

Ordinary Meeting

Meeting Date: Tuesday, 09 September, 2025

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

Time: 5.30pm

Membership (Quorum – 7)

Clr Patricia White – Mayor

Ward 1

Clr Jason Cox

Clr Matthew Norris - Assist. Deput Mayor

Clr Peter Wilkins - Deputy Mayor

Clr Selena Clancy

Ward 2

Clr Ben Krikstolaitis

Clr Bob Proudfoot

Clr Jemma Tribe

Clr Luciano Casmiri

Ward 3

Clr Denise Kemp

Clr Gillian Boyd

Clr Karlee Dunn

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.

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<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

Walawaani (welcome),

Shoalhaven City Council recognises the First Peoples of the Shoalhaven and their ongoing connection to culture and country. We acknowledge Aboriginal people as the Traditional Owners, Custodians and Lore Keepers of the world's oldest living culture and pay respects to their Elders past, present and emerging.

Walawaani njindiwan (safe journey to you all)

Disclaimer: Shoalhaven City Council acknowledges and understands there are many diverse languages spoken within the Shoalhaven and many different opinions.

2. Moment of Silence and Reflection

3. Australian National Anthem	
4. Apologies / Leave of Absence	
5. Confirmation of Minutes	
• Ordinary Meeting - 26 August 2025	
6. Declaration of Interests	
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15. Confidential Reports

Mayoral Minute

CMM25.2	Mayoral Minute - Chief Executive Officer Recruitment Process & Outcome <i>Local Government Act - Section 10A(2)(a) - Personnel matters concerning particular individuals (other than Councillors).</i> <i>There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to contrary to the guidelines for the appointment of Senior Staff and may give rise to contractual issues.</i>
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Reports

CCL25.25	Acquisition of Land for Road Widening - Part Lot 1 DP 576975, 9 Worrigea Road, Worrigea <i>Local Government Act - Section 10A(2)(c) - Information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.</i> <i>Local Government Act - Section 10A(2)(d)(iii) - Information that would, if disclosed, reveal a trade secret.</i> <i>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.</i>
CCL25.26	Acquisition of Land for Road Widening - Part Lot 1 DP 228057, Croobyar Road, Croobyar <i>Local Government Act - Section 10A(2)(c) - Information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.</i> <i>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.</i>

MM25.20 Mayoral Minute - Chief Executive Officer Recruitment

HPERM Ref: D25/345669

Recommendation

That in accordance with Section 10A(2)(a) and (d)(i) of the Local Government Act the Council resolve to consider a separate confidential Mayoral Minute on the recruitment of a Chief Executive Officer by reason of the:

- (a) personnel matters concerning particular individuals (other than Councillors), and*
- (d) commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it.*

Details

With the resignation of the Chief Executive Officer, Robyn Stevens, the Council has appointed a Sub-Committee to oversee the process for recruiting a new Chief Executive Officer. The Sub-Committee was tasked with the evaluation of the applications received and to select a short list of candidates for interview, to interview the candidates and to recommend a preferred candidate for the Council to appoint.

This process has been undertaken, and the results will be considered in a separate confidential report which is provided in accordance with Section 10A(2)(a) and (d)(i) of the Local Government Act, 1993.

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CL25.279 Rescission Motion - CL25.270 Position on Unplanned Residential Development - Rural Area Adjoining Berry

HPERM Ref: D25/381779

Submitted by: Clr Denise Kemp
 Clr Luciano Casmiri
 Clr Bob Proudfoot

Purpose / Summary

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

Recommendation

That Council rescind the Motion relating to Item CL25.270 Position on Unplanned Residential Development - Rural Area Adjoining Berry of the Council Meeting held on Monday 26 August 2025.

Background

The following resolution was adopted at the Ordinary Meeting held 26 August 2025 (MIN25.418).

That Council

1. *Receive this report for information.*
2. *Reaffirm Council's current policy position set by the Shoalhaven Local Strategic Planning Statement to "retain and manage existing rural land, avoiding the rezoning of such land for other uses including rural-residential and residential outcomes, unless identified in a relevant strategy."*

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CL25.280 Notice of Motion - CL25.270 Position on Unplanned Residential Development - Rural Area Adjoining Berry

HPERM Ref: D25/381835

Submitted by: Cllr Denise Kemp
Cllr Luciano Casmiri
Cllr Bob Proudfoot

Purpose / Summary

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

Recommendation

That Council conduct a workshop (which includes landowner representation and input) by 15 October 2025, with the objective of:

1. Determining Potential Development Constraints and clarify staff concerns stated in the report CL25.270 in reference to traffic, bushfire, flooding, contamination, and scenic character are constraints that are required to be considered as part of the assessment of a Planning Proposal pursuant to the LEP plan making guidelines and Minister's directions and concept subdivision layout as part of the environmental planning and assessment act considerations. As part of any planning proposal and further DA, the following would need to address and respond to:
 - a. Servicing - Feasible extensions from adjoining serviced estates.
 - a. Traffic - Dual access, TIA to test intersections/upgrades.
 - b. Bushfire - On-site APZs, compliant BAL ratings, dual access.
 - c. Flooding - No development in flood affected land.
 - d. Contamination - PSI to confirm suitability, no high-risk history.
 - e. Scenic Character - retention of ridgelines, buffers and vegetation.
2. To review and understand the impacts of the staff recommendation has considered residential development across the Shoalhaven with the ability for Shoalhaven to meet required housing in the period to June 2029, as part State Government requirements of the New Land Use Planning Scheme.

Note by the CEO

This Notice of Motion will be dealt with if the preceding Rescission Motion is carried.

