for full time rental, even if only for 12-18 months to help alleviate some of the pressure and to buy us some time as we await the promised housing investment funding from the Federal and State Governments.

I understand the reservations; the thought of tenanting your home through a rental agreement is daunting, but there are organisations available who can help you with this, for example:

Southern Cross Community Housing: a Registered Community Housing Provider that help put people into homes and can manage your property: <https://www.scch.org.au/real-estate/>

Salt Care: help people settle into homes with wrap around care and support. Their team will work with you to give you peace of mind that your home is in good hands:
<https://www.salt.org.au/salt-care/salt-assisted-housing/>

I understand this is a big decision and its not a request I make lightly. If you do decide to tenant your property, please ensure you look after your own interests first and seek financial advice and professional help from a trusted real estate agent or accredited organisation.

We have taken our fair share of knocks over the last few years with multiple natural disasters and the pandemic. There are some in our strong and resilient community that are doing it tough and feeling more vulnerable than ever before.

Thank you for taking the time to consider my request to help put a roof over someone's head. If you would like more information, please contact Council on 1300 293 111.

Kind regards

Amanda Findley
Mayor

shoalhaven.nsw.gov.au f @

- This letter may not necessarily represent the position of the Shoalhaven City Council as a corporate body -

CL23.68 - Attachment 1

CL23.69 Report Back - Employment Zoned Land Representations - Exemption from NSW Biodiversity Conservation Act 2016

HPERM Ref: D23/68865

Department: Strategic Planning

Approver: Carey McIntyre, Director - City Futures

Attachments: 1. NSW Government Response - Biodiversity Conservation Act - Exemption for Zoned Employment Lands Request [↓](#)

Note: This item was deferred from the Ordinary Meeting 26 September 2022 to enable Councillors to be briefed on the matter.

Reason for Report

Provide an updated report back to Council, following the briefing on 22 February 2023, on the outcome of representations to the NSW Government requesting that employment zoned land be exempted from the NSW Government's Biodiversity Offsets Scheme, specifically focussed on the regionally significant South Nowra Employment Precinct.

Recommendation

That Council:

1. Receive the report on the outcome of representations to the NSW Government seeking exemption of zoned employment land from the Biodiversity Conservation Act 2016 (NSW) for information.
2. Work with relevant NSW Government Agencies on a possible strategic approach to enable development and consideration outcomes in the broader South Nowra Area, including possible Strategic Biodiversity Certification as per the Biodiversity Conservation Act 2016 (NSW).
3. Receive further reports on this project as it progresses.

Options

1. As recommended.

Implications: This potentially provides a way forward that could enable future development of zoned employment land in the context of a strategic and sustainable approach to development and biodiversity in the broader South Nowra Area.

2. Continue to advocate for an exemption (or similar) for zoned employment land from the Biodiversity Conservation Act 2016 (NSW)

Implications: There appears to be no support or ability to pursue this further given the outcome of the representations that are covered in this report

Background

Council resolved on two occasions to pursue the exemption of zoned employment land from the Biodiversity Conservation Act 2016 (NSW).

CL23.69

In April 2021, Council resolved that:

1. *The CEO and other appropriate staff take part in a joint deputation with representatives of affected owners in the South Nowra Industrial Lands to the Minister for the Environment The Hon. Matt Kean MP with a view to having the NSW Government introduce a general exemption from the biodiversity offset scheme for zoned employment lands.*
2. *The deputation be organised through the Member for South Coast the Hon. Shelley Hancock MP.*

Council revisited this resolution in August 2021, resolving that Council:

1. *Re-endorse its decision April 2021 decision to pursue a deputation to the NSW Minister for the Environment seeking to exempt zoned employment land from the NSW Government's biodiversity offsets scheme.*
2. *Also include relevant commercial zoned land in the exemption request.*
3. *Receive a report on the response from the joint (Council and landowners) deputation to the NSW Minister for the Environment.*

In August 2021, Council made a similar submission to the NSW Parliamentary Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme. The Inquiry released its [findings](#) in November 2022 and the NSW Government [response](#) to them was published in February 2023. No specific recommendations were made on 'exempting' employment land. The inquiry did however, recommend that greater certainty be provided on the likely scale of biodiversity offsetting liabilities as part of rezoning decisions and this was accepted by the government.

The NSW Audit Office also released a report on the Effectiveness of the Biodiversity Offsets Scheme in late August 2022. That report can be reviewed [here](#).

Representations

In response to the above resolutions a Background Advocacy Paper was provided to the Member for South Coast, the Hon. Shelley Hancock MP with a request for a meeting with the NSW Minister for Environment to discuss the requested exemption.

The Paper presented issues associated with the Biodiversity Conservation Act 2016 (the Act) that are being experienced and drew on the existing zoned and regionally significant South Nowra Employment Precinct as a relevant example.

The Paper requested the following:

Considering the adverse impacts the Biodiversity Conservation Act 2016 is having on regional economic development, jobs and business growth, Shoalhaven City Council is seeking the exclusion of employment zoned land from the application of the Act as a matter of urgency.

The requested meeting ultimately took place on 11 November 2021 with the then Parliamentary Secretary for the Environment, Felicity Wilson MLA and was attended by the Member for South Coast, Mr Gareth Ward MP Member for Kiama, landowner/business representatives, NSW Government Agency staff and Council representatives.

Following the meeting with the Parliamentary Secretary and the change in late 2021 to the NSW Government's Ministerial Portfolios, Council staff continued to pursue a formal response to the representations in this regard through the Local members.

The NSW Minister for Environment and Heritage, James Griffin MP provided a formal response in early August 2022 to the Member for South Coast – see **Attachment 1**.

Possible Way Forward

The letter from the Minister advises that there are no provisions in the Act that allow for the exclusion of zoned employment lands from the biodiversity assessment requirements. It does however identify an opportunity for a possible 'whole of Government' approach to the employment lands in the South Nowra precinct that involves broader strategic consideration of biodiversity alongside planning and infrastructure servicing requirements.

Given the likelihood that an 'exemption' would not be possible, potential alternate approaches were raised by NSW Government staff. As a result, early discussions have been held with NSW Government staff regarding a possible alternative strategic option to enable both development and biodiversity outcomes in the broader South Nowra area. This could possibly involve a Strategic Biodiversity Certification approach for the broader area.

Planning Authorities, for the purposes of biodiversity certification, are those listed under Section 8.1 of the Act. They include, but are not limited to, local Councils and the Minister for Planning.

Loans and other financial assistance may be available from the Biodiversity Conservation Trust for planning authorities undertaking biodiversity certification.

The Minister for the Environment determines whether to declare such a proposal 'strategic'. This is done using criteria outlined in the Biodiversity Conservation Regulation 2017 (NSW).

The criteria are as follows:

1. the size of the area of the land,
2. any regional or district strategic plan under the Environmental Planning and Assessment Act 1979 (NSW) that applies to the area in which the land is situated,
3. advice provided by the Minister for Planning regarding the proposed biodiversity certification,
4. the economic, social or environmental outcomes that the proposed biodiversity certification could facilitate.

Given that it appears highly unlikely that the NSW Government will exempt zoned employment land from provisions of the Act, it is recommended that Council work with the NSW Government on a possible strategic biodiversity approach for development in the broader South Nowra area and Council receive future reports in this approach as it is worked up. Early background biodiversity survey work has already commenced to assist in this regard using funding provided by the NSW Government.

The provision of future reports to Council will enable the justification of the strategic approach associated with the proposal to be considered and to enable a formal request to be made to the Minister.

Community Engagement

No formal community engagement was undertaken as part of the representations to the NSW Government in this regard.

Should Council proceed further with the recommended strategic biodiversity approach, then community and landowner engagement will be included as part of this work.

Policy Implications

Depending on the outcome of the recommended strategic biodiversity approach, some adjustments or changes could be required to the Shoalhaven Local Environmental Plan 2014 and other supporting policy documents may be needed. This will be covered in future reports to Council.

The NSW Government has also recently commenced early work on a possible Precinct Profile for the regionally significant South Nowra Employment Precinct arising from an action in the Illawarra-Shoalhaven Regional Plan.

Financial Implications

There are likely to be costs associated with the proposed approach. These will be managed within existing budgets or reported to Council for consideration as work progresses should specific funding be required to advance this matter.

The NSW Government has recently provided some initial funding to assist with the preparation of background biodiversity surveys/assessments.



The Hon. James Griffin MP
Minister for Environment and Heritage

MD22/2735

Mrs Shelley Hancock MP
Member for South Coast
PO Box 1436
NOWRA NSW 2541

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

Dear Mrs Hancock

Shelley,

Thank you for your further representations on behalf of Shoalhaven City Council regarding the meeting held on 11 November 2021 to discuss excluding zoned employment lands from the *Biodiversity Conservation Act 2016*. I appreciate you bringing Council's concerns to my attention.

Following on from my recent correspondence of 13 April 2022, I can advise there are no provisions in the Act that allow the exclusion of zoned employment lands from the biodiversity assessment requirements.

However, I believe there is an opportunity for a whole-of-government approach to activate the employment lands within the precinct. This involves a broader strategic consideration of biodiversity in the South Nowra area at the same time as undertaking planning studies to inform the future employment activities, together with infrastructure and servicing requirements.

I understand there have been preliminary discussions between officers of the Department of Planning and Environment and Shoalhaven City Council about alternate strategic options to effectively deliver certainty for future development and conserve key biodiversity attributes in the South Nowra locality.

If Council has any further questions about this issue, Mr Michael Saxon, Director South East, Department of Planning and Environment can be contacted on 6229 7107 or at Michael.Saxon@environment.nsw.gov.au.

Thank you again for taking the time to bring this matter to my attention.

Yours sincerely

James Griffin MP
Minister for Environment and Heritage

3/2/22

CL23.70 Grant of Electricity Easement for Pad Mount Substation and Restriction on the Use of Land to Endeavour Energy - Lot 133 DP 703670 Greenwell Point Road Nowra

HPERM Ref: D22/460470

Department: Technical Services
Approver: Paul Keech, Director - City Services

Attachments: 1. Plan of Easement over Lot 133 DP 703670 [↓](#)
2. Administration Sheet & 88B Instrument [↓](#)

Reason for Report

This report provides Council with an opportunity to consider granting an Easement for a Pad Mount Substation and Restriction on the Use of Land in favour of Epsilon Distribution Ministerial Holding Corporation (Endeavour Energy) over Council owned land known as Ratcliff Park, Lot 133 DP 703670 Greenwell Point Road Nowra, as shown outlined yellow in Attachment 1.

Recommendation

That Council:

1. Grants an Easement in favour of Epsilon Distribution Ministerial Holding Corporation (Endeavour Energy) for a Pad Mount Substation and Restriction on the Use of Land over Council owned land at Lot 133 DP 703670, Greenwell Point Road, Nowra;
2. Funds all costs associated with the creation of the Easement from operating Work Order W0022694;
3. Authorises the affixing of the Common Seal of the Council of the City of Shoalhaven to any documents required to be sealed and that the Chief Executive Officer (Executive Manager Shoalhaven Water) be authorised to sign any documents necessary to give effect to this resolution.

Options

1. Resolve as recommended.

Implications: The easement is required to provide Endeavour Energy with legal access for the operation and maintenance of its essential public infrastructure.

2. Not resolve as recommended and provide further direction to staff.

Implications: Endeavour Energy will not have legal access to repair and maintain their infrastructure. This will cause a significant impact to the operational needs and future demands of the South Nowra Surcharge Mains.

CL23.70

Background

A review of the existing South Nowra Surcharge Main (SNSM) network has identified a need for the system to be significantly upgraded to address future growth and system pressure constraints. By upgrading the system, the SNSM will be able to meet its operational needs and future demands.

As part of the upgrade to the SNSM, a new Pad Mount Substation will be constructed over Council Land known as Lot 133 DP 703670.

Endeavour Energy will require an easement over the Pad Mount Substation to allow for future access, repair and maintenance.

The Restriction to the Use of Land being registered is that no building shall be erected or permitted to remain within the restriction site unless the building meets requirements outlined by Endeavour Energy.

Community Engagement

This matter is a local area, low impact issue, as outlined in Council's Community Engagement Policy, and therefore no community engagement has taken place.

Council's Asset Custodian and Asset Strategic Planner of Lot 133 DP 703670 have provided their concurrence to grant an easement for the Pad Mount Substation and Restriction on the Use of Land to Endeavour Energy.

Policy Implications

Nil.

Financial Implications

All costs will be funded from operational Work Order W0022694.

The easement will be granted to Endeavour Energy at \$nil compensation.

Risk Implications

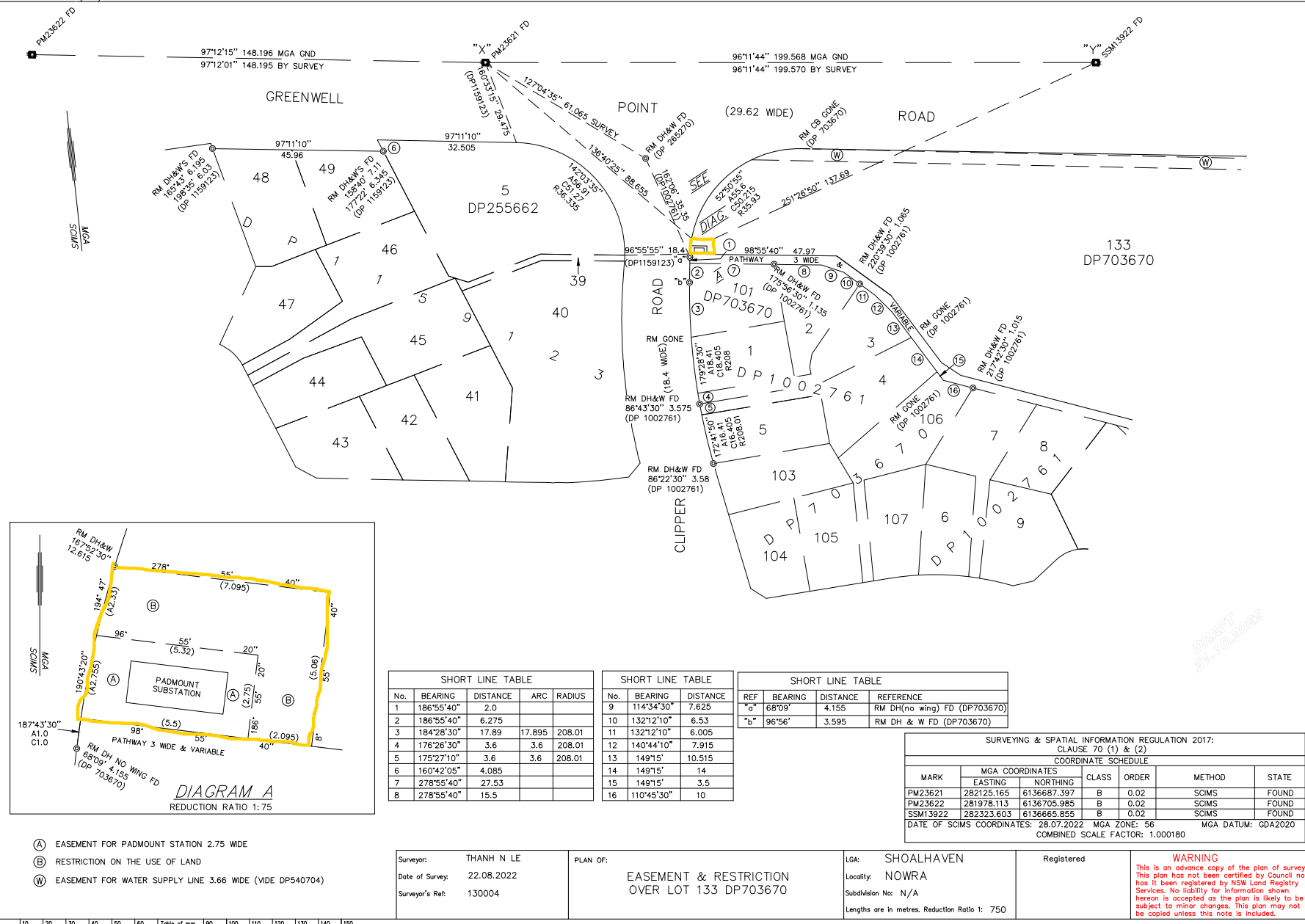
Failure to secure the easement will prevent Endeavour Energy from constructing the Pad Mount Substation causing a significant impact to the operational needs and future demands of the South Nowra Surcharge Main infrastructure.

CL23.70

PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet No. 1 of 1 Sheets



PLAN FORM 6 (2020)

WARNING: Creasing or folding will lead to rejection

DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 1 of 2 Sheet(s)
Office Use Only	Office Use Only	
Registered:	<p>WARNING</p> <p>This is an advance copy of the plan of survey. This plan has not been certified by Council nor has it been registered by NSW Land Registry Services. No liability for information shown hereon is accepted as the plan is likely to be subject to minor changes. This plan may not be copied unless this note is included.</p>	
Title System:		
PLAN OF	<p>LGA: SHOALHAVEN</p> <p>Locality: NOWRA</p> <p>Parish: NOWRA</p> <p>County: ST VINCENT</p>	
<p>EASEMENT & RESTRICTION OVER LOT 133 DP703670</p>		
<p>Survey Certificate</p> <p>I, THANH N LE</p> <p>of ALLEN PRICE AND SCARRATTS PTY LTD</p> <p>a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i>, certify that:</p> <p>*(a) The land shown in the plan was surveyed in accordance with the Surveying and Spatial Information Regulation 2017, is accurate and the survey was completed on , or</p> <p>*(b) The part of the land shown in the plan (*being/*excluding** THE EASEMENT AND RESTRICTION) was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2017</i>, the part surveyed is accurate and the survey was completed on 22.08.2022 the part not surveyed was compiled in accordance with that Regulation, or</p> <p>*(c) The land shown in this plan was compiled in accordance with the Surveying and Spatial Information Regulation 2017.</p> <p>Datum Line: "A" – "B"</p> <p>Type: *Urban/*Rural</p> <p>The terrain is *Level-Undulating / *Steep-Mountainous.</p> <p>Signature: _____ Dated: _____</p> <p>Surveyor Identification No.: 8205</p> <p>Surveyor registered under the <i>Surveying and Spatial Information Act 2002</i></p> <p>* Strike out inappropriate words ** Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</p>		<p>Crown Lands NSW/Western Lands Office Approval</p> <p>I, _____ (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.</p> <p>Signature: _____</p> <p>Date: _____</p> <p>File Number: _____</p> <p>Office: _____</p>
<p>Subdivision Certificate</p> <p>I, _____</p> <p>*Authorised Person/*General Manager/*Registered Certifier, certify that the provisions of s.6.15 of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.</p> <p>Signature: _____</p> <p>Registration number: _____</p> <p>Consent Authority: _____</p> <p>Date of endorsement: _____</p> <p>Subdivision Certificate number: _____</p> <p>File number: _____</p> <p>* Strike through if inapplicable</p>		
<p>Plans used in the preparation of survey/compilation</p> <p>DP255662</p> <p>DP703670</p> <p>DP1002761</p> <p>DP1159123</p>		<p>Statements of intention to dedicate public roads, create public reserves and drainage reserves, acquire/resume land.</p> <p><i>DRAFT 21.10.2022</i></p>
<p>Surveyor's Reference: 130004</p>		<p>Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A</p>

CL23.70 - Attachment 2

PLAN FORM 6A (2019)	DEPOSITED PLAN ADMINISTRATION SHEET	Sheet 2 of 2 Sheet(s)
Office Use Only	WARNING	Office Use Only
Registered:	<p style="color: red; font-size: small;">This is an advance copy of the plan of survey. This plan has not been certified by Council nor has it been registered by NSW Land Registry Services. No liability for information shown hereon is accepted as the plan is likely to be subject to minor changes. This plan may not be copied unless this note is included.</p>	
PLAN OF EASEMENT & RESTRICTION OVER LOT 133 DP703670	<p style="font-size: small;">This sheet is for the provision of the following information as required:</p> <ul style="list-style-type: none"> A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2017</i> Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i> Signatures and seals- see 195D <i>Conveyancing Act 1919</i> Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. 	
Subdivision Certificate number:	<div style="border: 1px solid black; padding: 5px; text-align: center; margin-bottom: 10px;">STREET ADDRESSES FOR ALL LOTS ARE NOT AVAILABLE</div> <p style="text-align: center;">PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919, IT IS INTENDED TO CREATE: –</p> <ol style="list-style-type: none"> 1. EASEMENT FOR PADMOUNT SUBSTATION 2.75 WIDE (A) 2. RESTRICTION ON THE USE OF LAND (B) <div style="text-align: center; margin-top: 100px; color: lightgrey; opacity: 0.5; font-size: 2em; transform: rotate(-15deg);"> DRAFT 21.10.2022 </div>	
Date of endorsement:		
If space is insufficient use additional annexure sheet		
Surveyor's Reference: 130004		

CL23.70 - Attachment 2

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act, 1919.

Measurements are in metres

Sheet 1 of 7 sheets

Plan

Plan of Easement & Restriction
of Lot 133 DP703670

Full name and address
of owner of land

**THE COUNCIL OF THE CITY OF
SHOALHAVEN**
36 Bridge Road
Nowra NSW 2541

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement for Padmount Substation 2.75 Wide (A)	Part 133/703670	Epsilon Distribution Ministerial Holding Corporation ABN 59 253 130 878
2	Restriction on the Use of Land (B)	Part 133/703670	Epsilon Distribution Ministerial Holding Corporation ABN 59 253 130 878

PART 2 (Terms)

Terms of Easement for Substation Plinth 2.75 Wide numbered 1 in the plan

1.0 Definitions

- 1.1 **easement site** means that part of the land that is affected by this easement.
- 1.2 **electrical equipment** includes electrical transformer, electrical switchgear, protective housing, concrete plinth, underground electrical cable, duct, underground earthing system, and ancillary equipment.
- 1.3 **install** includes construct, repair, replace, maintain, modify, use, and remove.
- 1.4 **land** means the lot or Torrens title land that is burdened by this easement.

Approved by the Council of the City of Shoalhaven

.....dated..... 130004-Draft 88b.doc

CL23.70 - Attachment 2

Measurements are in metres

Sheet 2 of 7 sheets

Plan

Plan of Easement & Restriction
Lot 133 DP703670

PART 2 (Terms) cont.

