

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

Addendum Agenda

Mayoral Minute

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MM23.8 Mayoral Minute - Rezoning Pathways Program.....1

MM23.8 Mayoral Minute - Rezoning Pathways Program

HPERM Ref: D23/88767

Recommendation

That Council write to the NSW Department of Planning and Environment (the Department), advising the following:

1. Shoalhaven City Council staff will not be signing confidentiality agreements in respect to potential Planning Proposal applications submitted to the Council for early review by the Department, via the Rezoning Pathways Programs and that this resolution will also be provided to LGNSW, in support of its own campaign against this ill-conceived program.
2. Request the Department instead applies its considerable power and pressure to assist the state agency blockages that are being experienced for some of the existing Shoalhaven Planning Proposals e.g. Moss Vale Road Urban Release Areas.
3. Advise that Shoalhaven City Council is vehemently opposed to the Rezoning Pathways Programs as it intends to bypass community input into serious planning applications that deserve the ultimate scrutiny by community and council.

Details

The Rezoning Pathways Programs was one of the initiatives announced by the NSW Government as part of the 2022 Housing Package. In late 2022 the NSW Department of Planning & Environment (the Department) invited proponents to apply for sites to be considered under the Pilot Process for the State Assessed Planning Proposal Pathway (the Program).

To be eligible, a project needed to be:

- Not subject to an active PP in the system.
- formally lodged in 2 months of being accepted.
- A minimum of 300 residential dwellings in Regional NSW.
- Compliant with relevant planning legislation, policies and Ministerial Planning Directions.

Applications closed on 22 January 2023. More information on the Program is available [here](#).

On 20 January 2023, Council received the further advice from the Department regarding the Program, which noted that any relevant applications would be sent to Councils between 30 Jan and 10 Feb for review. Shoalhaven City Council did not receive any notifications in this period. Subsequently, Council was verbally advised that 4 expressions of interest had been submitted for the Shoalhaven LGA and these may be referred for review if accepted.

On 7 February 2023, Council wrote to the Department, expressing concerns around the probity requirements, specifically the need for Council staff to sign confidentiality agreements before they could review the documents associated with any PP that is referred for comment.

The letter specifically noted:

Depending on the limiting nature of any confidentiality requirements this could cause a range of concerns and difficulties for Council and any Council staff that may be involved. This may in fact end up being unworkable as Council seeks to also manage the expectations of our

community and Councillors. To maintain community confidence in any process of this nature it is essential that it is managed in an open and transparent manner.

No formal response has been received as yet.

LGNSW has significant concerns and has consistently raised these with the Department, specifically in regard to taking this process away from Councils and on 10 February 2023, LGNSW advised Planning Managers as follows:

We believe these confidentiality agreements are highly inappropriate. As such, we've conveyed to the Department that we'll be advising councils not to acquiesce to their staff signing these agreements.

Just wanted to let you know that we're having detailed conversations with the Department about these requirements being imposed on councils and we'll keep you posted if and when there are any updates.

More recently, LGNSW has said it considers the Program to be an outrageous overreach and probably unlawful. It has said it has received representations from a number of members and have encouraged Councils to be very cautious before entering into any confidentiality agreements which prevent council officers from reporting strategic planning matters to their elected Councils.

Indeed, it has advised that as a lay opinion only, a general manager may be in breach of their contract of employment (pursuant to s335 of the Local Government Act) to withhold strategic information from the elected council, which could, in a worst case scenario, expose the general manager to a summary dismissal.

It has said it will continue to pursue this matter with the Department and will voice its concerns to the new Minister, when elected. It is encouraging Councils to do same and to bring their concerns to their local communities as they see fit.

On 24 Feb 2023, Council sought an update from Department staff Council had not heard anything and had not received any Planning Proposals to review at that time in any event. Council was then verbally advised that the program has been placed on hold at this time. Further, on 24 Feb 2023, the Department issued a media release 'Statement on the Program, that attempted to clarify the involvement of Councils and the associated probity requirements.

I am aware other Councils, and their Mayors are concerned about this program for obvious reasons and while at this time, we may have one application of this nature in the Shoalhaven, we do not know where it might be and for exactly what. We are also unsure when it may be referred to Council staff for early review. My concerns include the confidentiality agreement requirements, the bypassing of Councils and the communities they represent and whether any proposal is expected to be consistent with existing land use strategy.

I call on my colleagues to support this Mayoral Minute.