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CL25.281 Notice of Motion - Cost Shifting Onto Local Government

HPERM Ref: D25/384757

Submitted by: Cllr Jason Cox

Purpose / Summary

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

Recommendation

That

1. Council note the findings of the LGNSW Cost Shifting report for the 2023/2024 financial year; and
2. A copy of the cost shifting report be placed on Council's website so that our communities can access it; and
3. Council writes to the Premier, the NSW Treasurer and the NSW Minister for Local Government seeking that they urgently address these costs through a combination of regulatory reform and appropriate funding.

Background

Councillors,

The pressure on councils to maintain services of appropriate standard that meet the needs of our communities has reached unprecedented levels.

The unrelenting growth of cost shifting to councils, coupled with rate pegging and insufficient state and federal funding, is increasingly eroding the possibility of financially sustainable local government and risking the capacity of councils to deliver the essential infrastructure and services required by their communities.

The latest research commissioned by Local Government NSW (LGNSW) shows that the increase in cost shifting has continued unabated by various State and Federal Government policies.

The cost shifting report, produced by independent consultants Morrison Low for the 2023/2024 financial year, reveals that \$1.5 billion of expense has been imposed on councils. This is an increase of approximately \$140 million (10 per cent) since the last report for the 2021/22 financial year, when the total cost shift was estimated at \$1.36 billion.

On average, this also now represents an inflated cost of \$497.40 for each ratepayer, an increase of \$36.72 from 2021/22. It is unfair to our communities that such a large portion of their rates are being diverted away from local priorities.

(The full report is available online at www.lgnsw.org.au/costshifting)

With councils having to fund this ongoing subsidy primarily for the State Government each and every year, it means our communities get less or go without. They go without safer roads. They go without parks. And they go without important community services that only

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councils provide, while their communities are effectively paying hidden taxes to other levels of government.

Councillors, our communities deserve better. The decades-long practice of cost shifting is continuing to undermine the financial sustainability of the local government sector. This must stop. The November 2024 report of the parliamentary inquiry into the ability of councils to fund infrastructure and services called for the NSW Government to identify opportunities to reduce cost shifting to local government. This call must be heard and acted upon.

It is essential to councils and communities that the NSW Government urgently seek to address cost shifting through a combination of regulatory reform and appropriate funding.

As a result, I move the following:

1. That Council note the findings of the LGNSW Cost Shifting report for the 2023/2024 financial year; and
2. That a copy be placed on Council's website so that our communities can access it; and
3. That Council write to the Premier, the NSW Treasurer and the NSW Minister for Local Government seeking that they urgently seek to address cost shifting through a combination of regulatory reform and appropriate funding.

Note by the CEO

Recommendations can be implemented within existing Council resources.

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CL25.282 Notice of Motion - Disability Inclusion Action Plan - Employees With a Disability

HPERM Ref: D25/384668

Submitted by: Cllr Bob Proudfoot

Purpose / Summary

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

Recommendation

That Council Staff prepare a report on the following:

1. The number of people with a disability who are currently employed by Shoalhaven City Council, across permanent, temporary and casual positions together with a statement of their respective roles.
2. An assessment as to what extent Council's Disability Inclusion Action Plan (D.I.A.P) is meeting set targets.
3. The strategies that Council is using to attract and retain employees with a disability, including how well and how frequently we are engaging with local disability organisations.
4. The identification of opportunities to work with disability enterprises, such as Flagstaff, in order to deliver better outcomes regarding disability awareness and workplace support programmes.
5. Funding opportunities that may present themselves through government agencies and the private sector.

Background

The NSW Disability Inclusion Act, 2014, requires all Councils to prepare a DIAP in order to promote access and inclusion. Employment of people with a disability is a key part of the obligation.

Shoalhaven City Council, as a very large employer in the region, plays an important leadership role in demonstrating just how workplaces can be inclusive and welcoming for people with a disability. I believe that some work has been done in reviewing our DIAP.

Recent research shows that people with a disability continue to face barriers to employment, with staff turnover being far too high when compared to the norm. Partnering with local disability groups and social enterprises can be a practical way strengthen recruitment, reform workplace culture and maximise employee retention.

Effectively, this notice of motion seeks to build upon previous advancements that have been made, whilst aiming to both increase visibility on how Council is meeting its DIAP commitments as well as measuring what progress has been made in employing and retaining people with a disability.

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CL25.283 Staff Benchmarking and Organisation Chart

HPERM Ref: D25/378903

Approver: Brian Barrett, CEO

Attachments: 1. Organisation Chart will be distributed as an addendum

Purpose:

At its meeting on 26 August 2025 (Item 25.258) Council resolved as follows:

“As Councils are required to perform workplace planning and to be able to align our human resources with our financial and strategic goals. Can the A/CEO provide a report with benchmark levels or comparable information for councils of a similar size to the Shoalhaven LGA for the purposes of being more accurate in considering and developing our future staff, succession, strategic and financial planning needs. An organisational chart that shows departments, titles and staff numbers that is non identifying for public information. Is additional information available to be included from the OLG all in the public interest please.”

This report responds to that resolution.

Summary and Key Points for Consideration:

A focus on Full Time Equivalent (FTE) staffing alone will not deliver confidence that Council is delivering the right services at the right levels in an efficient and sustainable manner.

Council’s implementation of the Integrated Planning & Reporting framework does not currently offer the community or Councillors visibility of the services delivered, service levels, service delivery methods, revenue generation capacity or costs. This is the vehicle Council should be relying upon to determine the suite of services it wishes to offer to the community going forward and the service level at which each is offered. It will also allow Council to benchmark services to ensure the community is getting value for money and ensure Council’s long term financial sustainability.