- 1.5 **owner** means the registered proprietor of the land and its successors (including those claiming under or through the registered proprietor).
- 1.6 **prescribed authority** means Epsilon Distribution Ministerial Holding Corporation ABN 59 253 130 878 and its successors (who may exercise its rights by any persons authorised by it).
- 1.7 **services** includes overhead and underground gas, telephone, communications, water, sewage, and drainage services.
- 1.8 **structure** includes building, wall, retaining wall, carport, driveway, fence, swimming pool, and fixed plant or equipment; but excludes garden furniture and garden ornament.
- 2.0 The prescribed authority may:
 - 2.1 install electrical equipment within the easement site,
 - 2.2 excavate the easement site to install the electrical equipment.
 - 2.3 use the electrical equipment for the transmission of electricity,
 - 2.4 enter the land using the most practical route (with or without vehicles, machinery or materials) at all reasonable times (and at any time in the event of an emergency) and remain there for any reasonable time,
 - 2.5 trim or remove any vegetation from the land that interferes with or prevents reasonable access to the easement site or the electrical equipment, and
 - 2.6 remove any encroachments from the easement site and recover the costs of carrying out the removal work and repairing any damage done to the electrical equipment by the encroachment.
- 3.0 In exercising its rights under this easement the prescribed authority will take reasonable precautions to minimise disturbance to the land and will restore the land as nearly as practicable to its original condition.
- 4.0 The owner agrees to obtain the written consent of the prescribed authority, and comply with any conditions of consent reasonably imposed by the prescribed authority, prior to:
 - 4.1 installing or permitting to be installed any services or structure within the easement site, or

Approved by the Council of the City of Shoalhaven

.....dated..... 130004-Draft 88b.doc

CL23.70 - Attachment 2

Measurements are in metres

Sheet 3 of 7 sheets

Plan

Plan of Easement & Restriction
Lot 133 DP703670

PART 2 (Terms) cont.

- 4.2 altering the surface level of the easement site, or
- 4.3 doing or permitting to be done anything that restricts access to the easement site by the prescribed authority.
- 5.0 Electricity Network Assets (Authorised Transactions) Act 2015
 - 5.1 Notwithstanding any other provision in this easement, the owner grants the easement to the prescribed authority and acknowledges and agrees that any lessee of the prescribed authority's distribution system, and any nominee of such lessee (which may include a sublessee of the prescribed authority's distribution system from that lessee), may, without the need for any further approvals or agreements, exercise the rights and perform the obligations of the prescribed authority as if that lessee or nominee were the prescribed authority, but only for so long as the lessee leases the prescribed authority's distribution system from the prescribed authority.
 - 5.2 The owner must do all things reasonably necessary to ensure any such lessee, and any such nominee, is able to exercise the rights and perform the obligations of the prescribed authority.

Terms of Restriction on the Use of Land numbered 2 in the plan

2. Definitions

- 2.1. **120/120/120 fire rating** and **60/60/60 fire rating** means the fire resistance level of a building expressed as a grading period in minutes for structural adequacy / integrity failure / insulation failure calculated in accordance with Australian Standard 1530.
- 2.2. **building** means a substantial structure with a roof and walls and includes any projections from the external walls.
- 2.3. **erect** includes construct, install, build and maintain.
- 2.4. **owner** means the registered proprietor of the lot or Torrens title land that is affected by this restriction and its successors (including those claiming under or through the registered proprietor).
- 2.5. **prescribed authority** means Epsilon Distribution Ministerial Holding Corporation ABN 59 253 130 878 and its successors (who may exercise its rights by any persons authorised by it).

Approved by the Council of the City of Shoalhaven

.....dated..... 130004-Draft 88b.doc

CL23.70 - Attachment 2

Measurements are in metres

Sheet 4 of 7 sheets

Plan

Plan of Easement & Restriction
Lot 133 DP703670

PART 2 (Terms) cont.

- 2.6. **restriction site** means that part of the lot or Torrens title land that is affected by this restriction on the use of land.
3. No building shall be erected or permitted to remain within the restriction site unless:
- 3.1. the external surface of the building erected within 1.5 metres from the substation footing has a 120/120/120 fire rating, and
 - 3.2. the external surface of the building erected more than 1.5 metres from the substation footing has a 60/60/60 fire rating, and
 - 3.3. the owner provides the prescribed authority with an engineer's certificate to this effect.
4. The 120/120/120 fire rating and 60/60/60 fire rating must be achieved without the use of fire fighting systems such as automatic sprinklers.
5. No doors or opening windows are permitted to be erected within the restriction site on the external surface of a building within 3 metres from the substation footing.
6. Electricity Network Assets (Authorised Transactions) Act 2015
- 6.1. Notwithstanding any other provision in this restriction, the owner acknowledges and agrees that any lessee of the prescribed authority's distribution system, and any nominee of such lessee (which may include a sublessee of the prescribed authority's distribution system from that lessee), may, without the need for any further approvals or agreements, exercise the rights and perform the obligations of the prescribed authority as if that lessee or nominee were the prescribed authority, but only for so long as the lessee leases the prescribed authority's distribution system from the prescribed authority.
 - 6.2. The owner must do all things reasonably necessary to ensure any such lessee, and any such nominee, is able to exercise the rights and perform the obligations of the prescribed authority

Approved by the Council of the City of Shoalhaven

.....dated..... 130004-Draft 88b.doc

CL23.70 - Attachment 2

Measurements are in metres

Sheet 5 of 7 sheets

Plan

Plan of Easement & Restriction
Lot 133 DP703670

Name of Persons and Authority empowered to release, vary or modify Restriction or Easement numbered 1 & 2 in the plan

Epsilon Distribution Ministerial Holding Corporation

Draft 26 September 2022

CL23.70 - Attachment 2

Approved by the Council of the City of Shoalhaven

.....dated..... 130004-Draft 88b.doc

Measurements are in metres

Sheet 6 of 7 sheets

Plan

Plan of Easement & Restriction
Lot 133 DP703670

Signed on behalf of **THE COUNCIL OF THE CITY OF SHOALHAVEN ABN 59 855 182 344**
by an Authorised Delegate pursuant to Section 377 Local Government Act 1993:

.....
Signature of Authorised Delegate

.....
Name of Authorised Delegate (BLOCK LETTERS)

.....
Office Held by Authorised Delegate

I certify that I am an eligible witness and that the delegate signed in my presence:

.....
Signature of Eligible Witness

.....
Name of Eligible Witness (BLOCK LETTERS)

.....
Address of Eligible Witness

Approved by the Council of the City of Shoalhaven

.....dated..... 130004-Draft 88b.doc

CL23.70 - Attachment 2

Measurements are in metres

Sheet 7 of 7 sheets

Plan

Plan of Easement & Restriction
Lot 133 DP703670

I certify that the attorney signed this instrument in my presence.

Signed by the attorney named below who signed this instrument pursuant to the power of attorney specified for **Endeavour Energy Network Asset Partnership (ABN 30 586 412 717)** on behalf of **Epsilon Distribution Ministerial Holding Corporation (ABN 59 253 130 878)** pursuant to section 36 of the *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW)

Signature of witness:

Signature of attorney:

Name of witness:

Name and position of attorney:
Simon Lawton
Strategic Property Manager

Address of witness:
c/- Endeavour Energy
51 Huntingwood Drive
Huntingwood NSW 2148

Signing on behalf of:
Endeavour Energy Network Asset Partnership
ABN 30 586 412 717

Power of attorney: Book _____

No _____

EE reference: _____

Date: _____

Approved by the Council of the City of Shoalhaven

.....dated..... 130004-Draft 88b.doc

CL23.70 - Attachment 2

CL23.71 Acquisition - Drainage Easement - 16 Woodglen Crescent Mollymook Beach - Lot 916 DP 237271

HPERM Ref: D22/526733

Department: Technical Services

Approver: Paul Keech, Director - City Services

Reason for Report

This report provides Council with an opportunity to consider the acquisition of a drainage easement over Lot 916 DP 237271, 16 Woodglen Crescent, Mollymook Beach to assist in alleviating water inundation issues from Woodglen Crescent and Anker Avenue, Mollymook Beach.

Recommendation

That Council

1. Acquire by agreement in accordance with the Land Acquisition (Just Terms Compensation) Act 1991, an easement for drainage of water, approximate area of 4.5m² (subject to survey) over Lot 916 DP 237271, 16 Woodglen Crescent, Mollymook Beach.
2. Agrees to pay compensation in the amount of \$2,500 plus GST (if applicable) for acquisition of an easement for drainage of water over Lot 916 DP 237271, 16 Woodglen Crescent, Mollymook Beach plus, reasonable valuation and legal costs associated with the acquisition from Project Number 103425 in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.
3. Delegates authority to the Chief Executive Officer (Director City Services) to adjust the compensation in accordance with the area of the easement determined by the final registered plan.
4. Authorises the Chief Executive Officer to sign all 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.

Options

1. Resolve as recommended.

Implications: Acquiring the easement will provide Council with the legal capacity to construct and maintain the underground pipes to alleviate drainage issues from Woodglen Crescent and Anker Avenue, Mollymook Beach.

2. Not adopt the recommendation and provide further direction to staff.

Implications: This will continue to cause water inundation to properties 16 Woodglen Crescent, Mollymook Beach and 18 Woodglen Crescent, Mollymook Beach.

Background

The landowner raised concerns with Council regarding the water runoff from Tallwood Avenue, Woodglen Crescent and Anker Avenue, Mollymook Beach.

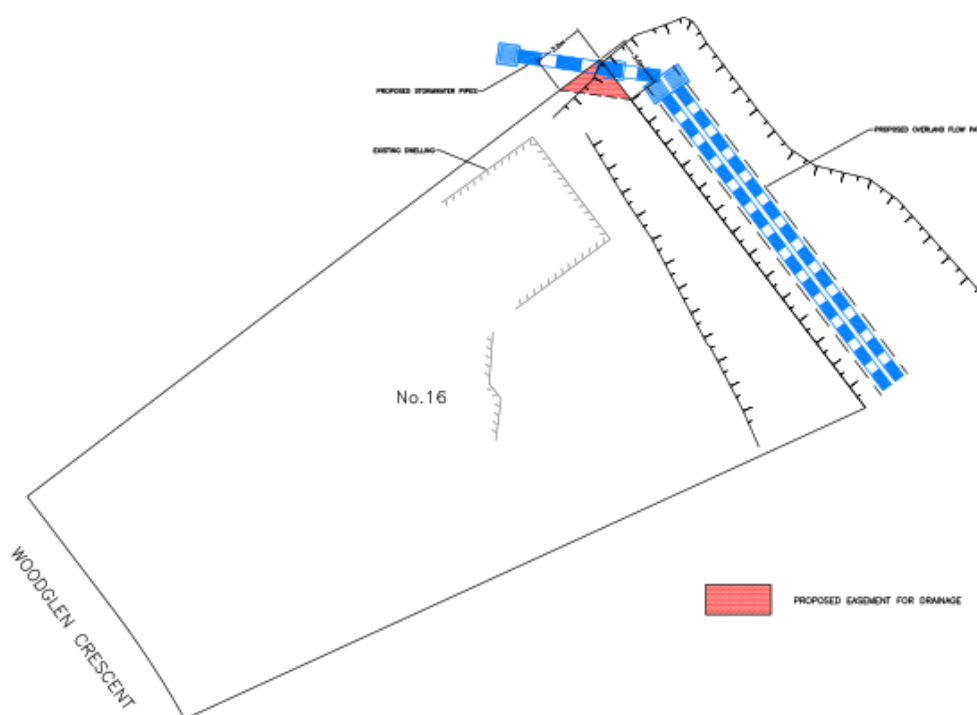
CL23.71

Council has undertaken internal investigation which identified water runoff from Anker Avenue and Woodglen Crescent, Mollymook Beach effecting properties 16 Woodglen Avenue and 18 Woodglen Avenue, Mollymook Beach.

Council engineers proposed mitigation measures of extending the existing piped watercourse at 20 Woodglen Crescent, Mollymook Beach through to 16 Woodglen Crescent, Mollymook Beach as the most efficient method to alleviate water runoff issues effecting both properties.

The easement would burden 4.5m² of 16 Woodglen Crescent, Mollymook Beach. See Diagram 1 – Easement Location, burdened area of proposed easement for drainage highlighted in red.

Diagram 1 – Easement Location



CL23.71

Part Lot 916 DP 237271, 16 Woodglen Crescent Mollymook Beach – G J Palmer

This easement will be located across the rear northern boundary corner. Resulting in an overall area of 4.5 square metres.

The landowners Valuation Report completed by Saunders & Staniforth Valuers, dated 1 August 2021 assessed compensation payable at \$2,500.

The landowner has agreed to this compensation amount by signed acceptance received via email on 8 December 2022.

Community Engagement

Not applicable for operational matters.

Policy Implications

The acquisition of the easement will be undertaken in accordance with Council's Acquisition of Land by Shoalhaven City Council, POL22/120.

Financial Implications

The compensation and reasonable valuation and legal costs associated with the acquisition are to be funded from Project Number 103425.

Risk Implications

The acquisition is necessary to secure access for operational purposes. If no underground pipework is installed, the runoff from Woodglen Crescent and Anker Avenue Mollymook Beach, will continue to affect both 16 Woodglen Crescent and 18 Woodglen Crescent, Mollymook Beach.

CL23.72 Grant of Easement for Drainage of Water - Lot 7/SP75314 - 2B Parson Street and Releasing of Easement for Drainage of Water - Lot 7/SP75314 - 2 B Parson Street, Ulladulla

HPERM Ref: D23/18821

Department: Works & Services

Approver: Paul Keech, Director - City Services

Attachments: 1. Transfer Releasing Easement [↓](#)
2. Transfer Granting Easement [↓](#)

Reason for Report

This report provides Council with the opportunity to consider modifying Easements for Drainage of Water, that burdened on private land identified as Lot 7/SP75314 at 2B Parson Street Ulladulla, currently occupied by the Ulladulla Toyota Service Centre.

This is to allow Bunnings Group Ltd to comply with the Deferred Commencement Consent for DA20/1068 as determined by Council in their meeting on 11 April 2022.

Recommendation

That Council:

1. Resolve to:
 - a. Create an 'Easement to drain water 6.5 wide' denoted 'A' on the plan at annexure 'B' on land occupied by Ulladulla Toyota Service Centre at 2B Parson St, Ulladulla known as Ulladulla Homemaker Centre (Strata Plan 75314); and
 - b. Partially release an existing easement for 'Drainage of Water 4m wide and Variable (DP1063542)' denoted on the plan as 'Y' in Attachment 1 and Attachment 2 (D23/18953, D23/18945).
2. Request the proprietor of Lot 7 SP75314 to co-sign any documents to register the easement as per Point 1 above. Those document(s) being:
 - a. Transfer Releasing Easement on Lot 7 in accordance with Point (1b) above; and
 - b. Transfer Granting Easement on Lot 7 in accordance with Point (1a) above.
3. Seek no compensation from the proprietor of Lot 7 (currently Ulladulla Toyota Service Centre) nor pay compensation to the proprietor of Lot 7.
4. Require Bunnings Group Ltd to pay all Council costs associated with these transfer(s), that is releasing, granting, and registration of easement(s).
5. Authorises the Chief Executive Officer to sign all 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.

CL23.72

Options

1. Resolve as Recommended

Implications:

The registration of these easement(s) transfer(s) constitutes a part of Deferred Commencement Consent for DA20/1068 – development of Bunnings in Ulladulla.

Therefore, by adopting the recommendation, Bunnings Group Ltd will be able to act upon these consent(s) in order to proceed with their development.

2. Not Resolve as Recommend

Implications:

Not resolving as recommend in this report will result in Bunnings Group Ltd will not being able to comply with the Deferred Commencement Consent for DA20/1068 as resolved by Council on 11 April 2022. Therefore, this council approved development cannot proceed.

Background

Bunnings Group Ltd is undertaking works to comply with the Deferred Commencement Consent for DA20/1068, in order for Bunnings to commence their development in Ulladulla.

As part of this works, one of the consent conditions is resolving the stormwater alignment in their neighbouring lot, located on their northern boundary (2B Parson St).

Council and Bunnings Group Ltd entered into a Works Agreement Deed to allow Bunnings to undertake necessary stormwater works to comply with the deferred commencement consent. As part of this agreed work agreement, Council has agreed to:

- (a) Sign the prepared Easement Transfers.
- (b) Seek owner of Lot 7 signature on the Easement Transfers;
- (c) Register the Transfers with the Land Registry Service.

Layout and details of easement modifications are shown in Figures 1 and 2 below.

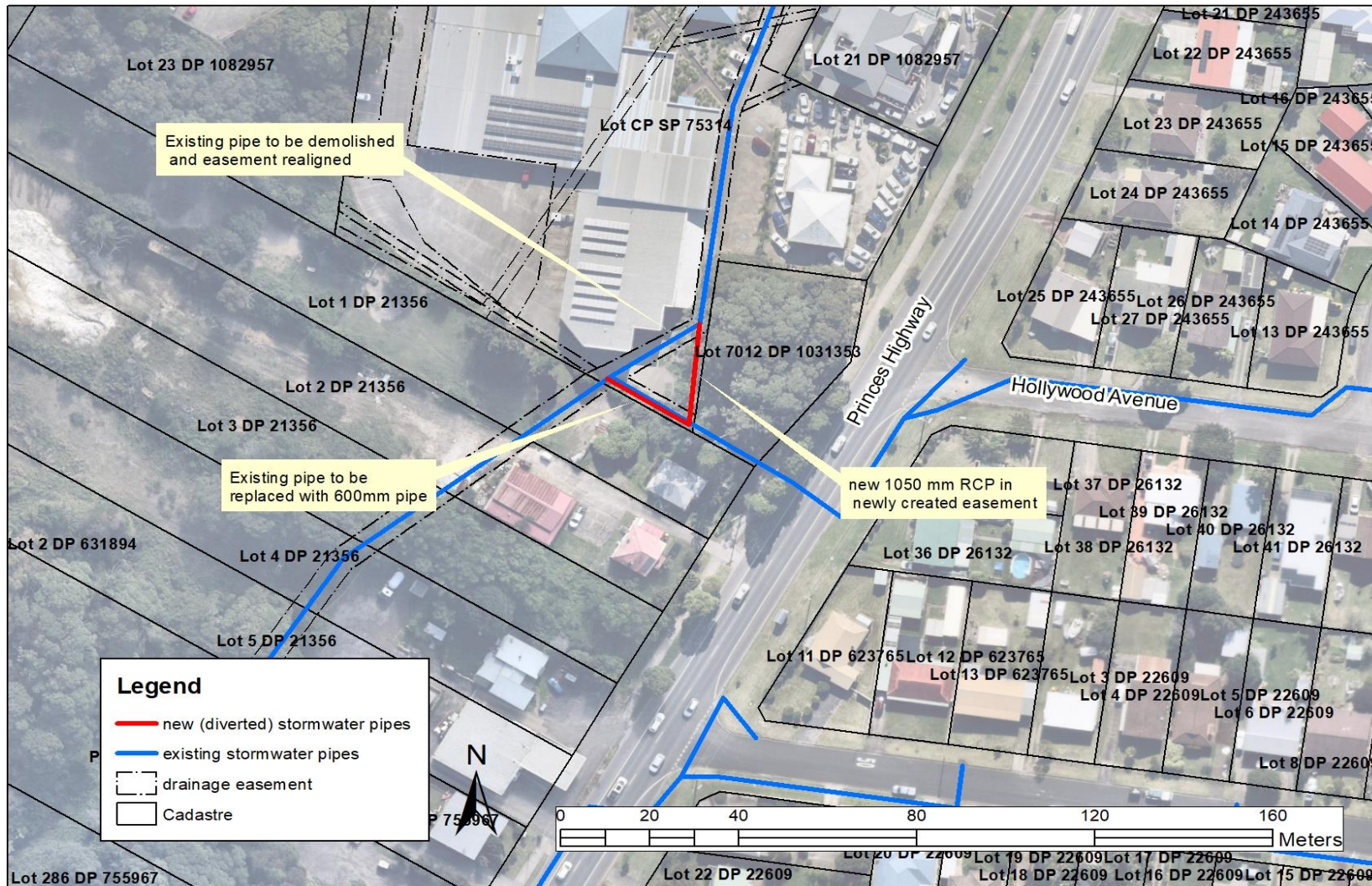


Figure 1 Location of the Proposed Activity

CL23.72

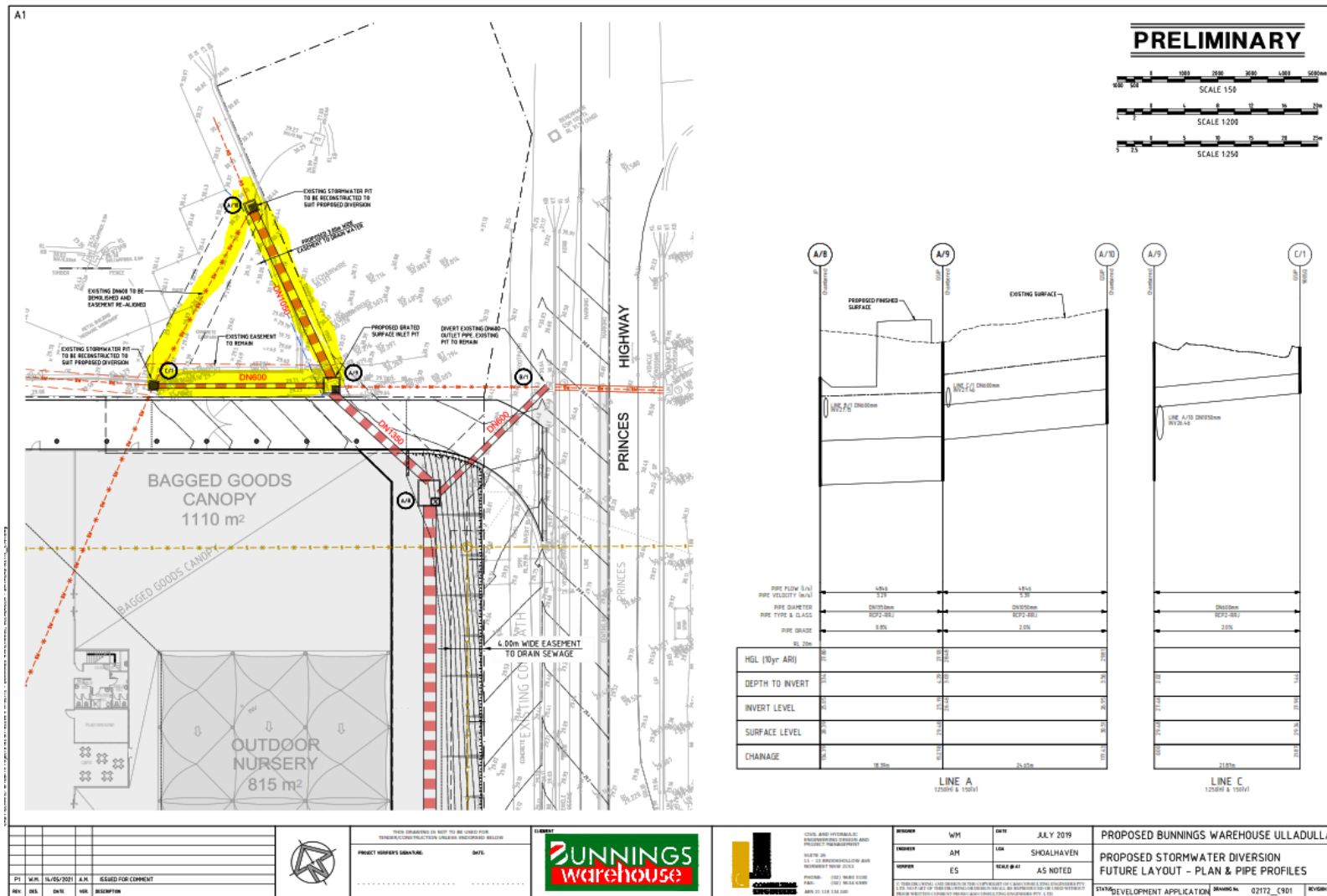


Figure 2 The proposed activity (only the sections highlighted in yellow)

CL23.72

Community Engagement

The affected owner (Lot 7 SP75314) has been consulted about the proposed easement adjustments and has provided consent.

Financial Implications

Nil – all costs associated with the easement adjustments are to be borne by the Bunnings Group Ltd.

CL23.72

Form: 01TR
Release: 3-3

**TRANSFER
RELEASING EASEMENT**
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY	Insert Duties Assessment No. as issued by Revenue NSW Office. Duties Assessment No. _____				
(A) TORRENS TITLE	Servient Tenement 7/SP75314		Dominant Tenement EASEMENT IN GROSS		
(B) LODGED BY	Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any Email: _____ Reference: _____	CODE TR		
(C) EASEMENT	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Number See Annexure A</td> <td style="width: 50%;">Nature of Easement Drainage of Water</td> </tr> </table>			Number See Annexure A	Nature of Easement Drainage of Water
Number See Annexure A	Nature of Easement Drainage of Water				
(D) TRANSFEROR	Registered proprietor of the dominant tenement SHOALHAVEN CITY COUNCIL				
(E)	The transferor acknowledges receipt of the consideration of \$ _____ and, as regards the dominant tenement, transfers and releases the abovementioned easement to the transferee as registered proprietor of the servient tenement.				
(F) TRANSFEREE	Registered proprietor of the servient tenement [REDACTED]				

DATE _____

- (G) I certify that I am an eligible witness and that an authorised officer of the transferor signed this dealing in my presence.
[See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness: _____
Address of witness: _____

Authorised officer's name: _____
Authority of officer: _____
Signing on behalf of: _____

I certify I am an eligible witness and that the transferee signed this dealing in my presence.
[See note* below]

Certified correct for the purposes of the Real Property Act 1900 by the transferee.

Signature of witness:

Signature of transferee:

Name of witness: _____
Address of witness: _____

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Page 1 of 3

2005

CL23.72 - Attachment 1

Annexure **A** to TRANSFER RELEASING EASEMENT

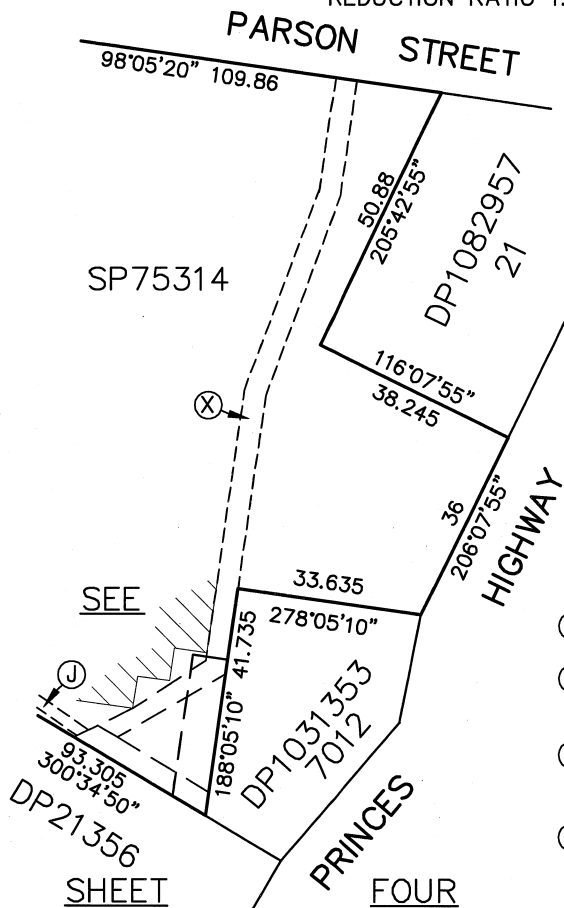
Parties:

SHOALHAVEN CITY COUNCIL and IAN WILLIAM HENRY

Dated: _____

(C) That part of the easement for drainage of water 4 wide & variable (DP1063542) (to be released) shown marked (Y) on the plans in Annexures B-1 and B-2

PLAN OF PARTIAL RELEASE OF EASEMENT TO DRAIN WATER
4 WIDE & VARIABLE WIDTH (DP1063542)
OVER LOT 7 SP75314 AT ULLADULLA
LGA: SHOALHAVEN PARISH: ULLADULLA COUNTY: ST VINCENT
REDUCTION RATIO 1:1000



- (A) PROPOSED EASEMENT TO DRAIN WATER 6.5 WIDE
- (X) EASEMENT FOR DRAINAGE OF WATER 4 WIDE & VARIABLE (DP1063542) (TO BE RETAINED)
- (Y) EASEMENT FOR DRAINAGE OF WATER 4 WIDE & VARIABLE (DP1063542) (TO BE RELEASED)
- (J) EASEMENT FOR DRAINAGE OF WATER 2 WIDE (DP1082957)

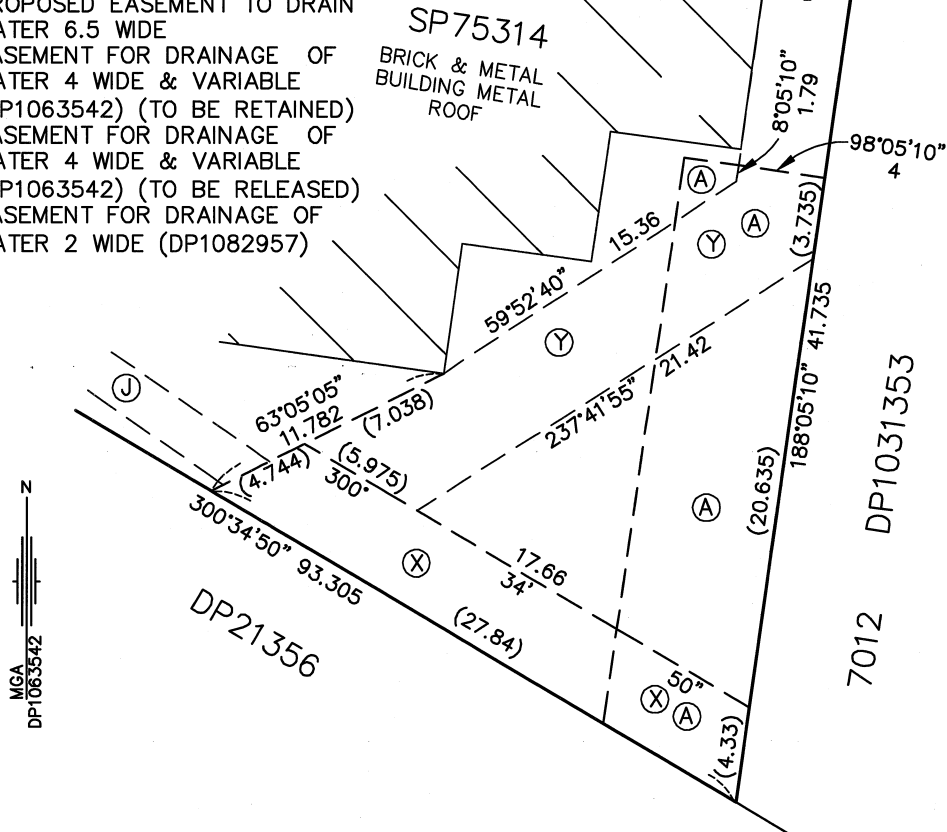
SIGNATURES:

SIMON H APPERLEY
SURVEYOR REGISTERED UNDER THE SURVEYING
AND SPATIAL INFORMATION ACT, 2002
DATE: 22 August 2022
SURVEYORS REF: 103688
LRS REF: 20M(Comp)

ANNEXURE 'B-2'

PLAN OF PARTIAL RELEASE OF EASEMENT TO DRAIN
WATER 4 WIDE & VARIABLE WIDTH (DP1063542)
OVER LOT 7 SP75314 AT ULLADULLA
LGA: SHOALHAVEN PARISH: ULLADULLA
COUNTY: ST VINCENT
REDUCTION RATIO 1:250

- (A) PROPOSED EASEMENT TO DRAIN
WATER 6.5 WIDE
- (X) EASEMENT FOR DRAINAGE OF
WATER 4 WIDE & VARIABLE
(DP1063542) (TO BE RETAINED)
- (Y) EASEMENT FOR DRAINAGE OF
WATER 4 WIDE & VARIABLE
(DP1063542) (TO BE RELEASED)
- (J) EASEMENT FOR DRAINAGE OF
WATER 2 WIDE (DP1082957)



SIGNATURES:

S.H. Apperley
SIMON H APPERLEY
SURVEYOR REGISTERED UNDER THE SURVEYING
AND SPATIAL INFORMATION ACT, 2002
DATE: 22 August 2022
SURVEYORS REF: 103688
LRS REF: 20M(Comp)

Form: 01TG
Release: 3-2

**TRANSFER
GRANTING EASEMENT**
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional
pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) TORRENS TITLE	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Servient Tenement 7/SP75314</td> <td style="width: 50%; padding: 5px;">Dominant Tenement EASEMENT IN GROSS</td> </tr> </table>	Servient Tenement 7/SP75314	Dominant Tenement EASEMENT IN GROSS								
Servient Tenement 7/SP75314	Dominant Tenement EASEMENT IN GROSS										
(B) LODGED BY	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; padding: 5px;">Document Collection Box</td> <td style="width: 60%; padding: 5px;">Name, Address or DX, Telephone, and Customer Account Number if any</td> <td style="width: 25%; padding: 5px; text-align: center; vertical-align: middle;"> CODE TG </td> </tr> <tr> <td></td> <td style="padding: 5px;">Email: _____</td> <td></td> </tr> <tr> <td></td> <td style="padding: 5px;">Reference: _____</td> <td></td> </tr> </table>		Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE TG		Email: _____			Reference: _____	
Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE TG									
	Email: _____										
	Reference: _____										
(C) TRANSFEROR	<div style="background-color: black; width: 100px; height: 20px; margin-bottom: 5px;"></div>										
(D)	The transferor acknowledges receipt of the consideration of \$ _____ and transfers and grants—										
(E) DESCRIPTION OF EASEMENT	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">EASEMENT TO DRAIN WATER 6.5 WIDE DESIGNATED 'A' ON THE PLAN AT ANNEXURE 'B'</td> </tr> </table>		EASEMENT TO DRAIN WATER 6.5 WIDE DESIGNATED 'A' ON THE PLAN AT ANNEXURE 'B'								
EASEMENT TO DRAIN WATER 6.5 WIDE DESIGNATED 'A' ON THE PLAN AT ANNEXURE 'B'											
	out of the servient tenement and appurtenant to the dominant tenement.										
(F)	Encumbrances (if applicable): _____										
(G) TRANSFeree	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">SHOALHAVEN CITY COUNCIL</td> </tr> </table>		SHOALHAVEN CITY COUNCIL								
SHOALHAVEN CITY COUNCIL											

DATE _____

(H) I certify I am an eligible witness and that the transferor signed this dealing in my presence.
[See note* below]

Certified correct for the purposes of the Real Property Act 1900 by the transferor.

Signature of witness:

Signature of transferor:

Name of witness:

Address of witness: _____

I certify that I am an eligible witness and that an authorised officer of the transferee signed this dealing in my presence.
[See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:

Address of witness: _____

Authorised officer's name: _____
Authority of officer: _____
Signing on behalf of: _____

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Page 1 of 3

2005

CL23.72 - Attachment 2

ANNEXURE 'B'

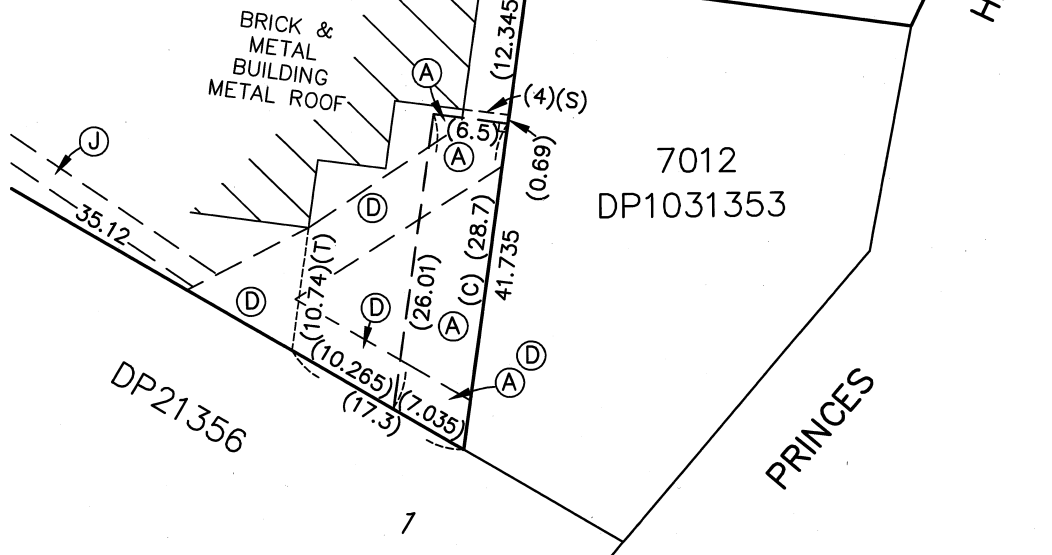
PLAN OF PROPOSED EASEMENT TO DRAIN WATER 6.5 WIDE
OVER LOT 7 SP75314 AT ULLADULLA
LGA: SHOALHAVEN PARISH: ULLADULLA COUNTY: ST VINCENT

REDUCTION RATIO 1:500

(A) PROPOSED EASEMENT TO DRAIN
WATER 6.5 WIDE

(D) EASEMENT FOR DRAINAGE OF
WATER 4 WIDE & VARIABLE
(DP1063542)

(J) EASEMENT FOR DRAINAGE OF
WATER 2 WIDE (DP1082957)



(C) EASEMENT IS COINCIDENT WITH LOT BOUNDARY
(S) LINE OF SOUTH FACE OF WALL PRODUCED
(T) LINE OF EAST FACE OF WALL PRODUCED

SIGNATURES:

Simon H Apperley

SIMON H APPERLEY
SURVEYOR REGISTERED UNDER THE SURVEYING
AND SPATIAL INFORMATION ACT, 2002
DATE: 17 JUNE 2022
SURVEYORS REF: 103688
LRS REF: 20M(Comp)

CL23.73 East Nowra Sub-Arterial Road Advocacy Strategy

HPERM Ref: D23/80759

Approver: Paul Keech, Director - City Services

Reason for Report

To provide Council with an update on the progress of the East Nowra Sub-Arterial Road Advocacy Strategy. Further background to this report was provided in a Councillor Briefing, with a copy of the presentation available on the “Related Links” on the ENSA Project Page <https://www.shoalhaven.nsw.gov.au/Projects-Engagement/Major-Projects-Works/East-Nowra-Sub-Arterial-ENSA-Road-Project>

Recommendation

That Council:

1. Note that after extensive traffic modelling and cost analysis the preferred solution to address the traffic congestion on the Princes Highway through Nowra/Bomaderry is the completion of the following road projects by the NSW State Government, in order of warrant;
 - a. East Nowra Sub-Arterial Road
 - b. Six Lane upgrade of the Princes Highway Plunkett St to Hillcrest Ave
 - c. Six lane upgrade of the Princes Highway Cambewarra Road to Bolong Road
 - d. Hillcrest to Yalwal Sub-Arterial Road
 - e. Nowra Bomaderry Bypass
2. Note that the initial concept design tasks for the East Nowra Sub-Arterial Road have been progressed as far as possible without significant funding and that TfNSW has indicated that further progression of the proposed East Nowra Sub-Arterial Road is currently on hold.
3. Write to the Local State and Federal Members seeking a high priority be placed on the East Nowra Sub-Arterial Road and that a minimum of \$6 million in funding be immediately provided for TfNSW to deliver the Concept Development, Detailed Investigation and Design stages of the proposed East Nowra Sub-Arterial Road over a 5 year period, noting that Council has already acquired land, undertaken traffic modelling and undertaken extensive geotechnical testing at its own cost.
4. Note that with the benefit of detailed geotechnical information, strategic planning has commenced within Council to determine future operational, environmental or economic opportunities for the balance of the Wondalga Farm land adjacent to the most likely East Nowra Sub-Arterial Road corridor.
5. Update its Advocacy Projects 2023 Document accordingly.

Background

Early Project Development

The East Nowra Sub-Arterial Road (ENSA) is a proposed sub-arterial road that would provide a much-needed alternative connection between the Princes Highway and Greenwell

CL23.73

Point Rd and become a primary route for traffic that travels between the highway and Worrigee and the coastal villages to the east. ENSA would significantly reduce congestion at the Princes Highway/Kalandar Street intersection and reduce congestion on the Princes Highway through the Nowra CBD.

ENSA was initiated through Shoalhaven City Council as early as 2004, with concept designs, geotechnical and surveying work completed. The proposed sub-arterial road is identified in the Nowra-Bomaderry Structure Plan, the Nowra Key Road Projects Strategic Overview and other CBD strategies.

Council has strategically acquired much of the land on which the proposed road alignment sits, known as Wondalga Farm, to minimise barriers for future delivery of the project and facilitate investigations.



Figure 1 – ENSA Locality Plan

Current Status

In recent years, Council has completed more detailed geotechnical investigations along the proposed alignment to better understand the likely construction costs. The most recent cost estimate for the project is \$75 million. Other associated road upgrades and improved connections in the East Nowra area would optimise the benefits of the ENSA project, and those works are estimated at an additional \$25 million.

The revised cost estimate and refined concept design information was shared with TfNSW in October 2021 following a Councillor Briefing where support was reinforced for advocacy of the project to be reinvigorated to seek either State or Federal funding to progress the project. It was acknowledged that the regional significance and cost of the road was of a magnitude that placed the road outside of Council's capacity and responsibility to deliver and into the remit of TfNSW.

Based on traffic modelling undertaken by Council over recent years ENSA is identified as a key component of an overall traffic improvement solution for Nowra-Bomaderry's traffic congestion, however it is not the only major upgrade required to achieve an acceptable level of performance. To ultimately achieve an acceptable level of performance, the modelling identifies the need for an upgrade of the Princes Highway to 6 lanes through the Nowra-Bomaderry Urban Area, the construction of the Nowra Bypass and the inclusion of the proposed Hillcrest Yalwal Sub-Arterial Road. Each of these projects are significant in their own right, however it is Council's view that implementation of ENSA would see the most benefit and is also more easily implemented as a result of Council already acquiring the bulk

of the land required for the project, with the lowest level of disruption to the existing road network during its construction.

Updates from TfNSW in late 2022 indicated that following recent announcements of funding for further investigation of the Nowra Bypass there was currently no activity being undertaken by TfNSW to progress the development of the ENSA project. It was indicated that no further development of ENSA was likely until regional traffic modelling investigations being undertaken as part of the Nowra Bypass project were completed to inform the significance of ENSA to the performance of the overall road network.

Subsequently, the ENSA project has stalled with TfNSW despite Council's ongoing advocacy at State and Federal level.

A digital fly-through showing the concept design for ENSA can be viewed on the project website at:

<https://www.shoalhaven.nsw.gov.au/Projects-Engagement/Major-Projects-Works/East-Nowra-Sub-Arterial-ENSA-Road-Project>

Considerations

Proposed Next Steps

The revised cost estimate for the ENSA project is based on the initial concept design and required broad assumptions to be incorporated in the absence of detailed investigation and stakeholder engagement. The potential for the final project to vary substantially from the initial concept design was reflected in the adoption of a 40% contingency within the cost estimate. To progress the project further, concept design development and detailed investigations are required in a number of areas including, but not limited to:

- Traffic interchange with the Princes Highway and Nowra CBD, in particular the relationship with North St, Junction St and Moss St and the overall impact on efficiency of the Princes Highway;
- Traffic interchange at Greenwell Point Road;
- Analysis of risks/opportunities associated with a traditional bulk earthworks road formation versus a viaduct-style solution across all or parts of the floodplain;
- Potential Aboriginal Heritage impacts;
- Environmental impacts;
- Flooding impacts;
- Active Transport opportunities;
- Considerations for land acquisition required in the vicinity of Nowra High School; and
- Traffic optimisation in the East Nowra precinct

Each of the above items has the potential to alter the final alignment of the proposed road and therefore Council is not currently in a position to formalise the road corridor through the Wondalga Farm property.

It is estimated that the cost to progress the project through the Concept Development and Detailed Investigation and Design stages is in the order of \$6 million over a 5-year period. An indicative timeline is provided below:

Year	Stage	Expenditure
1	Concept Development	\$0.8M
2	Concept Development	\$1.5M
3	Detailed Design	\$1.0M
4	Detailed Design	\$1.4M
5	Detailed Design	\$1.4M

Wondalga Farm Future Uses

Council has recently awarded a lease that will see the maintenance and operation of the Wondalga Farm site undertaken by an external party for a period of 5 years. The terms of the lease include provision for Council to continue to undertake investigations within the site and excise parts of the site for the purpose of progressing a future road if required.

It is envisaged that at the conclusion of the current 5-year lease sufficient investigation and planning will have been undertaken to determine the future of the balance of the land within the Wondalga Farm site not required for the road corridor. Engagement with internal stakeholders is currently underway to identify what opportunities may exist within the site for environmental, economic or operational benefits to inform future decision making. However, definitive action in relation to the future uses of much of the Wondalga Farm site is not possible until the alignment of the road has been determined, placing additional weight on the need for the ENSA project to be progressed through the Concept Development and Detailed Investigation and Design stages.

Financial Implications

Nil associated with this report. The development of solutions to the failure of the Princes Highway to provide an acceptable level of service to motorists who travel in and through the Nowra/Bomaderry area is a funding responsibility of the State and Federal Governments.

Council has no funding identified for the ENSA project in its 10-year capital list.

CL23.74 Tenders - Design and Construction of Amenities Block - Active Transport Improvement at Catherine St, Myola

HPERM Ref: D23/63570

Department: Works & Services

Approver: Paul Keech, Director - City Services

Reason for Report

To inform Council of the tender process for the Design and Construction of an Amenities Block - Active Transport Improvement at Catherine St, Myola.

In accordance with Section 10A(2)(d)(i) of the Local Government Act 1993, some information should remain confidential as it would, if disclosed, prejudice the commercial position of the person who supplied it. It is not in the public interest to disclose this information as it may reveal commercial-in-confidence provisions of a contract, diminish the competitive commercial value of any information to any person and/or prejudice any person's legitimate business, commercial, professional or financial interests. This information will be considered under a separate confidential report.