Recommendation

That Council:

1. Receives and notes the report;
2. Requests changes to its Delivery Program and Operational Plan that deliver greater transparency to the Shoalhaven community on services, service levels, service delivery methods, revenue generation capacity and costs by 1 July 2026.

Options

1. Receives and notes the report and requests changes to Council’s Delivery Program and Operational Plan

Implications: Council will rely on a strengthened Delivery Program and Operational Plan as well as the service review component of the Financial Sustainability project to determine the suite of services it will offer to the community going forward and the service level at which each is offered. This will enable Council services to be benchmarked against best practice to ensure the community is receiving value for money. It will also assist Council to determine what level of fees to apply to services that

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optimises Council's revenue but ensures services are financially accessible to those most in need of them.

Most importantly, it will ensure Council's adopted plans across all areas of its activities are fully costed, fully funded and capable of being delivered in the timeframes proposed.

2. Seek further information

Implications: Councillors will have unresolved questions answered.

Background and Supplementary information

Staff Benchmarking

Since it was first alerted to the organisation's financial difficulties Council has placed significant focus on the organisation structure and the full-time equivalent (FTE) staffing level. That is an understandable concern as salaries comprise 45% of Council's cash costs and staff levels are often viewed as indicators of the level of organisational efficiency.

Benchmarking is also a way of identifying whether Council's operations are efficient in relative terms to other equivalent councils in NSW.

Councils in NSW are categorised or grouped based on their relative size and whether they are metropolitan, rural or a regional town/city. Council is a Category 5 Council along with other equivalent regional towns/cities.

The Group 5 councils in NSW are Coffs Harbour, Lake Macquarie, Maitland, Mid-Coast, Newcastle, Port Macquarie-Hastings, Port Stephens, Shellharbour, Tweed and Wollongong.

Of those councils, if we were to try to draw comparisons on staffing levels, we would need to include only councils that offered a Water and Sewer service to their residents as the staffing levels of others would understandably be lower.

That leaves Coffs Harbour, Mid-Coast, Port Macquarie-Hastings and Tweed Councils.

Table 1 benchmarks full-time equivalent (FTE) staffing across those councils and includes information on geographic spread and population.

Table 1 (Source: Office of Local Government Comparative Data 2023/24)

Council	Area	Population	Pop/km2	Full Time Equivalent Staff	Population / Equivalent Full Time Staff
Coffs Harbour	1,173.7	80,480	69.2	547	147.1
Mid-Coast	10,053.9	97,911	9.8	903	108.4
Port Macquarie-Hastings	3,682.4	89,598	24.7	669	133.9
Shoalhaven	4,567.2	109,888	24.3	1,100	99.9
Tweed	1,307.8	98,963	76.3	733	135.0

At a macro level, it would appear that based on FTE alone, Shoalhaven Council has a relatively larger workforce than comparable NSW councils.

Service Levels

Each council offers some unique services to their community. That can extend to in-house animal shelters, crematoria or the possibility perhaps of a Shoalhaven Materials Recycling

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Facility. When operated by council staff, those differences reflect in full time equivalent staff numbers.

Even where councils offer similar services, the number of services/facilities offered, the hours of operation of facilities and the service level at which each is maintained varies considerably. It is the combination of services offered and service levels that determines the number of jobs required to deliver those services.

The following are relevant in considering comparative information between councils and is provided for illustrative purposes only:

Table 2 – Source: Phone survey of Category 5 councils

Activity	Shoalhaven City Council	Coffs Harbour	Mid-Coast	Port Macquarie-Hastings	Tweed
Aquatic & Leisure Facilities operated	13	6	5	6	3
Sporting Fields maintained	88	16	35	20	32
Parks & Reserves maintained	588	NA	14	70	62
Showgrounds	4	1	2	0	1
Tourist Parks operated	12	4	0	0	7
Active Cemeteries	7	5	24	10	5
Public Toilets	133	56	NA	NA	NA
Waste Transfer Stations	10	4	7	5	1
Libraries	5 + 2 mobile	5	11	3 + 1 mobile	12 + 1 mobile
Galleries	1	2	1	1	2
Visitor Centres	2	1	2	1	2
Coastline (kms)	165	51	192	84	37

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Geographic spread

The physical size of councils vary considerably. Shoalhaven Council organises itself around northern, central and southern service regions. It duplicates Depots in order to ensure staff can efficiently access the parts of the community they serve.

Geography can also influence the level of difficulty in accessing areas to deliver services.

In-house vs Outsourced delivery

In addition to the types of services offered, councils can choose different delivery models. Some lean politically toward using in-house staff for the majority of services. Others use an outsourced model relying on a minimal level of in-house staff to essentially contract manage service delivery.

Shoalhaven Council has traditionally used its own staff to deliver day to day services and only relied on contractors for large, specialised capital works including buildings and civil

infrastructure and for domestic waste collection services (excluding transfer stations which are operated by Council staff).

Capital Works

That in-house service delivery approach can extend to the delivery of capital works. Councils can choose to undertake capital works using internal staff, using contractors or using a hybrid model.

Shoalhaven has a large internal workforce delivering its capital works program and uses contractors only for large, specialised work. Almost \$11m in staff salaries are spent annually on capital projects.

Disaster Recovery

Council has 7 positions currently dedicated to disaster recovery projects that are largely capital in nature and fully funded from grants. It is uncertain how many existed in June 2024 but these would have formed part of the FTE at that time.

Summary

The combination of each of the above factors illustrates how poor FTE at a council level is as a measure of relative efficiency across councils without properly considering services provided.

Council could provide the same suite of services and reduce its FTE by seeking to purchase those services from the private sector for a cheaper price. It is arguable whether that would result in a better service offering particularly given the wealth of experience council staff bring to their roles. The loss of local jobs may also have a negative impact on the local economy.