Recommendation

That Council consider a separate confidential report in accordance with Section 10A(2)(d)(i) of the Local Government Act 1993.

Options

1. Accept the recommendation.

Implications: Consider a separate confidential report on the matter.

2. Council make a different resolution.

Implications: This is not recommended as an extensive evaluation process has been undertaken by the tender evaluation team in accordance with the tender evaluation plan.

Details

Project Description

Design and construction of an amenities building as part of Myola Active Transport Improvement works at Catherine St, Myola.

Tendering

Council called tenders for Design and Construction of an Amenities Block - Myola Active Transport Improvement at Catherine St, Myola on 28 November 2022 which closed at 10:00 am on 20 December 2022. One tender was received at the time of closing. Tender was received from the following:

CL23.74

Tenderer	Location
Cerak Constructions Pty Ltd	Botany NSW

Details relating the evaluation of the tenders are contained in the confidential report.

Policy Implications

Nil. The tender process has followed the requirements under the provisions of the Local Government Act 1993.

Financial Implications:

Details relating to the Financial Implications are contained in the confidential report.

Risk Implications

Details relating to the Risk Implications are contained in the confidential report.

CL23.75 Tenders - Shared User Path and Carpark - Active Transport Improvement at Catherine Street, Myola

HPERM Ref: D23/67232

Department: Works & Services

Approver: Paul Keech, Director - City Services

Reason for Report

To inform Council of the tender process for the Active Transport Improvement project at Catherine St, Myola.

In accordance with Section 10A(2)(d)(i) of the Local Government Act 1993, some information should remain confidential as it would, if disclosed, prejudice the commercial position of the person who supplied it. It is not in the public interest to disclose this information as it may reveal commercial-in-confidence provisions of a contract, diminish the competitive commercial value of any information to any person and/or prejudice any person's legitimate business, commercial, professional or financial interests. This information will be considered under a separate confidential report.

Recommendation

That Council consider a separate confidential report in accordance with Section 10A(2)(d)(i) of the Local Government Act 1993.

Options

1. Accept the recommendation

Implications: Consider a separate confidential report on the matter.

2. Council make a different resolution

Implications: This is not recommended as an extensive evaluation process has been undertaken by the tender evaluation team in accordance with the tender evaluation plan for the project to proceed.

Details

Project Description

This project is for the civil works construction as part of Myola Active Transport Improvement works at Catherine St, Myola comprising of a 70-lot carpark and shared pathway.

Tendering

Council called tenders for the Myola Active Transport Improvement at Catherine St, Myola on 3 October 2022 which closed at 10:00 am on 3 November 2022. Three tenders were received at the time of closing. Tenders were received from the following:

CL23.75

Tenderer	Location
Unicivil Pty Ltd	Fairy Meadow NSW
Kingsline Pty Ltd	Greenfield Park NSW
Civil & Civic Group Pty Ltd	Canberra Airport ACT

Details relating the evaluation of the tenders are contained in the confidential report.

Policy Implications

Nil. The tender process has followed the requirements under the provisions of the Local Government Act 1993.

Financial Implications:

Sufficient funds are not available to cover the tendered amount including other project costs. These are discussed further in the confidential report.

Risk Implications

Details relating to the Risk Implications are contained in the confidential report.

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CL23.76 DA22/1542 – 1 Buchan St Mollymook – Lot 14 DP 20321

DA. No: DA22/1542/4

HPERM Ref: D23/26428

Department: Development Services

Approver: James Ruprai, Director - City Development

Attachments:

1. DA Plan Set - 1 Buchan St Mollymook (under separate cover) [⇒](#)
2. Revised Report - SEPP 65 Design Statement - 1 Buchan St Mollymook - Lot 14 DP 20321 (under separate cover) [⇒](#)
3. Revised Report - Visual Impact Report - 1 Buchan St Mollymook - Lot 14 DP 20321 (under separate cover) [⇒](#)
4. Plans - Landscape - 1 Buchan St - Mollymook - Lot 14 DP 20321 (under separate cover) [⇒](#)
5. Revised Clause 4.6 variation - 1 Buchan St Mollymook (under separate cover) [⇒](#)
6. Planning Report S4.15 Assessment - 1 Buchan St - Mollymook - Lot 14 DP 20321 (under separate cover) [⇒](#)
7. Draft Determination - DA22/1542 - 1 Buchan St Mollymook (under separate cover) [⇒](#)

Description of Development: Residential Flat Building comprising 8 units and swimming pool

Owner: One Buchan Street Pty Ltd

Applicant: Chris Beasley

Notification Dates: 24 May 2022 to 17 June 2022, Revised Plans – 25 August 2022 to 16 September 2022

No. of Submissions:

25 - first notification period from 24 May 2022 until 17 June 2022

54 - the second notification period from 25 August 2022 to 16 September 2022

All submissions were objections. Details can be found in the attached assessment report. A summary is provided in this report.

Purpose / Reason for consideration by Council

The development application (DA) was called in for determination by the Council due to the public interest by a Notice of Motion dated 31 October 2022 (MIN22.569).

Recommendation

That Council in relation to Development Application DA22/15420 for a Residential Flat Building containing 8 units and basement parking at Lot 14 in DP 20321, 1 Buchan St, Mollymook:

1. Confirm that it supports the proposed variation, under clause 4.6 of *Shoalhaven Local Environmental Plan 2014*, to the 11m maximum building height to allow for the development of the residential flat building to a maximum 11.3m in height.

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2. Approve Development Application (DA22/1542) in accordance with the recommended conditions of the consent (Attachment 7)

Options

1. Approve the development application (DA) in accordance with the recommendation of this report.

Implications: This would allow the applicant to pursue construction of the development.

2. Refuse the DA.

Implications: Council would need to determine the grounds on which the application is refused, having regard to section 4.15 considerations. A refusal enables the applicant to lodge a section 8.2 Review and / or appeal with the Land and Environment Court of NSW (LEC).

3. Alternative recommendation.

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

Location Map



Figure 1 – Locality Map

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Figure 2 – Location Map with 1m contours

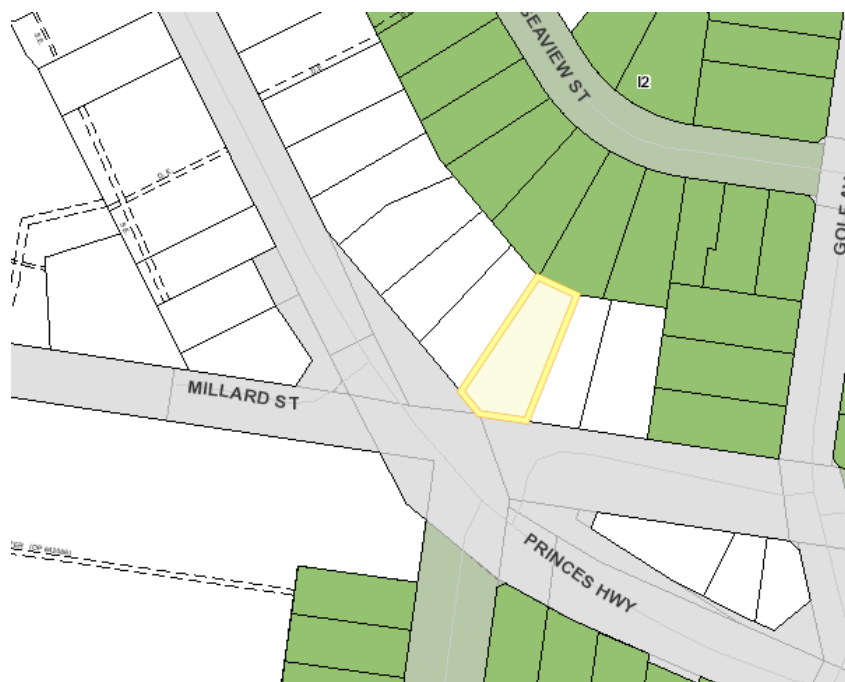


Figure 3: Height of Buildings Map

Note: The land is 'uncoloured' which means that the 11m height applies to the land.

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Background

Proposed Development

- Demolition of existing aged dwelling and erection of new apartment building consisting of 6 by 3-bedroom apartments over the first three storeys and two by two bedroom apartments on the top fourth storey, see Figures 3 to 10.
- Communal open space at the front and rear of the property including a swimming pool at the rear.
- The building is set back a minimum 9m at the rear (north) and 5.6m at the front (south).
- The building reads as a three storey development at the front elevation facing the Princes Highway and following the slope of the land steps down to three storeys at the rear with a portion in the centre comprising 4 storeys above ground.
- Basement parking for 17 cars including 2 accessible spaces and bicycle parking is accessed via a driveway along the eastern boundary from the cul-de-sac in Buchan Street.
- Four of the apartments are LHA (Liveable Housing Australia) Silver Standard compliant.
- The majority of the building is compliant with the 11.0m HOB limit for the site with an overall height of 11.3m for the lift overrun and 11.1m for a small number of solar collectors. The applicant has provided a written request to vary the development standard in accordance with clause 4.6 of SLEP 2014.

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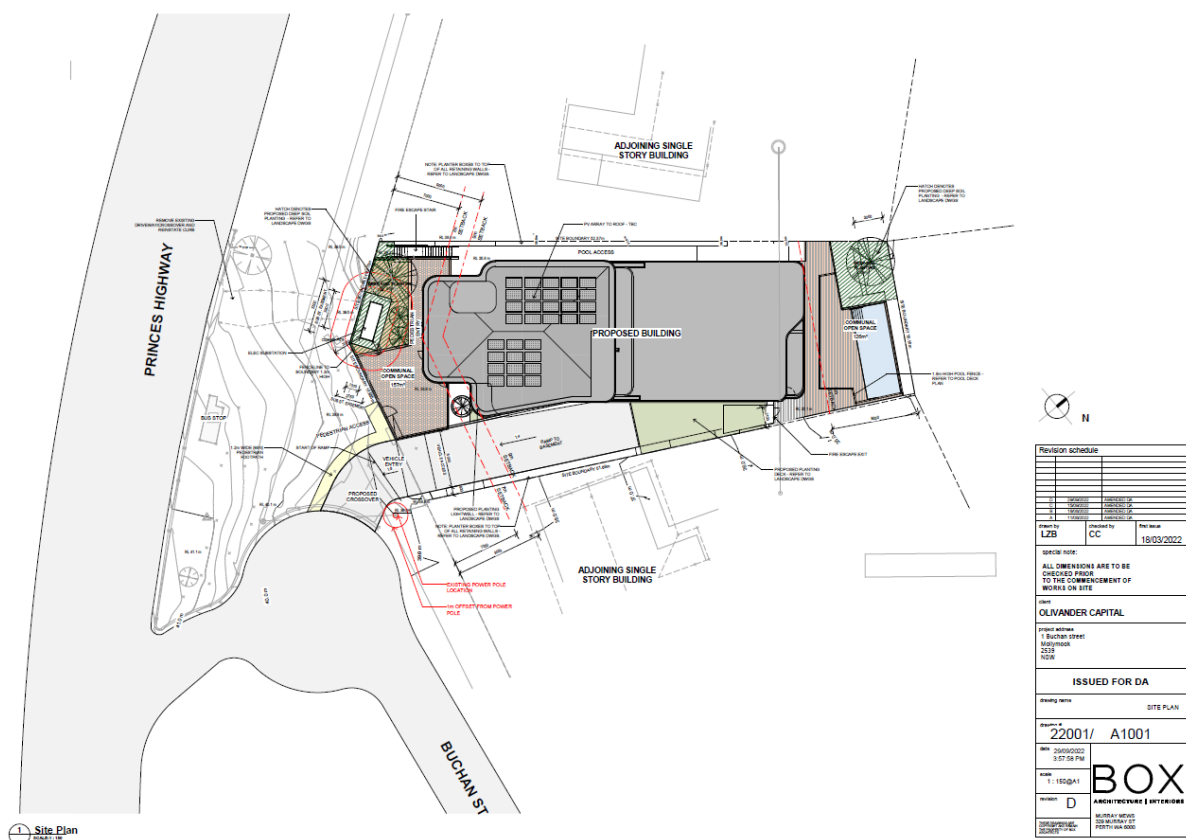
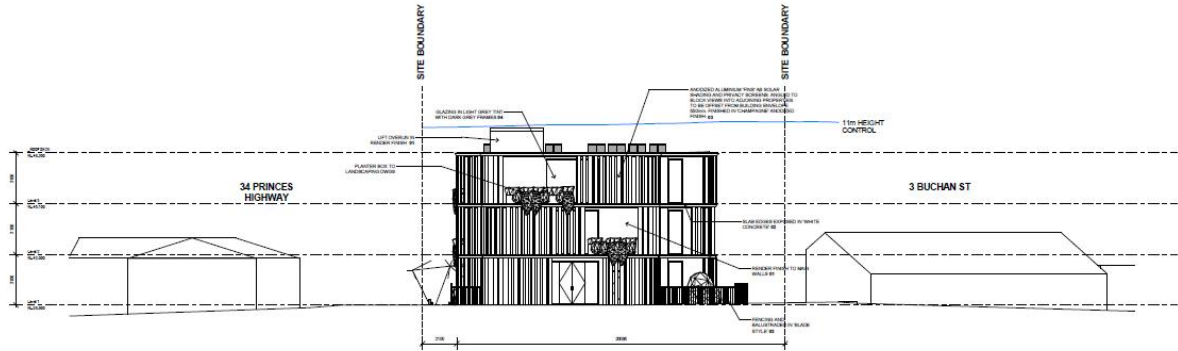


Figure 4: Site Plan

MATERIALS PALETTE

01 TEXTURED WHITE RENDER
02 EXPOSED WHITE CONCRETE
03 ANODISED ALUMINIUM FINISH
04 LIGHT GREY TINTED GLAZING
WITH MATT SANI-GLASS FRAMES
05 ZINCALUME ROOFING FINISH

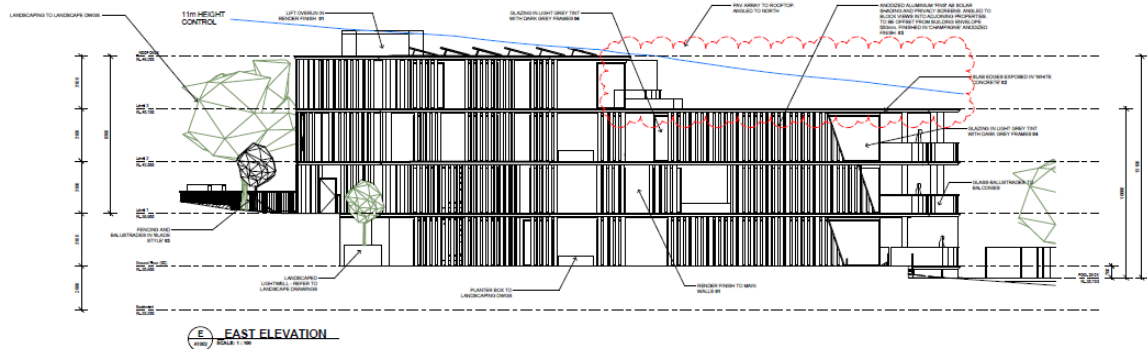


9 STREET ELEVATION / SOUTH ELEVATION
SCALE: 1:100

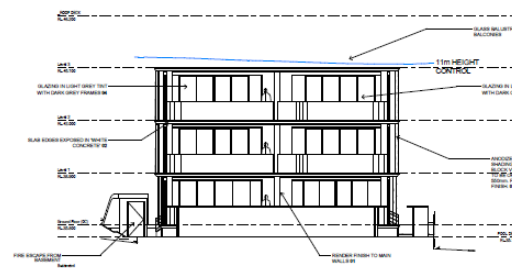
Figure 5: South (Street) Elevation



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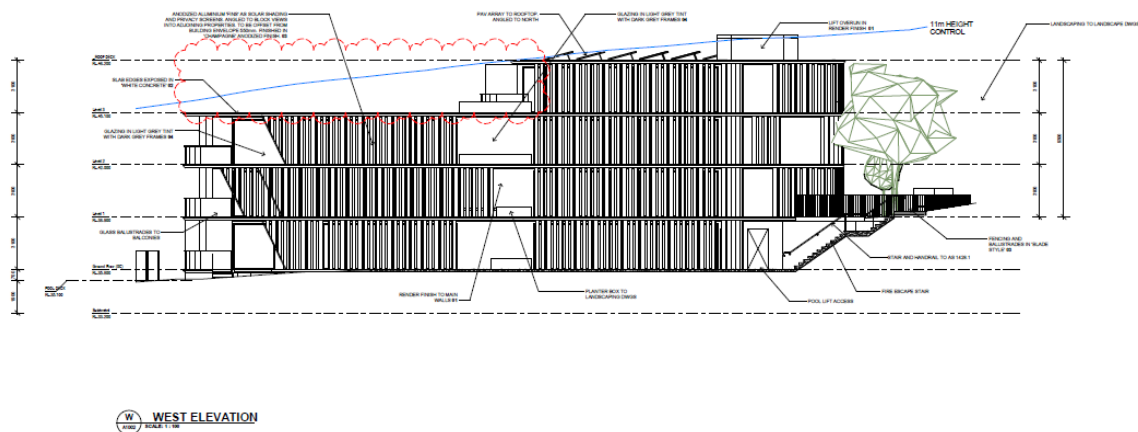


10 EAST ELEVATION
SCALE: 1:100



11 NORTH ELEVATION
SCALE: 1:100

Figure 6: East & North Elevation



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Figure 9: Render view from Buchan St, with entry to the basement garage visible at right of building



Figure 10: Render view from north

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Figure 11: Render view from north east

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Subject Land

The subject site is legally described as Lot 14 DP 20321. It has an angular 29m frontage to the Princes Highway, a depth of approximately 53m with a total area of 1,189m². The site contains an older style fibro dwelling dating from the 1960s. The existing dwelling has vehicular access from the Princes Highway.

The land:

- fronts the Princes Highway and Buchan Street and sits in an area that has a mixed-use character, with four motels, a retirement village and a funeral director's premises within 300m of the site;
- slopes from south to north away from the Highway with a cross fall of approximately 5.6m; and
- was rezoned from SP3 Tourist to R1 General Residential in September 2019 and a DCP *Chapter V3 5 Ulladulla/Mollymook Gateway Precinct* was adopted by Council in 2019 to support the rezoning. The strategic framework enables and permits this type of (residential flat) development. Adjoining land to the north is zoned R2 Low Density Residential.

Site & Context

The site is located 1km northwest of Ulladulla Harbour, 1.1km north of the Ulladulla Post Office and CBD, and 1km south of Mollymook Beach.

The surrounding area is predominantly low density residential in character with a mix of ageing motels, a manufactured home village and a funeral director business on the opposite side of the road. The site is adjoined by single residential dwellings to the west and east, and a dual occupancy development to the north.

The subject site is identified as part of the Ulladulla/Mollymook Gateway Precinct. Chapter V3 of the Shoalhaven DCP 2014 describes the context of the area as follows:

“the opportunity exists for development fronting the Princes Highway in this location to create a ‘sense of arrival’ and positively respond to the natural environment elements that define the coastal location”.



Photo 1: Princes Highway South Elevation



Photo 2: View from verge on the opposite side of the Princes Highway

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Photo 3: Rear North Elevation of existing house



Photo 4: View from subject lot towards rear adjoining neighbour (76 Seaview Street)

CL23.76

History

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

- Formal pre lodgement advice was given in February 2022.
- The application was lodged on 13 May 2022.
- As a result of detailed assessment of the submitted application and based on concerns regarding the massing, privacy, bulk, and transition with the lower density residential zone, the following additional information and design changes were requested from the applicant on 4 July 2022:
 - Relocation of the proposed building to be minimum 9m from the rear boundary.
 - Step down the building at the rear so that it transitions into the R2 Low Density zone.
 - Reduce the height so that the main building is compliant with the 11m height limit.
 - Provide a mix of apartment housing types.
 - Provide privacy screens to balconies on the side elevations.
 - Council had sought and received advice from Council's Development Engineering Unit, Traffic, Waste, Shoalhaven Water, Endeavour Electricity and Transport for NSW (TfNSW). (Required to be reviewed by the applicant.)

The internal referral comments were completed on 21 July 2022 requesting the following matters to be addressed:

- Explore opportunities for an easement to be created downstream such that the development could connect through to the existing road drainage network on Seaview Street as the proposed stormwater discharge method is not supported.
- Revise the driveway design.
- Revise the basement parking layout.

Revised plans were received on the 19 August 2022, which responded to Council's request by:

- Revising the design of the apartment building so that it stepped down at the rear.
- Reduced the height of the main building to be under the 11m height limit.
- The lift overrun reduced to be only 0.3m above the height limit.
- Relocated the building so that it is a minimum 9m from the rear boundary.
- Revised driveway, turning paths & carparking layout.
- Revised stormwater plan.

Adjoining property owners (Seaview St) refused to grant an easement through their properties.

The revised plans were renotified on 25 August 2022 and referred to the Development Engineer for comment.

Previous Approvals over the Site

DA number	Description of Proposal	Decision & Date of Decision	Officer Comment
BA93/1995	Urban Dwelling Additions	Approved August 1993	N/A

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Zoning

The site is zoned R1 General Residential under the *Shoalhaven Local Environmental Plan 2014* (SLEP 2014), see Figure 12. The proposed development is best characterised as a Residential Flat Building which is permissible with consent. The objectives of the zone are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To identify land suitable for future urban expansion.

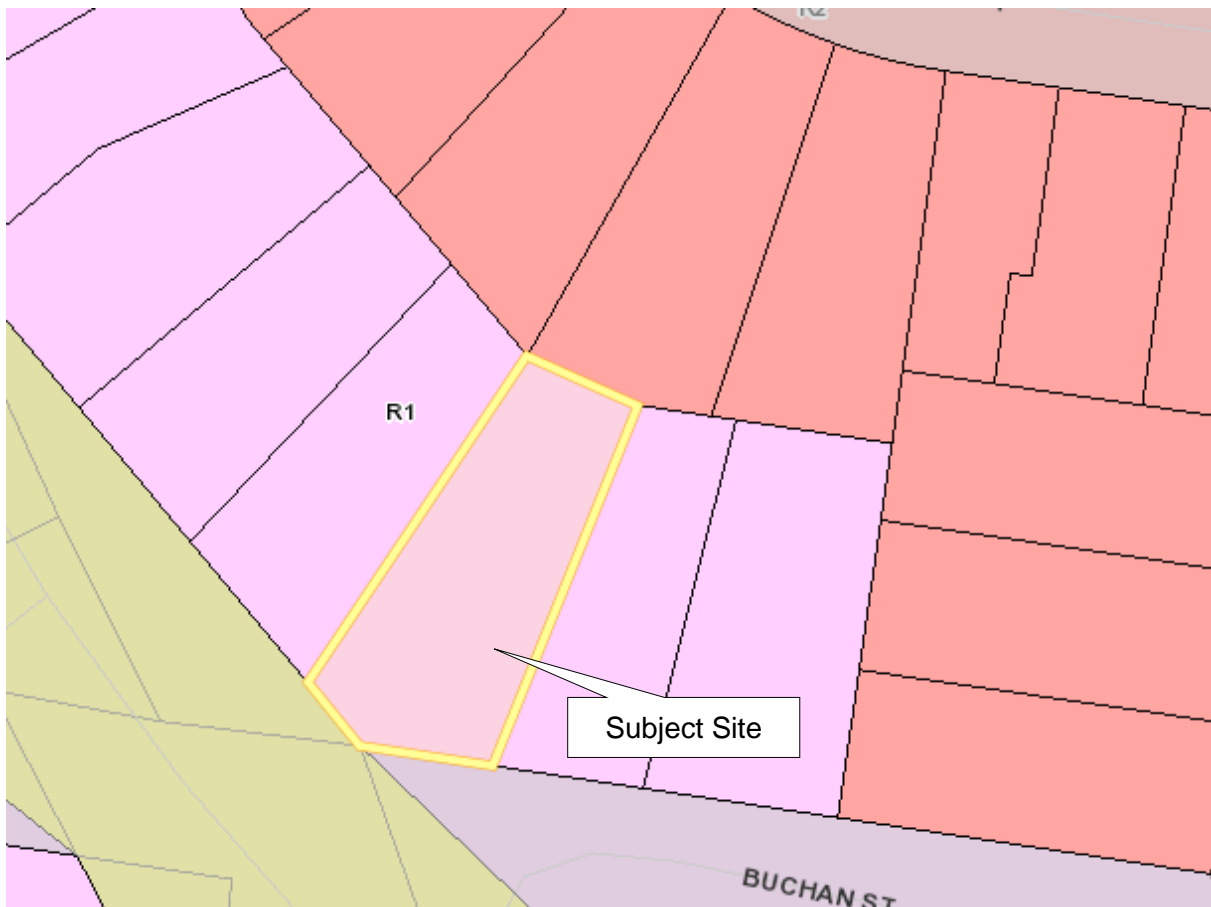


Figure 12 – Zone Extract (SLEP 2014)

Planning Assessment

The Development Application has been assessed under s4.15(1) of the *Environmental Planning and Assessment Act 1979*. Attachment 6 contains Council's section 4.15 assessment. Other attachments informing the assessment include a statement addressing *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development*, a visual impact assessment and the applicant's clause 4.6 request.

The proposed application has been assessed against the relevant planning instruments and has been found to be satisfactory and capable of conditional approval.

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Consultation and Community Engagement:

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 60m buffer of the site. The first notification period from 24 May 2022 until 17 June 2022 with 25 submissions in objection were received.

In response to the submissions received and the initial assessment against the relevant planning instruments the plans were requested to be revised.

The revised plans were renotified from 25 August 2022 to 16 September 2022 with 54 objections received. It is noted that many on the submissions were 'pro forma' type, covering the same issues.

Key points (for both notification periods) are summarised below:

- Privacy & amenity to adjoining properties.
- Transition to the R2 Low Density Residential zone.
- Height exceedance.
- Rear setback deficient.
- Stormwater management inadequate.
- Ulladulla/Mollymook Gateway Precinct DCP compliance.
- Bulk, scale & character. Incompatibility.
- Impact of construction on adjoining properties.
- Solar access impacts.
- Light spill.
- Noise.
- Waste collection.
- No play areas for children..
- Parking inadequate.
- Affordable housing not provided.
- Footpath/kerb provision inadequate in the locality.

The assessment of the application considered the matters raised in the submissions (as prescribed by s4.15(d) and concluded on balance having regard to all the heads of consideration (section 4.15 Evaluation), that the application should be conditionally approved. A detailed analysis can be found in the attached section 4.15 assessment report. Refer to Attachment 6.

Summary of Key Concerns

Issue

The proposed residential flat building exceeds the SLEP 2014 height limit of 11m and the maximum height should be 8.5m at the rear to transition to the R2 Low Density Residential zone.

Comment

The site is subject to a maximum building height control of 11m. The proposed development has maximum building height of 11.3m. The proposal is to vary the control by 2.7% for the lift overrun and 0.9% for a portion of the solar collectors.

There is no development control applicable to the land that prescribes a height of 8.5m. The design steps down at the rear to be a height of 10m which relates to the verandah roof.

The proposal exceeds the 11m height development standard by 300mm (depicted in Figure 13 & 14 below).

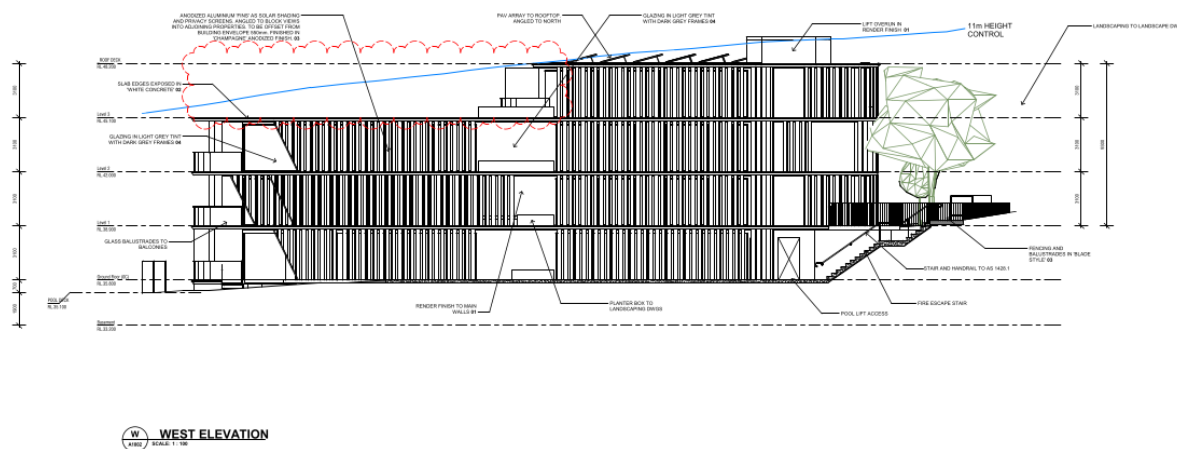


Figure 13: West elevation showing 11m height line in blue



Figure 14: Height Plane diagram showing building with 11m maximum building height plane.

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The applicant has submitted a written request to Council in accordance with clause 4.6(3)(a) and (b) of the SLEP 2014 seeking to justify the contravention of the development standard by demonstrating:

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

The encroachments consist of the following:

- A 300mm encroachment of the lift overrun.
- A 100mm encroachment of some solar collectors.

The applicant is relying on the provisions of clause 4.6 of SLEP 2014 to seek an exception to the height development standard by 100-300mm.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the building height development standard on the following basis:

- a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
- b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - *The desired future character of the area should be preferred and be given more weight in accordance with the context, objectives, and DCP controls for the Gateway Precinct in Chapter V3.*
 - *Much of the existing development in the area is over 50 years old and nearing the end of its economic life.*
 - *It is clear that Council's intention is for an orderly but decisive transformation of the area from the existing low density residential development to a much higher density style development though still primarily residential in character.*

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

Development consent must not be granted unless the consent authority is satisfied that:

- a) The applicant's written request has adequately addressed the matters required by subclause 3 of clause 4.6 being 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 justify contravening the standard; and
- b) 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.

– *Does the written request adequately address those issues at Clause 4.6(3)(a)?*

The applicant has adequately established that compliance with the standard is unreasonable and unnecessary in the circumstances of the case. The objectives of the building height development standard are still achieved, notwithstanding the noncompliance proposed. An assessment against the objectives of Clause 4.3 is provided in the paragraphs that follow.

– *Does the written request adequately address those issues at clause 4.6(3)(b)?*

The applicant's written request demonstrates sufficient environmental planning grounds to justify contravening the height development standard for this particular proposal for the following reasons:

- The proposal is consistent with the key objectives of the R1 zone in that it provides for the housing needs of the community, providing a variety of housing types and densities in the form of an 8-unit narrow infill residential flat building in a desirable location fronting the Princes Highway.
- In considering the objectives of the zone for the provision of medium density residential uses the proposal is considered contextually appropriate.
- The height of the development exceeds the height of existing surrounding development in the vicinity; however, it is consistent with the desired future character of the site and its immediate surrounds.
- The proposed building responds to the DCP Ulladulla/Mollymook Gateway Precinct by providing a strong street presence, a sense of arrival and an increase in density.
- Is not inconsistent with the relevant objectives of *the Environmental Planning and Assessment Act 1979* (EPA Act), *Shoalhaven Local Environmental Plan 2014* (SLEP 2014) including the height clause and the strategic vision for the locality.

– *Is the development in the public interest?*

With regard to varying development standards, the public interest is considered as being protected where a development meets the objectives of the zone and the development standard sought to be varied. As discussed above, the development is consistent with the objectives of clause 4.3 and is supported.

The objectives of cl 4.3 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,*

The minor non-compliance (lift overrun and solar panels) with the maximum height limit has minimal impact on neighbours, amenity, the locality, scenic quality, privacy and is appropriate in this instance. The proposal is, accordingly, considered to be in the public interest.

Concluding comments

For the reasons provided above the requested variation to the height of buildings development standard is supported as the applicant's written request and plans have adequately addressed the requirements of clause 4.6 of the SLEP 2014, and the proposed development would be in the public interest because it is consistent with the objectives of the height of buildings development standard.

Issue

The privacy and amenity of adjoining neighbours will be negatively impacted.

Comment

The building design includes a privacy design response incorporating vertical aluminium fin blades set at 45 degrees to the boundaries on the side elevations (similar to Bannisters Pavilion Mollymook), as well as planter boxes and landscaping on the perimeter that provides privacy to adjoining dwellings. The fins/blades on the side elevations will be 'conditioned' in the draft approval, to extend to the columns at the end of the balconies on the first storey and above to provide privacy to the rear of the adjoining properties to the west and east. The applicant has accepted this.

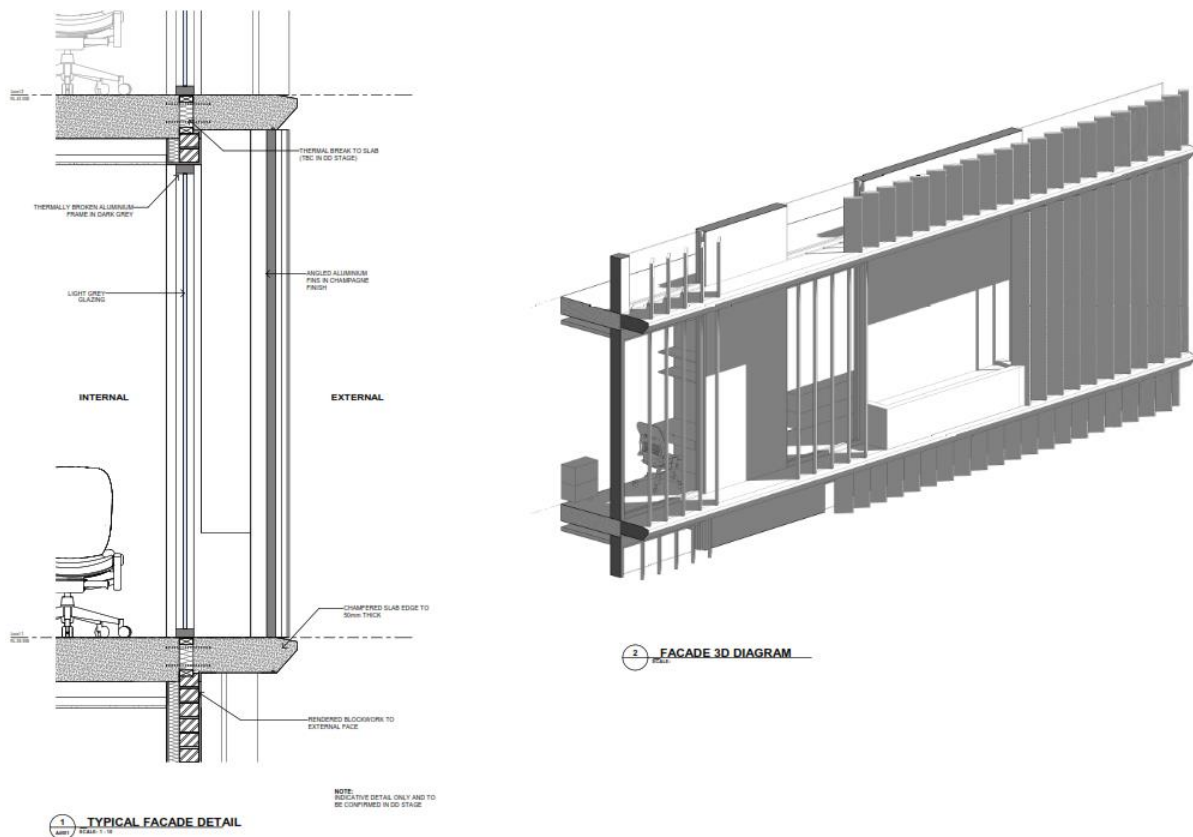


Figure 15 – Typical Façade Detail and 3D diagram for privacy fins set at 45 degrees

Issue

Transition to the R2 Low Density Residential zone

Comment

The applicant has revised the plans to step down the building at the rear and provide a minimum rear setback of 9m in accordance with the Apartment Design Guidelines (ADGs) directions for transitioning apartment development to lower density zones.

Issue

No kerb and guttering or footpath on Buchan St

Comment

Kerb and guttering is already in place out the front of this property. A proposal for kerb and guttering in established areas is normally the responsibility of the property owner who it benefits.. In relation to the footpath on Buchan St, the delivery of footpaths in the city is subject to Council's Pedestrian Access and Mobility Plan (PAMP) which covers footpath planning in the city based on priority and Buchan St is not included in the plan.

Issue

The rear setback is inadequate and does not comply with SEPP 65 requirements.

Comment

The applicant revised the minimum setback from 6m to 9m which many objectors requested in their initial submissions. The 9m setback is the recommended setback for a transition zone in the ADGs as shown in Figure 16 below. It is noted that due to the angled shape of the boundary at the rear that the building ranges from a 9m to an 11m rear setback.

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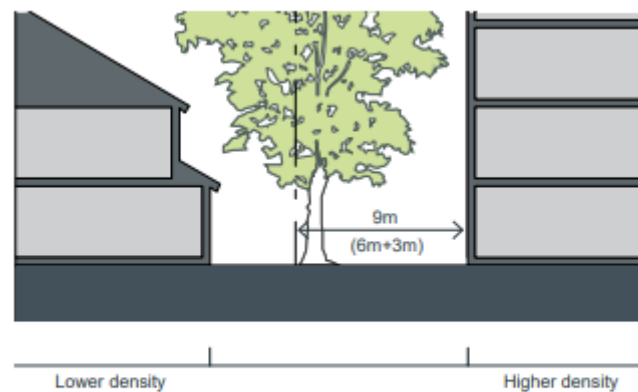


Figure 3F.5 To resolve amenity impacts, apartment buildings should increase the building separation distance (+3m) when adjacent to a different zone that permits lower density residential development

Figure 16: Excerpt from Part 3F of the Apartment Design Guidelines

Issue

Stormwater Management and the potential negative impacts on the properties below on Seaview St.

Comment

The applicant initially proposed a stormwater management system that utilised an Onsite Detention (OSD) tank at the rear and incorporated rainwater harvesting and an overflow discharging to a level spreader and gravel bed adjacent to the rear boundary of 76 Seaview Street.

This method of stormwater disposal was not supported by assessment staff or Council's Development Subdivision Engineer.

Initial advice to the applicant was that Council's preferred option for stormwater disposal was the creation of a drainage easement through the downstream properties adjoining at the rear to Seaview St in accordance with Chapter G2 of council's DCP.

The applicant initially wrote to 3 downstream adjoining property owners on 10 October 2022 and provided Council with a response on 25 October 2022 that 2 had objected and no response had been received from the third.

In the opinion of assessing staff, the applicant had not sufficiently demonstrated to Council's satisfaction that a stormwater drainage easement could not be obtained from the adjoining property owners. The applicant was requested on 28 October 2022 to approach the property owners again, and in accordance with DCP Chapter G2 Acceptable Solution A2.1 provide an:

"acknowledgement from adjoining property owners indicating a refusal to grant a drainage easement. The acknowledgement must indicate that a reasonable amount of compensation has been offered for the proposed drainage easement and that the advantages of creating as easement were explained".

Council provided a pro forma easement request letter to assist.

The applicant sent letters to the owners of three adjoining properties. The applicant advised Council on 19 December 2022 that 2 responses in the negative and one no response were received from the property owners. The applicant also provided a Development Control Plan (DCP) variation request to DCP Chapter G2 and a supporting letter from their Solicitor for the proposed Stormwater Concept Plan.

The Development Subdivision Engineer reviewed the information provided and proposed the following 2 preferences for stormwater disposal from the site.

- First preference is for all stormwater to be directed to Seaview Street via a stormwater easement through one of the downstream properties to the north of the subject site.
- Second preference – In the event that a stormwater easement is not achievable then Council could consider:
 1. A split stormwater disposal system that incorporates:
 - a. Charged collection all roof stormwater and basement pump system piped to a suitably sized OSD tank located in the southern end of the site that overflows to a 450 x 450mm grated boundary pit located in the southeast corner of the site to Buchan Street stormwater drainage. The discharge pit would have to be arranged so that any stormwater surcharge from the top of the pit could only fall to Buchan Street and not back into the site or neighbouring properties. This would require a revision to the OSD stormwater calculations and design of a revised stormwater system in accordance with Council's Engineering Design Specifications.
 - b. Other impervious areas that can grade via gravity to the grated boundary pit, (such as partial driveway) to be piped to the pit.
 2. Collect remaining impervious area stormwater that cannot fall by gravity to Buchan Street and discharge via a suitably sized adsorption system designed in accord with Council's DCP and Engineering Design Specifications.
 3. Demonstrate that discharge i) towards the northern boundary and ii) total site discharge, does not exceed pre-development peak flows.

These 2 options were provided to the applicant on 20 January 2023. The applicant has advised acceptance of the second option.

Given that the applicant has demonstrated that an easement is unachievable the second preference has been provided as a condition of consent: to prepare certified engineering design plans prior to the issue of a Construction Certificate. This stormwater option will provide a better outcome for the neighbouring properties as it will collect all stormwater and direct it to Buchan Street.

Issue

Noncompliance with DCP Ulladulla/Mollymook Gateway Precinct

Comment

V3: Miscellaneous Site-Specific Issues

The purpose of **V3: Miscellaneous Site-Specific Issues** Chapter is to provide site specific provisions for a number of locations across the Shoalhaven.

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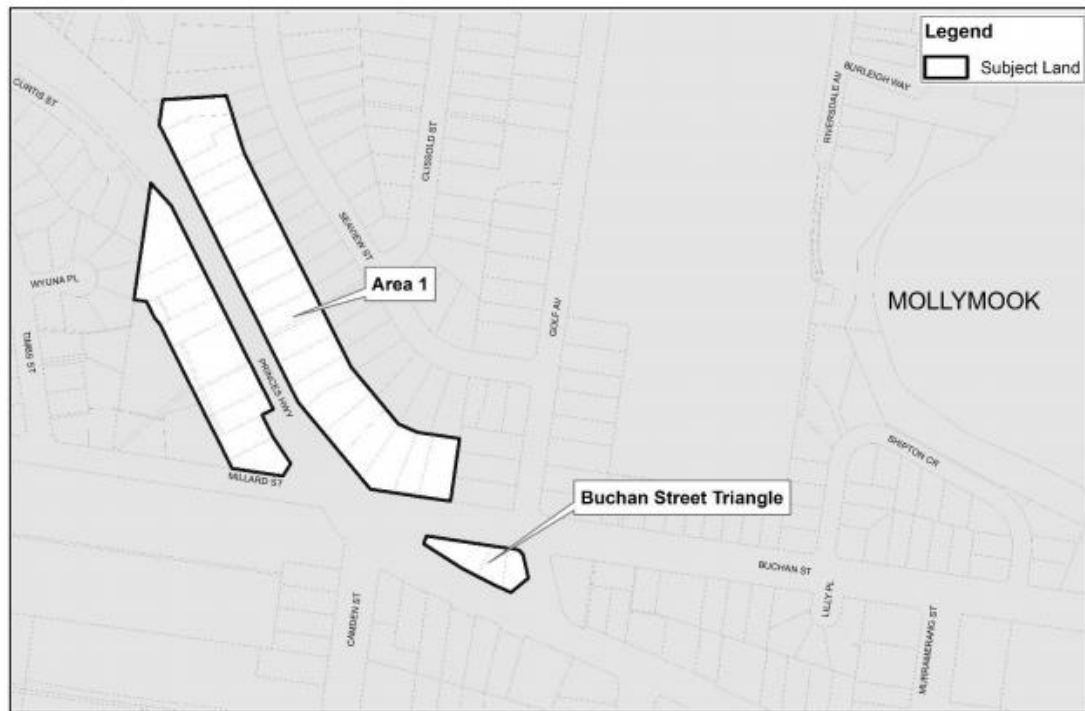


Figure 17: Chapter V3 - Subject Land – Ulladulla/Mollymook Gateway Precinct

The subject site is located in Area 1 (depicted in Figure 17) identified in the DCP as the Ulladulla/Mollymook Gateway Precinct. The DCP discusses future desired intent for development of the area and states the following regarding context of the area:

“The opportunity exists for development fronting the Princes Highway in this location to create a ‘sense of arrival’ and positively respond to the natural environment elements that define the coastal location. It is anticipated that the precinct will continue to be predominantly residential in nature into the future with the opportunity for other compatible uses, including the continuation of appropriate tourist and visitor accommodation uses, and increased density.

Future development should have a strong street presence whilst sympathetically blending with the surrounding area and protecting the amenity of adjacent dwellings.”

Key objectives of this section in relation to the proposal are:

- i. Ensure that development enhances and makes a positive contribution to the character of the Gateway Precinct as the northern gateway to the Ulladulla Town Centre.
- ii. Ensure that development is sensitive to the landscape, built form and environmental conditions of the locality, including distinctive views of the Ocean.
- iii. Minimise the amenity impact on adjoining or adjacent properties, especially Seaview Street, Mollymook.

The relevant Performance Criteria are:

The building height, bulk and scale of the development:

- i. Is compatible with the desired future character of the area.
- ii. Minimises adverse amenity impacts associated with the overshadowing of adjoining properties.
- iii. Relates to the landform, with minimal cut and fill.
- iv. Enables view sharing.

The application is generally compliant with the objectives and performance criteria of the DCP chapter. The applicant has set back the building a minimum of 9m from the rear boundary. It presents as a 3 storey building at the front and rear, the bulk of the building complies with the 11m height restrictions and steps down at the rear to transition into the R2 low density zone.