Where companies are not Shoalhaven-based external provision would also see Council funds boosting economic activity in other Local Government Areas.

Council could reduce its FTE by undertaking all its capital works using contractors and only maintaining a limited in-house project management capacity. For specialist areas like Water and Sewer, the depth of experience staff bring to executing an efficient capital works program would suggest this approach is unlikely to deliver a better quality service. Obviously, major one-off treatment plant replacements are likely to be outsourced.

Council could reduce FTE immediately by ceasing to provide the rich suite of services it currently offers. That is unlikely to be supported by the community.

Council would be better served focussing its attention on its Delivery Program and Operational Plan which currently offers limited visibility of the many services Council does offer. This would enable Council to review the level at which those services are offered in consultation with the community, the cost of those services relative to other councils, the revenue generation capacity of the service and the appropriate pricing point (if a charge is made at all) to enable that service to be accessed by the community.

Organisation Chart

Section 332 of the Local Government Act 1993 provides as follows:

(1) A council must, after consulting the general manager, determine the resources to be allocated towards the employment of staff.

(1A) The general manager must, after consulting the council, determine the positions within the organisation structure of the council.

(1B) The positions within the organisation structure of the council are to be determined so as to give effect to the priorities set out in the strategic plans (including the community strategic plan) and delivery program of the council.

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When Council adopted its 2025/26 budget it allocated \$128.025m toward employee benefits and on-costs in accordance with s332(1). These amounts are fully reflected in the original budget for 2025/26.

That budget funded the following:

Permanent Positions -	1119.56
Temporary Positions -	25.93
Trainees/Cadets -	6
TOTAL	1151.49

As noted at the Extraordinary Council Meeting on 19 June 2025 (Item CL25.209) Council included savings amounting to \$7m in its 2025/26 budget as outlined in the Sustainable Financial Futures Plan.

Some of those savings related to jobs that existed but were not funded. They formed part of a savings pool. As vacant jobs occurred at Council, decisions were taken on whether to proceed with recruitment or whether to transfer the vacant position to the pool and release a higher priority job from the pool and recruit to it.

Inevitably, while this process was occurring the formally approved establishment was not a reliable indicator of the organisation structure Council could afford to fill in the long term. It is unsurprising that the full-time equivalent (FTE) staffing level reported fluctuated over that period.

When staff choose to leave council and vacate their jobs there is always a lag before a new person is recruited. While some jobs may be filled internally in the short term, inevitably Council carries a range of vacant jobs at any one time. Council's adopted 2025/26 budget is predicated on a job vacancy rate of 5% at any one time. That will always mean the number of staff paid by Council will be smaller than its budgeted FTE level.

The Chief Executive Officer (general manager), after consulting with Council, must determine the positions within the organisation structure. Traditionally, the Chief Executive Officer would seek Council confirmation that the Directorate/Sectional structure was adequate to deliver on Council's priorities in its strategic plans including the Community Strategic Plan.

It is not Council's role to determine positions within the structure.

The Chief Executive Officer has recently approved a revised organisation structure for Council, and **this is the subject of consultation with relevant unions and staff.**

This streamlines the leadership structure by reducing the number of Manager roles across Council. It re-aligns responsibilities with a view to better delivering Council's strategic aims. It will reduce the overall full-time equivalent (FTE) jobs to a sustainable level and dis-establishes (abolishes) all jobs that are no longer needed while creating a number of additional jobs that will be required.

The structure adopted will be distributed under separate cover. It provides details of the number of jobs dedicated to delivering on Council's strategic aims.

Strategic Planning

If Councillors want to have greater visibility of the services Council offers, the service levels at which they are offered and the resources needed to deliver those services, they can simply require that information to be included in the Delivery Program and Operational Plan.

It would appear that successive Councils of the Shoalhaven and successive administrations have included the bare minimum on services offered to the public and indicators of success. That was not the intention of the Integrated Planning and Reporting Framework when it was introduced in 2009.

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One convenient outcome of not planning is it bestows upon Council the ability to pursue capital projects that have never been rigorously tested for their need or their need relative to other strategic priorities. Planning also provides insights into, not only the capital costs of projects, but the operational costs of maintaining assets created. Visibility of the latter can sometimes show a compelling idea has no long-term merit in the context of the overall community's capacity to fund its ongoing costs.

While many external factors have impacted on Council's current financial sustainability, if Council does not improve its strategic planning capacity its long-term financial sustainability will never be assured.

Internal Consultations

The report has been prepared with input from all Directorates.

External Consultations

This was not required as the report is internal in nature.

Community Consultations

This was not required as the report covers existing service offerings only.

Policy and Statutory Implications

The report highlights deficiencies in the way in which Council has chosen to implement the Integrated Planning & Reporting framework. It forecasts changes needed to better comply with Council's statutory obligations.

Financial Implications

There are no direct financial implications. A methodical approach to documenting services offered, service levels required, and service delivery models will have the potential to deliver improved financial outcomes to Council from both improved revenue generation options and savings from expenditure reductions.

Risk Implications

The report highlights deficiencies in the Integrated Planning & Reporting framework which need to be addressed. Failure to do so presents reputational risks to Council and is likely to result in further deterioration in its financial sustainability.

CL25.284 Report Back - Review - Inclusion of Submission - Previous Council Report - Expenses and Facilities Policy - CL25.164

HPERM Ref: D25/386505

Department: Business Assurance & Risk
Approver: Brian Barrett, CEO

Purpose:

To provide the Council the findings of the investigation into the inclusion of a petition as a submission in the previous report to Council “*CL25.164 Councillor Expenses and Facilities Policy – Adoption*” in accordance with the resolution of the Council at the Meeting held on 10 June 2025.