The applicant has requested a variation to Acceptable Solution A4.1 which requires buildings to be sited within a building envelope determined by the following method: Planes are projected at 45 degrees from a height of 5m above ground level at the front, side and rear boundaries as shown in Figure 18.

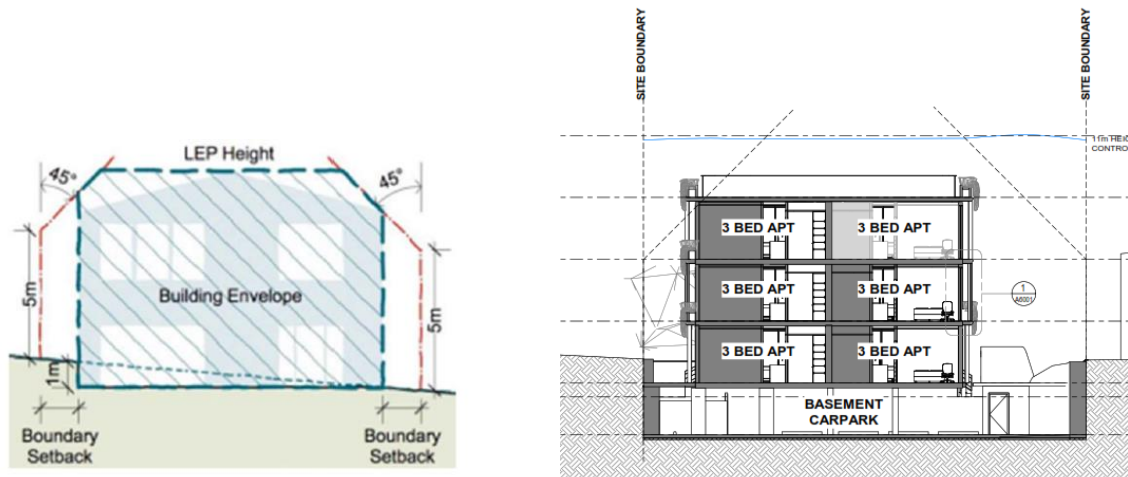


Figure 18: DCP Chapter V3 – Building Envelope and Section B Plan

The applicant has stated that that proposed apartment building is able to meet the performance criteria and objectives as:

- It will make a positive contribution to the Gateway Precinct.
- It is of slim form, does not impact on views of the ocean from the Princes Highway and adjoining properties.
- Responds to Council's intent for the Gateway Precinct by providing street presence and sets the scene for future desired character of the Precinct.
- Will have no impact on the amenity of adjacent properties.
- Will not result in increased overlooking or the visual qualities of Seaview St.

The request has been considered to be worthy of support given that they have demonstrated that the proposal is able to meet the objectives and performance criteria of the DCP.

The lot is surrounded by low density housing and older style motels, many of which are of an age now that are ready for redevelopment. The future character of the area is for increased density that responds sympathetically to the adjoining lower density area of Mollymook. The proposed residential flat building comprising 8 units is a small scale Residential Flat Building development which is complementary to the existing and future desired character of the gateway precinct.

The design does not obscure any ocean views, addresses the street appropriately, provides privacy measures, basement parking, and perimeter landscaping to protect the amenity of neighbouring residences including residential properties on Seaview St. Refer to Figure 15.

The DCP has a provision that guides development to comply with a building envelope as described above, where the ADG does not prescribe a building envelope.

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Where there is an inconsistency between the controls, The SEPP and its supporting document takes precedence. In this instance, the height and setback controls are considered acceptable for the previously mentioned reasons.

Issue

The building is of a bulk and scale that does not fit in with the existing character of the area.

Comment

To determine the impact of height and bulk, reference is made to a Land and Environment Court (LEC) **Planning Principle** – found in *Veloshin v Randwick Council [2007] NSWLEC 428*. This case makes specific reference as to how matters relating to height, bulk and character may be assessed, which is stated as follows:

“Planning principle: assessment of height and bulk

The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

Are the impacts consistent with impacts that may be reasonably expected under the controls?

For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For noncomplying proposals, the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Does the proposal fit into the existing character of the area?

Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?

Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked.

The following is an assessment of the relevant questions in relation to the proposed development in the context of the above judgment:

‘Are the impacts consistent with impacts that may be reasonably expected under the controls?’

Comment

Despite the minor intrusion of the lift overrun above the 11-metre height plane, the bulk of the building is consistent with the LEP height requirement.

The proposed development seeks a form of residential accommodation consistent with what the 'new' R1 General Residential zone permits. The building is a narrow infill apartment on a traditional narrow and deep residential lot. The building is 15m wide at the front, 13.5m at the rear, and 3-4 storeys high above ground containing 8 units. The design has considered privacy to the neighbours by providing fixed angled blades on the side of the building, planter boxes, a rear setback that ranges from 9m to 11m, and landscaping on the perimeter of the site

Chapter V3 of the Shoalhaven DCP 2014 states that the future context of the area is anticipated to continue to be predominantly residential in nature with the opportunity for other compatible uses, including the continuation of appropriate tourist and visitor accommodation uses, and increased density.

It is considered that the proposal is consistent with the zone objectives, with impacts that may be reasonably expected under the controls.

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

Comment

The current development standards for height are the same along the Princes Highway frontage, irrespective of the land use.

The applicant has stepped down the building at the rear to 10m height to transition the building into the R2 Low Density Residential zoned land that adjoins at the rear that have a maximum Height of Building of 8.5m.

The only relevant breach of height is the lift overrun by 0.3m or 2.7% variation of the control, the bulk of the building is compliant with the relevant controls. The 11-metre height line is shown in blue in Figure 18.

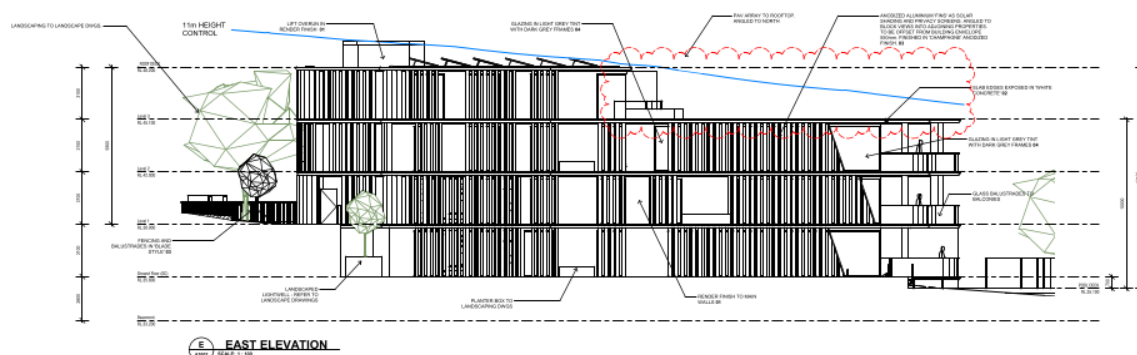


Figure 19: Proposed East Elevation

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Does the area have a predominant existing character and are the planning controls likely to maintain it?

Comment

The predominant character of the Mollymook/Ulladulla Gateway Precinct is single detached residential dwellings interspersed with tourist accommodation in the form of motels. DCP Chapter V3: Miscellaneous Site-Specific Issues anticipates that the Ulladulla/Mollymook Gateway Precinct will continue to be predominantly residential in nature with continuation of appropriate tourist and visitor accommodation uses and increased density.

The DCP outlines that future development should have a strong street presence whilst sympathetically blending with the surrounding area and protecting the amenity of adjacent dwellings.

The front façade to the Princes Highway has adequately addressed the gateway location of the subject site by creating ‘a sense of arrival’ and provides a strong street presence whilst sensitively responding to the surrounding area. See Figure 20 below. It is acknowledged that the drawing relies on vegetation to soften the appearance of the building however the site benefits from a substantial setback to the Highway.



Figure 20: Photomontage of proposed apartment building as viewed from the Princes Highway

Does the proposal look appropriate in its context?

Comment

The proposal will be appropriate to the existing and desired future residential context. Many of the dwellings are on large residential lots and are of an age that makes them suitable for redevelopment. There is also a mixture of other buildings including motels. Given the high amenity location, it is likely that future development will aim to utilise the building envelope available and increase development to the maximum height with views which are highly sought after in the area. The DCP Ulladulla/Mollymook Gateway Precinct Chapter recognises that the area will undergo transition in the future and provides guidelines to shape future development.

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The applicant has provided a visual analysis (see Figures 21 to 23 as extracted from the applicant's documentation) from the surrounding area which indicates that the building will be obscured by two storey development on Seaview St, tall mature vegetation along the Princes Highway and Seaview St neighbouring sites.



Figure 16: "Before" view of the site from Seaview Street (Nos. 76 and 74 Seaview Street to the left and right).



Figure 17: "After" view from Seaview Street. The upper northern edge of the roof is just visible behind the rear gable roof of No. 76 and above the left end of the roof of No. 74.

Figure 21: Photomontages - before and after of view to proposed development from Seaview St

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Figure 20: "Before" view from Seaview Street (near No. 45) looking towards the site



Figure 21: "After" view from Seaview Street (near No. 45) looking towards the site. The northern edge of the building is just visible to the right of the Telstra phone tower and behind the roof of 76 Seaview Street.

Figure 22: Photomontages before and after more distant views from Seaview St.

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Figure 23: Approaching the Princes Highway/Golf Avenue roundabout from the north

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Issue

Safety of the side boundary with 3 Buchan St

Comment

The applicant has provided a Geotechnical Report by Terra Insight that recommends appropriate construction methods to avoid impacts to surrounding properties. In addition, it will be required as a condition of consent to prepare a dilapidation report that will investigate the stability and impacts of the proposed development on surrounding properties prior to works commencing.

Issue

Solar Access to neighbouring dwellings

Comment

The applicant has provided shadow diagrams that indicate that the adjoining neighbours will receive a minimum of 3 hours sunlight between 9am and 3pm on June 21 in line with the ADGs and the NSW Planning Principle for solar access, as shown in Figure 24 below. The adjoining developments to the east and west of the site, have rear yards which face north.



Vehicle movements into and out of the basement carpark have the potential to generate some noise disturbance to the adjoining dwelling at 3 Buchan Street due to the proximity of the proposed driveway to this dwelling. A condition is recommended to require a suitably designed acoustic barrier fence to be provided along the dividing boundary between 1 & 3 Buchan Street designed and certified by an appropriately qualified and experienced acoustic consultant. Residential and swimming pool noise is regulated by the *Protection of the Environment Operations Act 1997* (POEO Act) and the Development Consent will also have conditions relating to noise regulations.

Issue

Waste bin collection

Comment

Individual waste bins are proposed to be presented to the highway for standard kerbside collection. The application was referred to Waste Services. Council's Waste Services raised no objections and have provided appropriate conditions to be included in the consent.

Issue

The proposed development if approved will set a precedent for similar development in the area

Comment

The R1 zone permits Residential Flat Buildings, and a proposal of this size will not set an undesirable precedent. The Mollymook/Ulladulla area is in a flux of change at present whereby older low density housing is being turned around into medium density living. Each DA is assessed on its merits having regard to the planning context at the time.

Issue

The impact on trees on neighbouring properties

Comment

The applicant has provided an Arborist Report that assesses the health of the trees and includes recommendations for the removal of trees on the subject property, tree protection and the pruning of trees on adjoining properties that may be impacted by the proposed development.

Issue

Play areas for children

Comment

In accordance with SEPP 65 communal open space has been provided by the applicant. There is no requirement to provide areas specifically for children to play in.

Issue

Lack of Parking

Comment

The provisions of Chapter G21: Car Parking & Traffic **(of the DCP)** have been considered by Council's Development Subdivision Engineer who reviewed the proposal from an access and manoeuvring perspective and raised no objections subject to imposition of conditions of consent.

The parking demand provisions have been calculated under the Chapter G21: Car Parking & Traffic. The carparking ratio requirements relevant for the type of development at the time of submission, and in accordance with savings provisions. Therefore, the proposed development generates the following car parking requirements:

- 1.5 spaces per two bedroom dwelling
- 2 spaces per dwelling containing 3 or more bedrooms

The proposal consists of the following:

Standard	No of Apartments	No of car spaces required
2 Bedroom Units	2	3
3 Bedroom Units	6	12
Total Car-spaces Required		15

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The application proposes **17** car parking spaces including 1 visitor space and 2 disabled spaces. The number of car parking spaces exceeds the DCP requirements. The car parking provision is compliant.

Issue

No unit for social/affordable housing

Comment

There is no mandatory requirement that requires a unit in this development to be provided for social or affordable housing.

Applicant's Response to Submissions

- The applicant was invited to consider and respond to submissions and provided their response which is summarised as follows:

The issues generally raised in submissions by Seaview Street residents were that the proposal:

- significantly exceeds the 11-metre height limit;
- does not comply with the SEPP 65 rear setback requirement of 9 metres;
- does not 'step down' or transition to the adjoining lower density area;
- does not minimise the amenity impact on properties in Seaview Street, as outlined in
- Shoalhaven DCP 2014 Chapter V3 Ulladulla/Mollymook Gateway Precinct;
- will set a precedent for the approval of future non-complying development in this area.

These issues have been addressed as follows:

- **Height Limit:** The building has been redesigned to step down the site which has been achieved by reducing the footprint of the upper floor apartments which are now 2 bedrooms. The northern end of the building is now well within the height limit as per Figure 25.

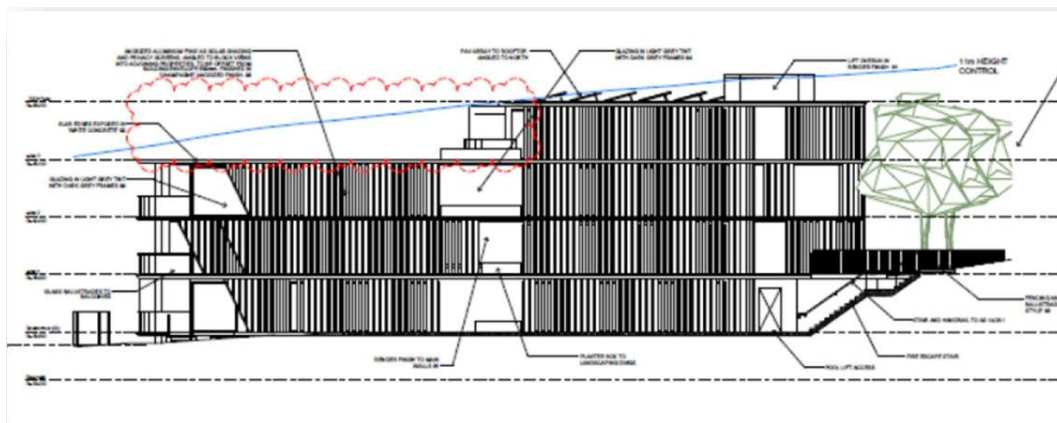


Figure 25: West Elevation showing 11m maximum height line in blue

- **Rear Setback:** *The revised plans show the building setback 9m to comply with SEPP 65.*
- **Minimising Amenity to Seaview St:** *The above changes to building height, rear setback and stepping down of the building will minimise the impact top the Seaview St properties.*
- **Precedent:** *The building is now compliant with SEPP 65, The Apartment Design Guide and the provisions of Shoalhaven DCP Chapter V3 in relation to minimising the impacts on Seaview St.*

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Planning Assessment

The DA has been assessed under s4.15 of the *Environmental Planning and Assessment Act 1979*. Please refer to Attachment 6.

Policy Implications

Not applicable

Financial Implications:

Nil, unless the matter is potentially litigated. See below.

Legal Implications

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

Under some circumstances, third parties may have a right to appeal Council's decision to the LEC.

Summary and Conclusion

The Report and the attached s4.15 Assessment Report (Attachment 6) provides an assessment of the proposal for demolition of the existing dwelling house and construction of a residential flat building, associated parking, landscaping, swimming pool and stormwater works on the land identified as 1 Buchan St Mollymook legally described as Lot 14 DP 20321.

The proposed development has satisfied the provisions of SEPP 65 - Design Quality of Residential Apartment Development, SLEP 2014, and the overall objectives and provisions contained within Shoalhaven Development Control Plan (SDCP) 2014.

The proposal is considered to result in a development, which is suitable in the context of the existing and desired future character of this precinct.

This application has been subjected to a detailed analysis of the issues raised in the submissions which have been addressed in this report.

The application for the residential flat building is compliant with the relevant planning instruments and recommended for determination by way of approval subject to conditions outlined in Attachment 7 - the draft determination.

CL23.77 SF10933 – 41 Gordon Street, Milton – Lot 1 DP 781355**DA. No:** SF10933/4**HPERM Ref:** D23/56591**Department:** Development Services**Approver:** James Ruprai, Director - City Development**Attachments:** 1. Planning Report - S4.15 Assessment (under separate cover) ➡
2. Draft Determination - Refusal ⬇**Description of Development:** Two (2) Lot Torrens Title Subdivision**Owner:** R S & S M Bruderlin**Applicant:** Wallace Bruderlin**Notification Dates:** 13-28 April 2022**No. of Submissions:** One in objection**Purpose / Reason for consideration by Council**

This development application (DA) proposes development intensification on Gumley Lane, Milton, which is contrary to the provisions of Council's 'Development Adjoining Narrow Laneways – Interim Policy'. Given the application is recommended for refusal in the context of an interim policy and uniqueness of the particular lane, the matter is being put to Council for determination.

Recommendation

That Development Application SF10933 for two (2) lot Torrens Title subdivision at Lot 1 DP 781355, 41 Gordon Street, Milton be refused having regard to the reasons contained in Attachment 2 of this report.

Options

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

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.

2. Approve the application.

Implications: Council would need to determine the grounds on which the application is 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.

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Location Map



Figure 1 – Location Map

Background

Proposed Development

The DA seeks approval to subdivide the development site into two residential allotments as follows:

Proposed Lot 11 (506.7sqm)

- Corner allotment with frontage to Gordon Street and Gumley Lane;
- Regularly shaped;
- Direct access to Gordon Street;
- Contains an existing dwelling with attached carport and detached metal shed.

Proposed Lot 12 (506.7sqm)

- Regularly shaped;
- Direct frontage to Gumley Lane;
- Contains existing metal sheds.

It is proposed to impose the following restrictions on the title of proposed Lot 12 to mitigate the impact of the proposed subdivision:

- no dwelling unless a maximum roof area of 250sqm and a minimum of 2000L onsite detention;
- no dwelling unless set back a minimum of 3m from Gumley Lane, and any covered car accommodation being set back a minimum of 5.5m from Gumley Lane.

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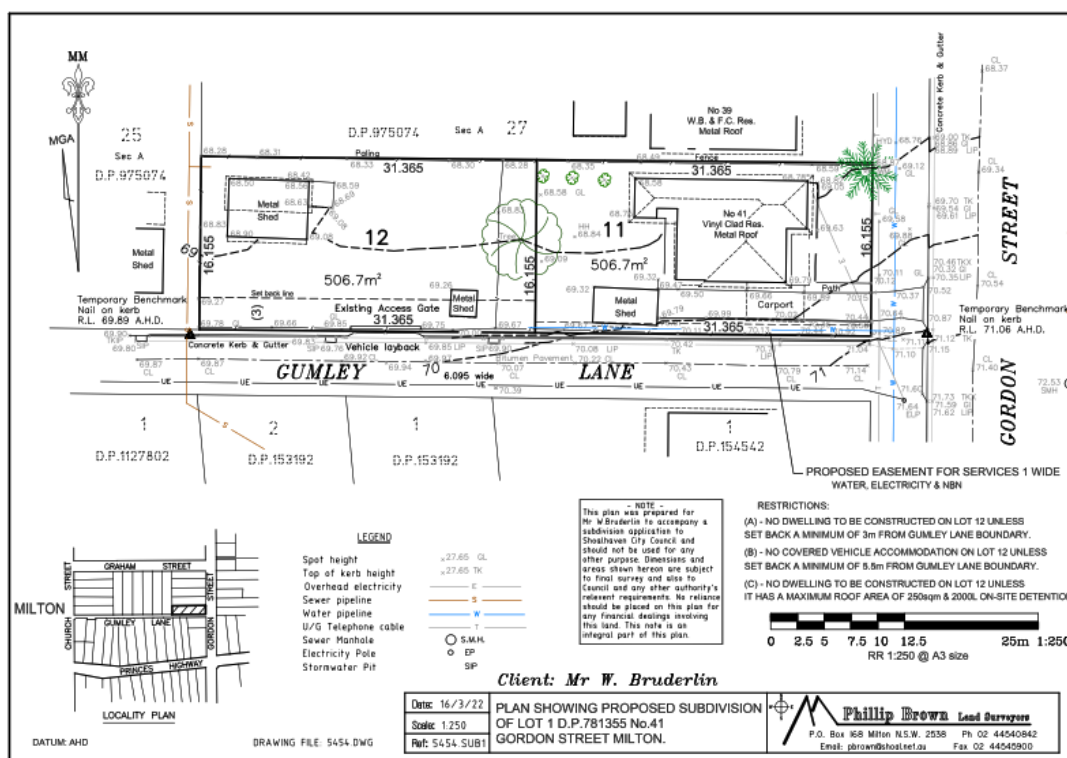


Figure 2 – Subdivision Plan

Subject Land

The development site is Lot 1 DP 781355 (41 Gordon Street, Milton). Refer to Figure 1.

Site & Context

The development site:

- Contains a single storey dwelling and a number of detached metal sheds.
- Is zoned R2 Low Density Residential.
- Has frontage to Gordon Street and Gumley Lane.
- Adjoins land zoned R2 Low Density Residential and SP2 Infrastructure (Health Services Facility) to the southwest).

Application History

- This application was lodged on 30 March 2022.
- As a result of detailed assessment of the application, additional information was requested from the applicant on 20 July 2022 in relation to the inconsistency with Council's 'Development Adjoining Narrow Laneways – Interim Policy'.

The applicant was advised that in light of the inconsistency, Council was not in a position to support the development as proposed, and that an amendment would be required. A copy of the Policy was provided to the applicant for reference.

It was mentioned to the applicant that it may be advisable to withdraw the application given that any redesign, could be a lengthy process.

- No formal response was received from the applicant via the Planning Portal.

However, the applicant has suggested informally - the provision of an easement for waste access through proposed Lot 11 to Gordon Street to allow direct waste access to

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the street from the proposed Lot 12, in order to address the comments raised by Council's Waste Services. This could be in the form of a 1m wide easement for waste access. Waste Services advised: *"Gumley Lane is currently not serviced by a kerbside collection vehicle and there is no kerbside space for waste bin collection near proposed site entry"*.

The applicant has also advised that there was a precedence set in Gumley Lane for dwellings to use the lane for a primary vehicle access, noting Lot 15 DP 1064376 (known as 2 Gumley Lane, Milton) and Lot 91 DP 1286488 (known as 96 Princes Highway, Milton).

No. 2 Gumley Lane was created from SF8492, prior to the adoption of the Interim Policy. No. 4 Gumley Lane (96 Princes Highway) was created from SF10671 and was lodged prior to the Interim Policy. The subdivision of this lot was supported by Council (MIN19.295, 7 May 2019).

Further to this, the applicant noted there is an existing layback to Gumley Lane which provides access to the existing site. The applicant contends that this is an indication that Council has approved access to the site for vehicle access from the lane. Given this, there would be no net increase in potential traffic flow to this driveway access point as it would 'continue' to service one lot.

Issues

Control 6.2 (Access) of SDCP 2014

Council's Development Engineer has raised concern in relation to the provisions of Control 6.2 Access, in relation to access off Gumley Lane for proposed Lot 12, which is prohibited by Council's 'Development Adjoining Narrow Laneways – Interim Policy'.

Performance Criteria P10.3 and Acceptable Solution A10.5 permits access to be provided to a lower order, lower traffic volume road where development has frontage to more than one road, so as to 'protect the integrity and efficiency of the local and main road networks'.

However, as per Council's 'Development Adjoining Narrow Laneways – Interim Policy', laneways are not to be used as primary frontages, except in cases where the laneway is the only legal and practical access.

Additionally, the Policy states that development proposals to increase vehicular access and servicing along narrow laneways that have a road reserve width of less than 10m, are generally not supported. The road reserve width of Gumley Lane is very narrow, approximately 5.6m wide.

There have been approvals for development in the lane, as mentioned earlier, however these effectively predate the policy. Continued intensification of development in the lane, will in the fullness of time, create pressure for improvements and upgrading of the lane.

Planning Assessment

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

Policy Implications

Development Adjoining Narrow Laneways – Interim Policy (POL 22/33)

This Policy was adopted by Council on 6 January 2018 and was intended to *"fill a policy gap in relation to the development of land adjacent to narrow laneways throughout the Shoalhaven"*.

CL23.77

There are no specific controls in the Shoalhaven Development Control Plan 2014 which set parameters for development on laneways.”

The Policy therefore contains provisions to address potential issues arising from increased development in these laneway locations, as there may be adverse impacts on the current use and function of narrow laneways (i.e. servicing and traffic), and the overall character and residential amenity of these areas.

The provisions of this Policy include:

- a. ***Laneways are not to be used as primary frontages, except in cases where the laneway is the only legal and practical access.***
- b. ***Development proposals to increase vehicular access and servicing along narrow laneways that have a road reserve width of less than 10m, are generally not supported. Intensification of lots with rear lane access would need to propose access and servicing from the primary street.***
- c. *Development proposals to increase vehicular access and servicing along laneways that have a road reserve width of 10m or greater may be supported where Council can be satisfied that:*
 - i. *The development results in minimal impact on existing residential amenity and*
 - ii. *Provision of infrastructure, car parking and waste collection is adequate to facilitate the development.*
- d. *Where Area Specific Development Control Plan Chapter exists, it prevails over the interim policy position, to the extent of the inconsistency.*
- e. *That this policy apply until suitable development controls are in place in Shoalhaven DCP 2014.*

As identified in Council's Development Engineer comments, the access arrangement proposed for this development is inconsistent with the Policy and does not support access via Gumley Lane.

As Gumley Lane is under 10m in width, any development proposals to increase vehicular access and servicing along narrow laneways are generally not supported as per b) of the Policy. Intensification of lots with rear lane access would need to propose access and servicing from the primary street.

Council requested the applicant submit amended plans demonstrating compliant access to Gordon Street can be provided, however this was not provided by the applicant.

It is noted that providing compliant access to Gordon Street within the subject site for proposed Lot 12 would result in the size of proposed Lot 11 (which would contain the existing dwelling facing Gordon St) being well under the minimum lot size requirement of SLEP 2014 (being 500sqm) and the size of proposed Lot 12 being under the minimum lot size requirement of Shoalhaven Development Control Plan (SDCP) 2014 for a battle-axe lot (being 650sqm). Any lot under 500 square metres, would have to be supported by a clause (now section) 4.6 written statement and if over 10%, be reported to the Council.

This would also potentially result in numerous non-compliances with the provisions of SDGP 2014 (i.e. private open space, landscaping etc. for a future development depending on the design and siting of a future development). The existing carport and garage would also need to be demolished to allow for the access and car parking required to be offset within proposed Lot 11.

Battle-axe lots

P82	Lots ensure dimensions for the siting and construction of residential development and ancillary outbuildings or facilities.	A81.1	Battle-axe lots to have a minimum lot size of 650m ² , excluding access handle.
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Figure 3 – Extract from Shoalhaven Development Control Plan 2014, Chapter G11, Subdivision of Land, page 41.

Consultation and Community Engagement:

One public submission was received in relation to Council's notification of the development. The notification was made in accordance with Council's Community Consultation Policy during the period 13-28 April 2022.

The issue raised as a result of the notification related to the proposed laneway access and Council's previous resolution covering all laneways in the Shoalhaven, stating that primary access was no longer to be allowed.

As detailed earlier in this report, Council's Development Engineer has raised concern in this regard in relation to access off Gumley Lane for proposed Lot 12, which is prohibited by Council's 'Development Adjoining Narrow Laneways – Interim Policy'.

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 to a review by the applicant in the event of approval or refusal.

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 proposed development is compliant with the provisions of *Shoalhaven Local Environmental Plan (SLEP) 2014* being permissible in the zone and achieving the minimum lot size; however, it is contrary to Council policy.

Whilst Gumley Lane is unique in that it is one-way and already services several properties inclusive of the hospital, Council's 'Development Adjoining Narrow Laneways – Interim Policy' applies to all laneways. If Council is inclined to make an exception, this would need to be detailed in Council's decision to support the development.

The Policy is an adopted Council position, however, in terms of 'planning weight', it does not have the status of an environmental planning instrument or a development control plan.

As such, Council could, if it chooses to do so, vary the policy taking into account the circumstances of the case. If Council is supportive of permitting access to Gumley Lane, it is likely that Council will continue to receive further development requests involving laneways.

CL23.77

However, if the Policy is to be consistently applied across the local government area, the application is not considered capable of support, based on the development not being in the public interest and the site not being suitable for the development as proposed.

Accordingly, a negative conclusion has been reached and recommendation made.

Attachment 2 contains the draft determination notice and the reasons for the refusal.

CL23.77



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
SF10933

TO:

Wal Bruderlin

being the applicant(s) for SF10933 relating to:

41 Gordon St, MILTON - Lot 1 DP 781355

REFUSED USE AND/OR DEVELOPMENT:

Two (2) Lot Torrens Title Subdivision

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:

CL23.77 - Attachment 2

Determination Notice by way of Refusal - Page 2 of 2 - SF10933

REASONS FOR REFUSAL

1. The site is not suitable for the development as proposed given the vehicular access arrangement utilises Gumley Lane (s4.15(1)(c) of the EPA Act).
2. The development is not in the public interest as prohibited by Council's 'Development Adjoining Narrow Laneways – Interim Policy' (s4.15(1)(e) of the EPA Act).

RIGHTS OF REVIEW AND APPEAL

Determination under Environmental Planning and Assessment Act, 1979

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

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

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

GENERAL ADVICE

Privacy Notification

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

SIGNED on behalf of Shoalhaven City Council:

CL23.78 Membership - Shoalhaven Heads Estuary Taskforce (SHET)

HPERM Ref: D23/61870

Department: Environmental Services

Approver: James Ruprai, Director - City Development

Reason for Report

To allow Council to formally appoint the new members for the Shoalhaven Heads Estuary Taskforce (SHET), following the adoption of the SHET Terms of Reference (TOR) by Council on 12 September 2022 and the subsequent completion of the Expression of Interest process (5.00pm Wednesday 8 February 2023).

Recommendation

That Council endorse the appointment of two (2) Community Representatives and one (1) Indigenous Representative, as the new SHET members:

1. Robyn Flack (Community Representative)
2. Jan Turnbull (Community Representative)
3. Natalie Lloyd (Indigenous Representative)

Options

1. That Council appoints the nominated members to the SHET.

Implications: Nil.

2. Provide an alternative recommendation.

Implications: This will lead to delays associated with the replication of the Expression of Interest process for the SHET nominations and thus, the immediate continuation of this Taskforce through not attaining quorum.

Background

The purpose of the SHET is to act as an advisory and representative group on matters relating to the Shoalhaven River, the estuary and entrance at Shoalhaven Heads.

The new SHET Terms of Reference (TOR) was adopted by Council on 12 September 2022 (MIN22.591).

As per the TOR, an Expression of Interest (EOI) process was conducted to enable the appointment of a maximum of five (5) local Community Representatives, one (1) Youth Representative between ages 16 and 30, one (1) Indigenous Representative, one (1) Shoalhaven Heads Community Forum Representative, and one (1) Greenwell Point CCB Representative, that meet the following criteria:

- A broad interest and understanding of floodplain and/or coastal management.
- A commitment to floodplain and/or coastal management in the nominated Council area.

- Local resident or businessperson living or working in or near a coastal and/or flood prone area.

Council completed the initial EOI process in December 2022. There were four (4) applications received for the five (5) vacant Community Representative positions. As such, four (4) applications were accepted and endorsed by Council, and the fifth vacant position was resolved to be filled by another EOI process (MIN22.972).

As such, Council again called for an EOI for a period of 21 days. The EOI closed at 5.00pm Wednesday 8 February 2023. Council received one (1) Community Representative application and one (1) Indigenous Representative application. Council then received a resignation from the SHET member Gerry Groom, which essentially declared another Community Representative position vacant. Council then received an application from a further Community Representative (Jan Turnbull) following this resignation.

Appointments to the SHET will be for a three (3) year term with a set commencement and finish date (to be disestablished through the adoption of the Lower Shoalhaven Coastal Management Program by Council).

If Council appoint the two (2) Community Representatives as new members for the SHET, this will complete the five (5) required community members as per the TOR.

Subsequently, the appointment of one (1) indigenous representative will partially fulfill the following Council Resolution (MIN22.937)

- *That Council as recommended by the Aboriginal Advisory Committee, encourage the appointment of two (2) Indigenous Representatives, male and female, on all Council Advisory Committees.*

External & Community Consultation

Nominations for SHET membership was advertised throughout the community via an EOI process. Vacancies were advertised locally via media and Council communication networks.

Policy Implications

Recommendation is in accordance with the SHET Terms of Reference (TOR) adopted by Council on 12 September 2022.

Risk Implications

Providing an alternative recommendation may lead to delays associated with the replication of the EOI process for the SHET nominations and the immediate continuation of this Taskforce through not attaining quorum.

CL23.79 Requests for Plaques and Memorials

HPERM Ref: D23/33737

Department: Community Planning & Projects
Approver: Jane Lewis, Director - City Lifestyles

Attachments: 1. Memorial Requests - Detailed Information (councillors information folder)
[⇒](#)

Reason for Report

The purpose of this report is to seek Council approval for one (1) plaque to be installed within the Callala Bay public domain, in accordance with Shoalhaven City Council's Plaques and Memorials Policy.

Recommendation

That Council:

1. Approve the request for a new plaque on an existing seat at Wowly Creek, Callala Bay. as per the Plaques and Memorials Policy:
2. Advise the applicant of Council's determination of the request.

Options

1. Adopt the recommendation.

Implications: This is consistent with the adopted Plaques and Memorials Policy and will allow staff to advise the applicant of the outcome of their request.

2. Adopt an alternative recommendation.

Implications: An alternate recommendation may be inconsistent with the Plaques and Memorials Policy.

Background

Council staff have received a request to install a plaque in memory of a person on Council owned and/or managed land. As per the adopted Plaques and Memorials Policy (POL22/57), a Council resolution is required to approve the installation of a plaque or memorial. This report summarises this request received, identifies whether they are for new or existing infrastructure and whether the request is consistent with the adopted Policy.

Consideration of Requests - Plaques and Memorials Policy

Council has received one (1) request for a plaque on an existing seat on Council owned and/or managed land. This is summarised in *Table 1* below. Additional detail of the individual request is provided within Attachment 1.

Table 1 – Summary of Requests for Plaques

	Infrastructure Request	Preferred Location	Consistent With Policy
1	New Plaque on existing seat	Wowly Creek, Monarch Place, Callala Bay	Yes

CL23.79

Policy Implications

The request received has been considered in line with the criteria contained within the adopted Plaques and Memorials Policy.

As per the approval process of the Policy, a Council resolution is required to approve the installation of the plaque or memorial.

The application is consistent with the Plaques and Memorials Policy and is therefore recommended to be supported by Council.

Financial Implications

As per the adopted Plaques and Memorials Policy, the delivery of the request will be funded by the applicant, however Council will be responsible for maintenance and operational costs.

The Asset Custodian for the preferred location of the request has considered the individual request and noted that the maintenance and operation of the new plaque will be managed within existing Operational Budgets.

CL23.80 Acceptance of Grant Funding - Stronger Country Communities Fund Round 5 - Nine Projects

HPERM Ref: D23/25907

Department: Community Planning & Projects
Approver: Jane Lewis, Director - City Lifestyles

Attachments:

1. Letter - Grant Notification - Successful Outcome - Stronger Country Communities Fund Round 5 (councillors information folder) [⇒](#)
2. Letters of Support - Application - Stronger Country Communities Fund Round 5 (councillors information folder) [⇒](#)
3. NSW Stronger Country Communities Fund Round 5 - Successful Applicant List (councillors information folder) [⇒](#)
4. Program Guidelines - NSW Stronger Country Communities Fund Round 5 (councillors information folder) [⇒](#)

Reason for Report

To inform Council of a successful grant funding application under the NSW Stronger Country Communities Fund Round 5 and seek Council acceptance of the grant funding for the following projects:

- Sub-Soil Drainage Installation - Bill Andriske Oval, Mollymook
- Sub-Soil Drainage Installation - Frogs Holla Sporting Complex, Milton
- Floodlight Upgrade – Crookhaven Park, Culburra Beach
- Floodlight Upgrade – Osborne Park, Kangaroo Valley
- Floodlight Upgrade – Lighthouse Oval, Ulladulla
- Playground Replacement – Joe Hyam Reserve, North Nowra
- Playground Replacement – Bawley Point Reserve, Bawley Point
- Playground Replacement – Dolphin Reserve, Currarong
- Playground Replacement – Kioloa Sporting Complex, Kioloa

Recommendation

That Council;

1. Accept the offer of funding for the successful grant application under the NSW Stronger Country Communities Fund Round 5 for:
 - a) Sub-Soil Drainage Installation - Bill Andriske Oval, Mollymook, for \$170,000
 - b) Sub-Soil Drainage Installation - Frogs Holla Sporting Complex, Milton, for \$295,000
 - c) Floodlight Upgrade – Crookhaven Park, Culburra Beach, for \$360,000
 - d) Floodlight Upgrade – Osborne Park, Kangaroo Valley, for \$360,000
 - e) Floodlight Upgrade – Lighthouse Oval, Ulladulla, for \$100,000
 - f) Playground Replacement – Joe Hyam Reserve, North Nowra, for \$318,000
 - g) Playground Replacement – Bawley Point Reserve, Bawley Point, for \$153,000

CL23.80

- h) Playground Replacement – Dolphin Reserve, Currarong, for \$167,200
- i) Playground Replacement – Kioloa Sporting Complex, Kioloa, for \$100,000
- 2. Make arrangements to forward a letter of thanks to the Minister of Regional New South Wales, The Hon. Paul Toole MP.

Options

1. Adopt the recommendation.

Implications: In line with community expectations, this funding will assist in the progression and delivery of several community infrastructure projects including drainage installation, floodlight upgrades, and playground replacement through the Shoalhaven LGA.

2. Council adopts an alternative recommendation.

Implications: Depending on the nature of the alternative recommendation, this may not meet community expectations and, could delay the delivery of projects or result in them not being delivered.

Background

In September 2022, an application under the NSW Stronger Country Communities Fund Round 5 was submitted for the nine (9) following projects:

- Sub-Soil Drainage Installation - Bill Andriske Oval, Mollymook - \$170,000.
- Sub-Soil Drainage Installation - Frogs Holla Sporting Complex, Milton - \$295,000.
- Floodlight Upgrade – Crookhaven Park, Culburra Beach - \$360,000.
- Floodlight Upgrade – Osborne Park, Kangaroo Valley - \$360,000.
- Floodlight Upgrade – Lighthouse Oval, Ulladulla - \$100,000.
- Playground Replacement – Joe Hyam Reserve, North Nowra - \$320,000.
- Playground Replacement – Bawley Point Reserve, Bawley Point - \$170,000.
- Playground Replacement – Dolphin Reserve, Currarong - \$180,000.
- Playground Replacement – Kioloa Sporting Complex, Kioloa - \$100,000.

In December 2022, Council was advised that the nine (9) projects within the application were successful. Six (6) of the projects were granted the full requested amounts while three (3) received the following reduced amounts:

- Playground Replacement – Joe Hyam Reserve, North Nowra, Council requested \$320,000 and received \$318,000.
- Playground Replacement – Bawley Point Reserve, Bawley Point, Council requested \$170,000 and received \$153,000.
- Playground Replacement – Dolphin Reserve, Currarong, Council requested \$180,000 and received \$167,200.

Council is now required to formally accept the grant funding. Details of each project follows:

Sub-Soil Drainage Installation - Bill Andriske Oval, Mollymook

The installation of new sub-surface drainage to the playing field of Bill Andriske Oval, Mollymook, home of the Milton Ulladulla Rugby Leagues Club will build upon the recently

installed irrigation at the facility. The drainage project will improve the turf field surface through improved drainage at the site allowing the facility to improve its resilience and ability to recover from high periods of usage.

Sub-Soil Drainage Installation - Frogs Holla Sporting Complex, Milton

New sub-surface drainage will be installed to the playing field of Frogs Holla Sporting Complex, Milton which has a history of field unavailability in periods of wet weather. The project will improve the turf field surface through improved drainage at the site allowing the facility to improve its resilience and ability to recover from high periods of usage.

Floodlight Upgrade – Crookhaven Park, Culburra beach

Crookhaven Park football fields at Culburra Beach currently do not meet the minimum standards for night games. The grant will provide for upgrades to the existing floodlights at the facility that will increase the lighting capacity to meet the current competition lighting standards, enabling night games to be played under safe conditions.

Floodlight Upgrade – Osborne Park, Kangaroo Valley

The grant will provide for upgrades to the existing floodlights at Osborne Park (Showground), Kangaroo Valley. The project will increase the lighting capacity at the venue to meet emergency services requirements, and the current sporting lighting standards, enabling night sport to be played under safe conditions.

Floodlight Upgrade – Lighthouse Oval, Ulladulla

This project involves upgrades to the existing floodlights at the Lighthouse Oval lower football fields at Ulladulla, home of the Milton Ulladulla Football Club. The project will increase the lighting capacity at the venue to meet the current competition lighting standards, enabling night games to be played under safe conditions. This project extends on the recent floodlight upgrades to the upper field at the facility.

Playground Replacement – Joe Hyam Reserve, North Nowra

The grant will provide for the replacement of the existing local level playground at Joe Hyam Reserve, North Nowra which was last replaced in 2001/2002 financial year. The location is identified in the Community Infrastructure Strategic Plan 2017 to be upgrade to a district level recreation park. The project will be tendered as a demolition, design and construct project, with the design to align with the NSW Government Everyone Can Play guidelines which promote equitable access for all users of the playground.

Playground Replacement – Bawley Point Reserve, Bawley Point

The replacement of the existing local level playground at Bawley Point Reserve, Bawley Point will be provided for with this funding allocation. The project will be tendered as a demolition, design and construct project, with the design to align with the NSW Government Everyone Can Play guidelines which promote equitable access for all users of the playground. This project aims to beautify the existing local recreation space making it a visually attractive space for the community to come together and socialise.

Playground Replacement – Dolphin Reserve, Currarong

The project involves the replacement of the existing local level playground at Dolphin Reserve, Currarong. The project will be tendered as a demolition, design and construct project, with the design to align with the NSW Government Everyone Can Play guidelines which promote equitable access for all users of the playground. This project aims to beautify the existing local recreation space that was last upgraded in 2002/2003 financial year and create a visually attractive space for the community to come together and socialise.

Playground Replacement – Kioloa Sporting Complex, Kioloa

The grant will provide for the replacement of the existing local level playground at Kioloa Sportsground, Kioloa. The project will be tendered as a demolition, design and construct

project, with the design to align with the NSW Government Everyone Can Play guidelines which promote equitable access for all users of the playground. This project will build upon the recreational opportunities at the facility which has recently had upgrades to the tennis court and basketball court surfaces.

Community Engagement

Sub-Soil Drainage Installation - Bill Andriske Oval, Mollymook

A letter of support was provided by the Milton Ulladulla Bulldogs Rugby League Football Club for the grant application identifying that the venue is affected by reduced availability through periods of extended wet weather. The Club looks forward to the delivery of this much needed project.

Sub-Soil Drainage Installation - Frogs Holla Sporting Complex, Milton

A letter of support was provided by the Frogs Holla Management Committee for the grant application identifying that the venue is used by five different sporting groups. It noted that the ground is affected by reduced availability through periods of extended wet weather.

Floodlight Upgrade – Crookhaven Park, Culburra

The user groups at the Touch Football and Football user groups at the venue identified the project, noting the current lighting did not meet the current sporting standards. Letters of support were provided for the grant application by the Culburra Beach Touch Association and the Culburra Cougars Football Club.

Floodlight Upgrade – Osborne Park, Kangaroo Valley

The importance of this project was identified by the Osborne Park Management Committee by highlighting that the floodlights are an essential part of Kangaroo Valley's safety with helicopters requiring to land at night in response to emergencies in the area. The upgrades to the existing floodlights at Osborne Park will increase the lighting capacity at the venue to meet the needs of the community to support sport, the Agricultural Show and emergency services. The Management Committee provided a letter of support for the grant application.

Floodlight Upgrade – Lighthouse Oval, Ulladulla

The project was identified by the Milton Ulladulla Football Club who highlighted the inadequate floodlighting at the venue, and the need for the project to allow them to safely run extended twilight/evening fixtures and training sessions. A letter of support was provided by the Club to accompany the grant application.

Playground Replacement – Joe Hyam Reserve, North Nowra

The project was identified by the community with representations made to Council by local Councillors with Council staff meeting the community to discuss. Council has conducted a community survey for the project seeking the preferred play items for the project. A letter of support was provided by Gareth Ward MP, Member for Kiama, to accompany the grant application.

Playground Replacement – Bawley Point Reserve, Bawley Point

The project was identified by the community with Council staff meeting the community onsite to discuss. Council has conducted a community survey for the project seeking the preferred play items for the project. A letter of support was provided by The Bawley Point, Kioloa and Termeil Community Association to accompany the grant application.