Summary and Key Points for Consideration:

At the Council Meeting held on 25 February 2025, Council considered a report outlining the Draft Councillor Expenses and Facility Policy and resolved (MIN25.81) inter alia to exhibit the Draft Policy in accordance with the requirements of Section 253 of the Local Government Act and receive a report on any submissions received during the exhibition period.

The policy was placed on public exhibition for the period between 5 March and 2 April 2025.

One (1) submission was received during the submission process from a member of the public which had a petition attached.

A report was presented to the Council Meeting on 27 May 2025 which included details of the submission, and reference to attached information provided by the submitter which included a list of names which were referred to as a petition. The attachment was dealt with under separate Cover for the information of Councillors and was not published on the Council website due to the personal information it contained.

On 10 June 2025 a recission motion on this matter was carried, and the Council resolved (MIN25.279):

“That Council:

- 1. In accordance with Section 252 of the Local Government Act 1993, adopt the draft Councillor Expenses and Facilities Policy (Formerly known as “Council Members – Payment of Expenses and Provision of Facilities Policy”) as publicly exhibited and attached. (Attachment 1) to commence from 1 July 2025.*
- 2. Not accept the petition included in the report CL25.164 provided to the 27 May 2025 Ordinary Meeting - and the CEO investigate the inclusion of that petition, and the CEO provide a report back on the investigation.”*

An administrative review of the actions of staff who drafted the report has identified the following findings:

1. That Council is required under Section 253(1) of the Local Government Act (LGA) to publicly advertise any amendments proposed to its policy which governs the payment of expenses and provision of facilities to Councillors.
2. The Council resolution of 25 February 2025 (MIN25.81) reiterated the requirement under Section 253(2) for the Council to receive a report back on ‘*any submission*’ received for consideration before adopting the policy.

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3. Council received a submission on 31 March 2025 via the Council's Documents on Exhibition Page from one (1) member of the public which outlined that an electronic petition had been conducted and provided the statement of the petition and a spreadsheet of the personal details of persons which it advised had agreed with the petition.
4. The information presented in the Council Report of 27 May 2025 provided an overview of the content of the submission, with personal information removed from publication in accordance with the Council's Privacy Management Plan.
5. The actions of staff in including the submission (and referencing the petition) in the Council report were in accordance with the Local Government Act, and policy requirements of the Council.
6. There was no reason identified that would warrant staff excluding the submission which was received as part of the formal consultation process from the Council report, either on the basis that it contained information which was referred to as 'a petition' or for any other reason.
7. The Council was provided the information and was free to consider the information in the context of determining the content of the adopted policy. It is noted that ultimately the Council resolved to not accept the petition which was contained in the report.

On the basis of the administrative review a formal investigation was not required.

Recommendation

That the report be received for information.

Options

1. As recommended
Implications: No further action is required.
2. An alternative resolution
Implications: unknown.

Background and Supplementary information

At the Council Meeting held on 25 February 2025, Council considered a report outlining the Draft Councillor Expenses and Facility Policy and resolved (MIN25.81):

"That Council:

1. *In accordance with Section 253 of the Local Government Act 1993, publicly exhibit the attached draft Councillor Expenses and Facilities Policy (Formerly known as "Council Members – Payment of Expenses and Provision of Facilities Policy").*
2. *Receive a report on any submissions received during the exhibition period. Should no adverse submissions be received the amended Policy be adopted at the close of the submission period.*
3. *Rescind the Council's existing Anzac Day Services - Wreath Laying Ceremonies Policy (POL22/100) noting the provisions with respect to provision of wreaths have been incorporated into the proposed draft Councillor Expenses and Facilities Policy."*

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Section 253 of the Local Government Act (LGA) states the following:

“253 Requirements before policy concerning expenses and facilities can be adopted or amended

(1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.

(2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.

(3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.

(5) A council must comply with this section when proposing to adopt a policy in accordance with [section 252\(1\)](#) even if the council proposes to adopt a policy that is the same as its existing policy.”

In accordance with the legislative requirements and the above Council resolution, submissions from the public were called via Council’s ‘Documents on Exhibition web page for the prescribed period of 28 days being from Wednesday 5 March 2025 to Wednesday 2 April 2025 (inclusive).

One (1) formal submission was received by the Council on 31 March 2025 at 11.46am from a member of the Community via the council consultation webpage. The submission stated the following:

“I attach a petition, that should be taken as INDIVIDUAL feedback on the policy. I verify that I ran the petition and that signatories have signed on to the following position. To: Shoalhaven City Council

We, the undersigned residents of Shoalhaven, express our concern over the excessive councillor expenses outlined in the Council’s draft policy. It has come to our attention that Shoalhaven’s councillor expenses are three times higher than the average of comparable councils, with the Mayor claiming approximately \$30,000 annually in travel allowances since 2012.

[a website link was provided]

We acknowledge the importance of supporting our elected officials in carrying out their duties effectively. However, we believe there is a fair and cost-effective solution to reduce excessive travel claims—providing the Mayor with a Council-owned vehicle for official duties.

By supplying a dedicated vehicle, Shoalhaven Council can significantly reduce the Mayor’s personal vehicle travel claims, ensuring greater transparency and responsible use of ratepayer funds. This approach is already standard practice in many councils and would bring Shoalhaven in line with cost-effective governance standards.

We, the residents and ratepayers of Shoalhaven, urge the Council to:

- 1. Review the current travel allowance structure and ensure it aligns with best practices.*
- 2. Allocate a Council-owned vehicle to the Mayor for official duties to reduce excessive claims.*
- 3. Improve transparency and accountability in councillor expense reporting.*

We seek your commitment to financial responsibility and fairness in Council spending.