Playground Replacement – Dolphin Reserve Currarong

The project was identified by the community with representations made to Council by local Councillors with Council staff meeting the community onsite to discuss. Council has conducted a community survey for the project seeking the preferred play items for the

project. A letter of support was provided by The Hon. Shelly Hancock MP, Member for South Coast, to accompany the grant application.

Playground Replacement – Kioloa Sporting Complex

The project was identified by the community with a project proposal presented to Council. Council staff have had ongoing communications with the community to discuss. A letter of support was provided by The Bawley Point, Kioloa and Termeil Community Association to accompany the grant application.

Financial Implications

Each of these projects were fully costed prior to the submission of the grant applications with sufficient funding being requested and granted to all projects to enable their delivery by 28 June 2024.

The three (3) projects that received a reduced funding allocation will be reduced in scope to meet the funding provided. This reduced scope will still deliver the intended outcomes of the projects.

CL23.81 Acceptance of Grant Funding - NSW Office of Sport - Female Friendly Community Sport Facilities and Lighting Upgrades Grant Program 2022/23

HPERM Ref: D23/52585

Department: Community Planning & Projects
Approver: Jane Lewis, Director - City Lifestyles

Attachments: 1. Grant Notification Letter - South Nowra Soccer Field Floodlights (councillors information folder) [⇒](#)

Reason for Report

To inform Council of a successful grant funding application under the NSW Office of Sport – Female Friendly Community Sport Facilities and Lighting Upgrades Grant Program 2022/23 and seek Council acceptance of the funding for the South Nowra Football Fields – Floodlighting Upgrades

Recommendation

That Council;

1. Accept the offer of funding for the successful grant application under the NSW Office of Sport – Female Friendly Community Sport Facilities and Lighting Upgrades Grant Program 2022/23 for the South Nowra Football Fields – Floodlighting Upgrades in the amount of \$339,075.
2. Make arrangements to forward a letter of thanks to the Minister for Sport, The Hon. Alister Henskens MP.

Options

1. Adopt the recommendation.

Implications: In line with community expectations, this funding will assist in the progression and delivery of:

- South Nowra Football Fields – Floodlighting Upgrades

2. Council adopts an alternative recommendation.

Implications: Depending on the nature of the alternative recommendation, this may not meet community expectations and, could delay the delivery of the project or result in it not being delivered.

Background

In November 2022, a grant application was submitted by Community Planning and Projects requesting \$339,075 in funding under the NSW Office of Sport – Female Friendly Community Sport Facilities and Lighting Upgrades Grant Program 2022/23 for floodlighting upgrades at the South Nowra football fields.

CL23.81

In February 2023, Council was advised that the application for the floodlighting upgrades to the South Nowra Football fields had been successful with a grant of \$339,075 offered.

The project will provide for the replacement of the existing floodlighting to fields 4 and 5 at the facility. The current floodlighting does not meet the current sporting code standards which will be addressed by the project, resulting in an increased number of fields available for both night training and games.

Council is now required to execute a funding deed with the NSW Office of Sport to allow the project to progress and commence.

Community Engagement

The project was identified by the Shoalhaven District Football Association who assisted in the development of the grant application. The Association identified that the lighting infrastructure for the fields was a constraint on further community participation in sport.

Consultation for this project has occurred with the local female football club, South East Phoenix FC Inc, who strongly support the project as the fields are used for training and games for the Girls Talent Support Program, run by Football NSW as well as girls summer and winter football competitions.

Council has engaged with Football NSW, who identified that the project links directly to their infrastructure strategy. Football NSW supports the facility upgrades as this project will maximise participation, increase the capacity at South Nowra Playing Fields, provide a safe and suitable venue for all participants and meet the current and future demands within Shoalhaven District Football Association, and field tenants such as Southern Phoenix SAP, juniors and women's teams.

Letters of support were provided for the grant application by Football NSW, South East Phoenix FC Inc, and Shoalhaven District Football Association.

Financial Implications

The scoped total cost of the project is estimated at \$452,550 with a requested grant amount of \$339,075. Council has committed a co-contribution of \$113,475 towards the project which will be funded from 106215 – Swim Sport & Fitness Northern – Minor Improvements Program.

The project was fully costed prior to the submission of the grant application with sufficient funding being requested and offered, and Council co-contribution available to enable the successful delivery of the project.

CL23.81

CL23.82 Notice of Motion - Shared User Path on the South Side of the Shoalhaven River Under the Three TfNSW Bridges

HPERM Ref: D23/72899

Submitted by: Cllr Evan Christen

Purpose / Summary

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

Recommendation

That Council:

1. Requests that Transport for NSW (TfNSW) plan, design and construct a high-quality Shared User Path (SUP) for the full width of the south side of three TfNSW bridges and adjacent connections as part of the third bridge construction works.
2. Urgently writes to NSW Transport Minister, Shadow Transport Minister and Members for South Coast and Kiama, seeking to ensure TfNSW provides this SUP in a timely manner and before finalising the total third bridge works.

Background

The new bridge over the Shoalhaven river has unfortunately not been designed with an adequately upgraded shared user path (SUP) under the bridge to encourage active transport within the riverfront precinct. This is despite there being a path previously under the first two bridges that needed improving.

This will be a major problem and threat to the viability of the desired redevelopment of the riverfront precinct that is to be on both sides of the bridge, and public enjoyment of the Shoalhaven river foreshore. The construction of a considerably upgraded SUP at this point would be a minor expense compared to the bridge construction and would be a major benefit to the area.

CL23.82

CL23.83 Notice of Motion - Crime Spree in the Nowra CBD

HPERM Ref: D23/83980

Submitted by: Cllr Paul Ell
Cllr Serena Copley

Purpose / Summary

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

Recommendation

That Council:

1. Records its urgent concern about the spate of vandalism of vehicles occurring in Council carparks in and around the Nowra CBD.
2. Notes that Council has been advised that none of our carparks currently have any CCTV camera coverage which has made it difficult for the police to catch the culprits.
3. Notes Council received a report and briefing from Community Connections and the NSW Police in August last year about the development of the Community Safety Plan.
4. Directs the CEO request an update from local police on their investigation of the recent uptick incidents, what steps they are taking and how Council can support their efforts.
5. Reaffirms the motion carried in June last year to investigate options for the installation of CCTV cameras and other measures to protect people and property in the Nowra CBD.
6. Directs the CEO in light of additional and escalating vandalism to review options available to Council to expedite the installation CCTV cameras as requested in point 4 of the original motion.
7. In the interim, directs the CEO to urgently investigate and report back on immediate steps Council can take including the possibility of Council employing a security guard on a 3-month contract to patrol the carparks in and around the Nowra CBD.

Background

Councillors would be aware of the myriad of reports of almost daily incidents of vandalism of motor vehicles parked in our Council owned carparks in and around the Nowra CBD. This vandalism typically involves every single panel of a car being scratched (maximising the cost of repair) and has recently escalated to include tyres being slashed.

There is clearly a crime spree occurring and many of our CBD workers and business owners are being impacted.

CBD business owners involved in the CBD committee are calling for action and we once again seek Council's support to get CCTV cameras in place in our carparks.

CL23.83

On 6 June 2022 Council carried the following resolution:

RESOLVED (Clr Ell / Clr Copley)

MIN22.392

That Council:

- 1. Acknowledges ongoing community concern surrounding safety in car parks and also other areas of Nowra/Bomaderry*
- 2. Researches crime statistics, and seeks input of NSW Police, in order to create an evidence base of the location, frequency and severity of crime in the Nowra/Bomaderry area to fully inform any future Council investment in mitigation and crime prevention measures*
- 3. Directs the CEO to investigate and audit the coverage of CCTV cameras and lighting in Council owned car parks in and around the Nowra CBD and prepare a report for Councillors outlining the findings of the audit.*
- 4. Directs the CEO to include in his report recommendations for any additional security infrastructure or other measures needed to improve community safety particularly in the Council owned car parks servicing the Nowra CBD.*
- 5. Instructs the CEO to include information about potential funding options open to Council from the state and federal governments to achieve the objectives outlined in point 4.*
- 6. Instructs the CEO to write to Superintendent Greg Moore from the NSW Police as part of preparing the report inviting him to share any suggestions or provide any other comments regarding this matter.*

Following this motion, Councillors received a briefing from staff and local police in July about this issue. However, the report resented back to Council in August in response to the the 6 June resolution has not resulted in any implementation of CCTV cameras in council car parks to date. .

The Federal Government has previously provided grant funding for CCTV cameras but unfortunately there doesn't appear to be any funding programs open at this time. However, we need to consider other funding options we have (including within our own budget) and be ready with a plan to apply for funds when the next opportunity arises.

Finally, we also want Council to investigate other short term options including the possibility of contracting a security guard to patrol the Nowra CBD carparks for a period of say 3 months to see if this helps reduce the instance of vandalism occurring.

We ask for the support of Councillors to help address this issue of enormous concern to residents who are concerned about working or even visiting the Nowra CBD while this disgraceful behaviour is occurring.

CL23.83

CL23.84 Notice of Motion - Support Shoalhaven residents by minimizing the disruptive aspects of short term rental accommodation (STRA) to neighbouring dwellings

HPERM Ref: D23/84043

Submitted by: Cllr Tonia Gray
Cllr Amanda Findley

Purpose / Summary

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

Recommendation

That Council:

1. Develops a specific policy to be drafted by staff, for the purpose of ensuring the amenity impacts of Short Term Rental Accommodation (STRA) are better managed. The development of the policy should include an investigation of:
 - i. Managing the negative aspects of STRA on neighbours by, for example, making it easier for Shoalhaven residents and visitors to report negative aspects of STRA, including building a Council system (or similar) where residents/visitors can lodge complaints and that links to the relevant complaint pages of different organisations.
 - ii. Managing impacts on bush fire safety.
 - iii. Making it possible to collect and analyse complaint data to provide a clearer picture of the type and severity of issues.
 - iv. A Council approach to STRA that are associated with regular complaints, with regard to compliance action and/or reporting to appropriate organisations.
 - v. How Council can check premises against NSW Fair Trading register for compliance and check against Code of Conduct and STRA Fire Safety Standard.
 - vi. How to ensure that fire safety rules are complied with and checking against STRA Fire Safety Standards.
 - vii. Any other powers of Council under existing policy and legislation that can be used in this regard.
 - viii. Other approaches in Australia and overseas that may be relevant.
2. Seek a further report be provided by staff when the draft policy is developed, with further recommendations to Council.

Background

Councillors across all three wards of the Shoalhaven receive complaints from full-time residents about the loss of amenity and liveability from nearby houses and units/apartments listed as STRA. Whilst there is an awareness of the NSW Fair Trading

CL23.84

Code of Conduct for the short-term rental accommodation industry, this does little to assist with disruption due to noise levels, cars blocking driveways/roads, reduced resident parking, overflowing dustbins, uncontrolled dogs, urination & defecation in public areas etc. emanating from the numerous non-hosted STRA in the region. Organisations may not be as proactive or responsive if called for by members of the community and so it becomes up to neighbouring residents to make complaints to these authorities.

NSW Fair Trading says on its website “NSW Fair Trading is currently experiencing a high volume of complaints. You may experience some delays if you lodge a complaint during this time. Urgent matters will be prioritised.” This indicates the likely level of response. A complaint requires 5 pages of details including the name of the person who the complaint is against. It is not easy to know the name of the property owner /manager. This is a generic form used for other property complaints. This is much too difficult in the example of a simple noise complaint.

Residents report that responsible authorities and organisations, as well as Estate Agents, are not always responsive to neighbours’ complaints.

Residents in the Shoalhaven repeatedly raise concerns over the Regulation of Short-Term Rental Accommodation within Residential Areas. Their main issues centre around **Point 2.5.2 of the Code of Conduct lists the obligations to nearby neighbours.**

Obligations to neighbours

2.5.2 A guest must not at any time during the occupancy period:

- (a) create noise that because of its level, nature, character, or quality, or the time it is made, is likely to harm, offend, or unreasonably disrupt or interfere with the peace and comfort of neighbours and other occupants of the premises

The ongoing problem in the Berry area as an example:

To this end, Berry residents have met several times with myself to submit information and complaints which has now become necessary to escalate further.

Residents reports issues such as:

- Being exposed to continued excessive noise, parties and large events that have been permitted at STRAs.
- Being exposed to large numbers of cars, people shouting, extensive parties including hen’s parties, women’s retreat events, weddings and boys weekends etc.
- Being exposed to the induced anxiety and stress in anticipation of each weekend event has become extremely unbearable for all surrounding neighbours to continue a normal lifestyle from Thursday or Friday afternoon (sometimes around 3pm to at least Sunday lunchtime or Monday).
- During the Christmas holidays, some houses are rented almost on an ongoing basis, often to unruly occupants plus invited party guests on most weekdays that includes little relief or peace for the neighbour/s.
- Owners being slow to answer calls or messages of complaint when there is excessive noise, which can result in the police being called on numerous occasions. Owners can become aggressive/defensive and hard to communicate with.
- While neighbours are often not adverse to short term rentals of low capacity the issue can be the excessive high capacity numbers of guest people in large homes and the noise they generate every weekend. As such, larger residential homes in the Shoalhaven must not be allowed to become Party Motels and Event Function Centres.

Note by the CEO

The development of any policy will need to consider and be consistent with the NSW Government existing legislative system that covers STRA.

CL23.84

CL23.85 Notice of Motion - Existing Fire Shed at Cunjurong Point

HPERM Ref: D23/84119

Submitted by: Cllr Patricia White

Purpose / Summary

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

Recommendation

That Council:

1. Notes that the existing Rural Fire Station (RFS) at Cunjurong Point is to be replaced with a new station at Bendalong.
2. Investigate the repurposing of the existing RFS station for the purposes of a Men's Shed for the local communities of Bendalong, Manyana and Cunjurong Point and to undertake community consultation as part of the investigation.
3. Receive a further a final report following the investigations for consideration.

Background

Currently men from Bendalong, Manyana and Cunjurong Point travel to either Ulladulla or Sussex Inlet for Men's Shed activities.

I have received a request from a group of men who have expressed and would value a local Men's Shed in the local villages. The community are aware that Council and the RFS are relocating the existing shed from Cunjurong Point to a site near Council's Sewer Treatment Plant on Bendalong Road.

I seek the support of all Councillors for the investigations and report back to Council.

CL23.85

CL23.86 Notice of Motion - Tomerong Traffic Plan and Pathway Network

HPERM Ref: D23/84250

Submitted by: Cllr Patricia White
Cllr Paul Ell

Attachments: 1. Construction Traffic Management Plan for the Jervis Bay Road Upgrade & its potential effects on Tomerong Village [↓](#)
2. Pathway Network [↓](#)(under separate cover)

Purpose / Summary

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

Recommendation

That Council:

1. Accept and review the attached Traffic Plan Report and Pathway Network Plans from Tomerong Community Forum for safety and infrastructure changes in the Tomerong Village.
2. Engage with Transport NSW on the reports/plans and options available for:-
 - a. Funding opportunities for safety and infrastructure improvements.
 - b. Timeframes for stages and completion of reports and plans.
 - c. Other potential safety improvements in and around the village of Tomerong.
3. Investigate other funding opportunities available for improved safety and infrastructure in the Tomerong Village.
4. Undertake traffic counts on Hawken Road (Island Point Road & Pine Forest Road) and Pine Forest Road.
5. Attend a meeting with the Tomerong Forum to discuss the Reports/Plans.
6. Write to SEATS seeking their support for the plans/reports and the Tomerong Community.
7. Staff provide a report back to Council following actions 1 to 6.

Background

Tomerong Community Forum has made representations to Councillors on behalf of residents on the potential effects on the Tomerong Village and pathway network on the increased traffic flow through Tomerong as a result of Transport NSW current projects to:

- Upgrade the Jervis Bay Rd inter-section.
- Duplicate the Princes Highway from Jervis Bay Rd to south of Hawken Rd and
- Upgrade the Hawken Road intersection.

Residents are very concerned that the speed limit on Jervis Bay Road is likely to be lowered in the coming period of time as construction commences. In combination, the effects of all

these interventions will undoubtedly increase the traffic flow through Tomerong either as a result of avoidance by motorists of these traffic upgrades or through providing more efficient routes for motorists to arrive at their destination by using these enhanced intersections and thus travelling through the village. Regular increase in traffic occurs now as holiday makers and residents travel via Pine Forest Road to the highway to avoid Jervis Bay Road.

The community and residents are calling on Councillors support for the two reports attached (Construction Traffic Management Plan and Tomerong Pathway Network).

The plans seek TfNSW and Council to address the expected increased traffic flows on local roads and through Tomerong itself. The community have identified several mitigation measures that should be addressed. It is not meant to be a comprehensive list of measures but is meant to identify the minimum number of issues faced by the community.

We seek all Councillors to support the recommendation.

**Construction Traffic Management Plan for the Jervis Bay Road Upgrade,
Princes Highway duplication and Hawken Rd intersection upgrade and the
potential effects on Tomerong village and residents**

INTRODUCTION

Purpose

This is an outline of a plan that the Tomerong Community Forum on behalf of local residents seeks to have written by TfNSW to address the expected increased traffic flows on local roads and through Tomerong itself. We have identified several mitigation measures that should be addressed in this report. This is not meant to be a comprehensive list of measures but is meant to identify the minimum number of issues we would like addressed.

Context

Tomerong village will be impacted by several Transport for NSW (TfNSW) projects over the coming years. Initially these impacts are likely due to increased traffic flow because of the upgrade to the Jervis Bay Road Intersection. Subsequently, impacts will come from the duplication of the Princes Highway between Jervis Bay Road and to the south of Hawken Road and thirdly, due to the upgrade of the intersection at Hawken Road. We understand that the speed limit on Jervis Bay Road is soon to be reduced and we expect this will also place additional traffic through Tomerong village.

The Tomerong Community Forum on behalf of local residents' requests that Transport for NSW develop a Construction Traffic Management Plan (this plan) for the Jervis Bay Road Upgrade, Princes Highway Duplication and Hawken Road upgrade and its potential effects on Tomerong village. This request is also being sent to Shoalhaven City Council with the aim to seek a Notice of Motion by Council for them to approach TfNSW on behalf of Tomerong Residents in support of this proposal. This proposal is also being sent to state and federal politicians and candidates in the upcoming NSW election seeking their support.

Often trucks and delivery vehicles are required to park along the road daily to service residences. These vehicle movements are likely to create traffic chaos with the inevitable increase in traffic flow through Tomerong village as vehicles divert away from the construction area. This situation will be unsafe by leading to increased risk of vehicle crash and personal injury. The added benefit of these proposed mitigation measures will be an improvement in the collective mental health of Tomerong residents and improved safety for all concerned.

Background, Purpose and Objectives of the projects and need for a comprehensive Construction Traffic Management Plan

This section is to be addressed by TfNSW identify the need for the projects and local impacts and the cumulative effects of the projects.

ONGOING CONSULTATION DURING CONSTRUCTION

How will local residents of Tomerong be kept apprised of the progress of these three projects?

EXISTING ROAD INFRASTRUCTURE AND CONSTRUCTION INTERFACE

Existing road network

Currently, most Bay and Basin traffic flows through the Jervis Bay Road intersection, but during construction of the intersection it is expected that there will be increases in traffic volumes that will flow through Tomerong. This will also be an issue for the other two projects. How will this be managed?

Existing Traffic conditions

What are the current traffic volumes through Tomerong? Traffic monitoring stations need to be established on the three roads leading into Tomerong to establish the current (early 2023) background traffic flows. This should be done before the speed limit is reduced on Jervis Bay Rd.

Road Dilapidation Surveys

The local road network is of a very basic nature. There is no kerb and guttering and no footpaths for pedestrians. Children ride or walk along the road verges to get to school and other activities. The road verges are poorly maintained. There is currently no pedestrian and cycling network. This provides a significant safety risk with the increased traffic flows.

Road Closures and public areas impacted

What are these

Additional local road upgrades and repairs necessary for the projects to proceed

What is required? (see our mitigation measures)

CONSTRUCTION TRAFFIC IMPACTS

What are the likely traffic Impacts.

What are the construction routes

What are the hours of work

What is the current and projected local road use

What are the haulage routes and will these effect Tomerong residents

Will pedestrian and cyclist access be improved – how and when?

What will be the impacts on Tomerong residents including property access and parking

What is the likely cumulative construction traffic impacts from these three projects be on Tomerong residents?

SITE CONDITIONS

An overview of the Traffic conditions for the life of these three projects and their likely impacts on Tomerong residents including:

- Traffic Control Devices
- Temporary Sign Posting
- Project Information Signs
- Variable Message Signs
- Flashing Arrow Signs
- Radar Activated Speed Signs
- Lighting towers.
- Traffic diversion measures
- Shared Roads Policy

- *Accidents and Emergencies*

KEY PROJECT STAKEHOLDERS (Tomerong Residents)

Communication methods, What?

Consultation with Key Stakeholders, How and when?

Mitigation Measures to be included in this report

Purpose

This is an outline of the mitigation measures that the residents of Tomerong would like TfNSW to address in this report due to the expected increase in traffic flows from the various Princes Hwy upgrades.

Mitigation Measures to be included in this report (in no particular order)

1. Traffic monitoring stations need to be established on the three roads leading into Tomerong to establish the current (early 2023) background traffic flows.
2. Kerb and gutter Hawken Road within the village
3. Kerb and gutter Pine Forest Road from Navel College Road to Tomerong.
4. Improve signage within this precinct to deal with additional traffic flows, especially speed signs and local directional signage
5. Undertake all possible methods to discourage additional traffic from passing through Tomerong village during the construction of Jervis Bay Rd intersection, Princes highway duplication and Hawken Rd intersection.
6. Install pedestrian crossing and lights in Tomerong
7. Provide a crosswalk near Tomerong Creek
8. Provide a footpath and cycleway to connect Pine Forest Rd at Tomerong to Naval College Road
9. Provide a footpath along Hawken Road from the Princes Highway to the 80km sign on the southern side of Tomerong.
10. Widen the bridge on Pine Forest Rd on the approach to Tomerong village to allow the safe passage of pedestrians and cyclist (particularly for school children).
11. Prevent all TfNSW construction trucks associated with these Princes Hwy upgrades from entering Tomerong village
12. Provide trunk mains sewerage connection to Tomerong before these road works are undertaken, as typically these mains would be placed along the road network. Regardless of the location of the mains sewer easement, a main sewer connection is imperative prior to road works beginning in earnest. The fact that a septic pump out truck is required to park along the road daily to service residences, will create traffic chaos with the inevitable increase in traffic flow through Tomerong village as vehicles divert away from the construction area. This situation will be unsafe by leading to increased risk of vehicle crash and personal injury. The added benefit of a mains sewer connection will be an improvement in the collective mental health of Tomerong residents, as operating a seep-away or full pump out septic system within the confines of a semi-/residential locale is stressful and costly. The environment will

also benefit by the capture and controlled disposal of black and grey water that may otherwise be absorbed into the ground and find its way into water ways.

LOCAL GOVERNMENT ACT 1993

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.