You can confirm the veracity of the petition by emailing the signatories.”

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A spreadsheet file was attached to the submission outlining data listing 176 lines of data, which included date, email address, First Name, Last Name, Address and Email address confirmation fields. Given the personal information included in the attachment to the submission, it was not published in the public agenda of the Council in accordance with Councils requirements under the Privacy Management Plan.

At the Ordinary Meeting of 27 May 2025 Council was provided a report with respect to the outcomes of the Public Exhibition process for consideration (Report CL25.164 - Councillor Expenses and Facilities Policy - for Adoption). Included in that report was the information outlined above with respect to the submission.

On 27 May 2025 the Council resolved as follows (MIN25.256):

“That Council in accordance with Section 252 of the Local Government Act 1993, adopt the draft Councillor Expenses and Facilities Policy (Formerly known as “Council Members – Payment of Expenses and Provision of Facilities Policy”) as publicly exhibited and attached. (Attachment 1) to commence from 1 July 2025, with the following amendment:

- 1. That ‘Meetings with ratepayers and residents’ be removed from official business definitions under section 19 of the Policy.”*

On 10 June 2025, Council considered and carried a rescission motion (MIN25.278) on the previous resolutions of the Council Meeting of 27 May 2025 with respect to the policy and resolved the following with respect to the matter (MIN.25.279):

“That Council:

- 1. In accordance with Section 252 of the Local Government Act 1993, adopt the draft Councillor Expenses and Facilities Policy (Formerly known as “Council Members – Payment of Expenses and Provision of Facilities Policy”) as publicly exhibited and attached. (Attachment 1) to commence from 1 July 2025.*
- 2. Not accept the petition included in the report CL25.164 provided to the 27 May 2025 Ordinary Meeting - and the CEO investigate the inclusion of that petition and the CEO provide a report back on the investigation. “*

At the Ordinary Meeting of 27 May 2025 Council was provided a report ([CL25.164](#)) with respect to a Draft Councillor Expenses and Facilities Policy for consideration.

Included in that report, was the information outlined above with respect to the submission.

Review

In response to the resolution of Council a preliminary review of documentation was undertaken prior to any formal investigation. The findings of the review are provided in the summary of this report. As the review did not identify any failure to follow legislative or policy requirements, further investigation was considered unwarranted.

Any such investigation would be required to meet the provisions outlined in the Local Government Award and be dealt with in confidence and affording procedural fairness and natural justice to staff.

No further action is recommended.

Internal Consultations

Relevant persons within the organisation were requested to provide information for the review arising from the Council resolution.

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External Consultations

No external consultation has occurred in relation to the drafting of this report.

Community Consultations

No external consultation has occurred with respect to the drafting of this report.

Policy and Statutory Implications

Relevant policy and legislative provisions with respect to the Conduct of Council Officials in providing information to the elected Council as outlined in this report can be found in the Code of Conduct, Local Government Act and related policy documents.

The Local Government Act at Section 253 outlines the requirement to provide the Council with information relating to submissions received in a process relating to the adopted or amendment of a policy relating to provision of Expenses and Facilities for Councillors. The Local Government Act, nor any Council policy, outlines a format or any criteria that can be appropriately applied to exclude relevant submissions.

The Code of Conduct includes provisions requiring council staff to follow statutory requirements (3.1b) and ensure that their work is carried out ethically (3.19 (c) and 7.5(b)) and *“provide full and timely information to Councillors and administrators sufficient to enable them to exercise their official functions and in accordance with Council procedures.”*

Council does not have a formal policy which specifically outlines the requirements of staff to deal with submissions in response to public consultation on draft policies. Any such policy would need to reflect the legislative and policy provisions above.

Financial Implications

None

Risk Implications

A failure of staff to provide Councillors with relevant information with respect to matters being considered by the Council creates a risk of uninformed decision making and could result in legislative non-compliance, risks of corruption and inappropriate influence, and reputation damage.

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CL25.285 2024/25 Draft Financial Statements

HPERM Ref: D25/366572

Department: Finance

Approver: Katie Buckman, Director - City Performance

Attachments:

1. General Purpose Financial Statements - Statement by Councillors and Management [↓](#)
2. Special Purpose Financial Statements - Statement by Councillors and Management [↓](#)

Purpose:

This report advises that the Draft Financial Statements for the year ended 30 June 2025 have been prepared and are ready for Council to:

- Refer them for audit in accordance with Section 413(1) of the *Local Government Act 1993*.
- Endorse the preparation of the “Statement by Councillors and Management” in accordance with Section 413(2)(c) of the *Local Government Act 1993*,
- Fix a date for the presentation of the Audit Report to Council and give public notice of the date in accordance with Section 418(1)(a) and (1)(b) of the *Local Government Act 1993*.

Summary and Key Points for Consideration:

- The Audit Office of NSW will commence their audit in September 2025
- Once the audit has been completed the Financial Statements will be reported back to Council for formal adoption.

Recommendation

That:

1. Council refer the Draft Financial Statements for the year ended 30 June 2025 for audit in accordance with Section 413(1) of the *Local Government Act 1993*.
2. The Mayor and Deputy Mayor be authorised to sign the “Statement by Councillors and Management” pursuant to Section 413(2)(c) of the *Local Government Act 1993*, with the Chief Executive Officer and the Responsible Accounting Officer.
3. Council fixes the date of 25 November 2025 for the audited Financial Statements, together with the auditor’s reports, to be presented to the public in accordance with Section 418(1)(a) and (1)(b) of the *Local Government Act 1993*.

Options

1. Adopt the recommendation

Implications: Council will proceed in submitting the Financial Statements for the year ended 30 June 2025 to the Audit Office of NSW for audit.

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2. Make an alternative resolution

Implications: Council will not meet the statutory timeframes for the submission of the Financial Statements for the year ended 30 June 2025.

Background and Supplementary information

Council's Draft Financial Statements for the year ended 30 June 2025 have been prepared and are ready for audit. In accordance with Section 413(2) of the *Local Government Act 1993*, Council's Financial Statements include:

- General Purpose Financial Statements
- Special Purpose Financial Statements
- Special Schedules

The Statement by Councillors and Management must be made in accordance with a resolution of Council. The Statement to be signed for the General Purpose Financial Statements is **Attachment 1**. The Statement to be signed for the Special Purpose Financial Statements is **Attachment 2**.

The Financial Statements, together with the auditor's reports, will be presented to the public at the Ordinary Council meeting on 25 November 2025. Public notice of this meeting will be placed on Council's website.

Internal Consultations

Nil

External Consultations

The Office of Local Government

Audit Office of NSW

Community Consultations

Public notice of the auditor's presentation will be advertised on Council's website.

In accordance with Section 420(1) of the *Local Government Act 1993*, any person may make submissions to Council with respect to the Financial Statements or the auditor's reports. Submissions must be lodged within 7 days after the date on which the Financial Statements are presented to the public.

Policy and Statutory Implications

Nil

Financial Implications

Nil

Risk Implications

This report ensures Council complies with the Local Government Act 1993 regarding the preparation and auditing of its financial statements.

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Shoalhaven City Council

General Purpose Financial Statements

for the year ended 30 June 2025

Statement by Councillors and Management

Statement by Councillors and Management made pursuant to Section 413 (2c) of the *Local Government Act 1993*

The attached general purpose financial statements have been prepared in accordance with:

- the *Local Government Act 1993* and the regulations made thereunder,
- the Australian Accounting Standards issued by the Australian Accounting Standards Board
- the Local Government Code of Accounting Practice and Financial Reporting.

To the best of our knowledge and belief, these statements:

- present fairly the Council's operating result and financial position for the year
- accord with Council's accounting and other records.

We are not aware of any matter that would render these statements false or misleading in any way.

Signed in accordance with a resolution of Council made on 09 September 2025.

Patricia White
Mayor
09 September 2025

Peter Wilkins
Deputy Mayor
09 September 2025

Brian Barrett
Chief Executive Officer (Acting)
09 September 2025

Mathew Badcock
Responsible Accounting Officer
09 September 2025

Shoalhaven City Council

Special Purpose Financial Statements for the year ended 30 June 2025

Statement by Councillors and Management

Statement by Councillors and Management made pursuant to the Local Government Code of Accounting Practice and Financial Reporting

The attached special purpose financial statements have been prepared in accordance with:

- NSW Government Policy Statement, *Application of National Competition Policy to Local Government*
- Division of Local Government Guidelines, *Pricing and Costing for Council Businesses: A Guide to Competitive Neutrality*
- The Local Government Code of Accounting Practice and Financial Reporting
- Sections 3 and 4 of the NSW Department of Climate Change, Energy, the Environment and Water's (DCCEEW) *Regulatory and assurance framework for local water utilities*, July 2022.

To the best of our knowledge and belief, these statements:

- present fairly the operating result and financial position for each of Council's declared business activities for the year,
- accord with Council's accounting and other records; and
- present overhead reallocation charges to the water and sewerage businesses as fair and reasonable.

We are not aware of any matter that would render these statements false or misleading in any way.

Signed in accordance with a resolution of Council made on 09 September 2025.

Patricia White
Mayor
09 September 2025

Peter Wilkins
Deputy Mayor
09 September 2025

Brian Barrett
Chief Executive Officer (Acting)
09 September 2025

Mathew Badcock
Responsible Accounting Officer
09 September 2025

CL25.286 History of Investigations - Sanctuary Point Shopping Centre - Rear Area and Laneway

HPERM Ref: D25/82363

Department: Certification & Compliance

Approver: Kevin Norwood, Acting Director - City Services

Purpose

The Purpose of this report is to report on the history of investigations of the area and laneway at the rear of the Sanctuary Point Shopping Centre, Paradise Beach Road in accordance with [MIN25.5](#).

That Council directs the CEO to prepare a report which details the history of investigations of the area and laneway at the rear of the Sanctuary Point shopping centre, Paradise Beach Road. In particular the report will focus on the following:

- 1. Previous resolutions of Council designed at working with shopkeepers in order to tidy up the overall appearance of the location.*
- 2. The most recent survey which clearly defines the common boundary of the laneway and the rear of the shops.*
- 3. Any identified health or safety issues with the location of large garbage disposal bins.*
- 4. The availability of government funding which could be used to provide an aesthetically pleasing facelift of the location, which can best be described as neglected.*

Summary and Key Points for Consideration

- Several resolutions of Council have been made seeking to improve understanding of the area behind the Sanctuary Point Shopping Centre with an aim to improve its visual amenity.
- A survey of the area has identified that the bins impacting the visual amenity are located on Council land. This has been confirmed via site inspections.
- Council has had varying degrees of engagement with Shop Owners, Property Managers and other community members to improve the visual amenity at this location however, this has not resulted in any improvements as identified by follow up site inspections
- Limited Government funding opportunities have been identified to address the concerns predominantly due to the assumed required works being on private property, however, there are compliance avenues that could be utilised that would shift funding requirements to the shop owners.
- At the date of this report, the area behind the shops continues to yield a poor visual amenity however, there are limited associated health and safety impacts.

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Recommendation

1. That Council write to the relevant shop owners, requiring them to:
 - a. Cease using Francis Ryan Reserve for the storage of commercial waste.
 - b. Confine all waste storage activities to within their own premises.
 - c. Install fencing or screening to provide both visual and physical separation between their waste storage areas and Francis Ryan Reserve. Council assists relevant shop owners to seek appropriate grant funding.
2. Council officers make inspections within 3 months of the initial correspondence to confirm the requested items have been completed. Should there be unaddressed items, Council issue orders to the relevant shop owners under Section 124 of the Local Government Act 1993.

Options

1. Resolve as recommended.

Implications:

- The costs and works required to comply with the proposed orders would be the responsibility of the shop owners, which is likely to result in resistance.
- The visual amenity of the area is expected to improve, aligning with the community-developed Master Plan for the shopping precinct.

2. That Council issue orders to the relevant shop owners as outlined in Option 1 and provide a 50% contribution towards the cost of a standard dividing fence, estimated at a total of \$7,200.

Implications:

- There are currently no available funds to support a Council contribution. As a result, the proposed works may be delayed until funding becomes available.
- Delaying the works and contributing to the costs may help reduce resistance from shop owners associated with a compliance order.
- The visual amenity of the area is expected to improve, aligning with the community-developed Master Plan for the shopping precinct, however the realisation of this improvement will be delayed due to funding restrictions.

3. Request further information.

Implications: The details will need to be provided for staff to ratify. The delivery of reports impact on Council resourcing and budgets.

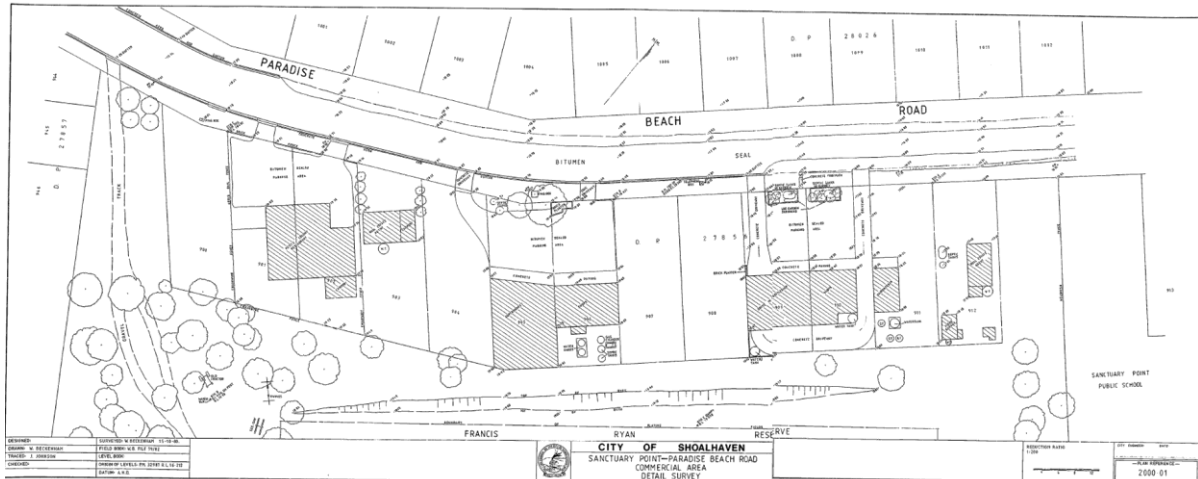
Background and Supplementary information

General Background

- The shops were constructed between 1970 and 1990 with most occurring between the mid-1970's to mid-1980's. At this time there was no rear lane, access to the sports field amenities & carpark was via a gravel track at the Western end of the shops. An extract of Council's Detail Survey of the area from 1980 is provided in figure 1.

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Figure 1



- The relevant part of Sanctuary Point Shopping Centre comprises of 13 individual privately owned lots fronting Paradise Beach Road, Sanctuary Point.
- There is no laneway or formal access to the rear of the shops, rather all shops share a common boundary with Lot 4 DP 806393 being Francis Ryan Reserve, owned by Shoalhaven City Council.
- Francis Ryan Reserve is Zoned RE1 – Public Recreation and has a dual classification as both Community and Operational Land.
- It does not appear that any of the adjoining lots have any permanent right of access burdening the Council land. However, it appears several of the shop developments rely on access through the reserve. It is possible access licences exist between Shoalhaven City Council and the adjoining property owners; however, none were identified during the review carried out for this report.
- The existing rear access lane was not formally designed or constructed, and therefore lacks adequate drainage, consistent pavement, and line marking. Its remaining service life is undefined. Additionally, the area is not a gazetted road and does not include a formal pedestrian pathway. Despite this, most of the space at the rear of the shops is used for parking and private bin storage. Given these conditions, Council may choose to restrict access to this area if considered appropriate.
- City Development have previously addressed issues of garbage bins on the footpath fronting Paradise Beach Road, however, have not previously been requested to look at the storage of larger commercial sized bins at the rear of the shops.
- There is limited area at the rear of most shops for commercial storage bins, with some shops having no rear land for garbage bin storage. It has however been identified that these shops cover multiple lots as such it is within their capability to provide onsite storage of bins. The exception may be with Lot 909 DP 27856 and Lot 910 DP 27856 who have a right of carriageway (ROC) that traverses the rear of the lots that may impact bin storage.
- At the time the shops were constructed, provisions for garbage bin storage were generally not considered during the planning phase. Additionally, due to the smaller population at the time, waste generation was likely lower. The practice of separating waste into categories such as cardboard, bottles, plastics, and general waste - requiring multiple receptacles - was also uncommon. As a result, the number of bins in use has likely increased over time.
- The overall appearance and maintenance of the rear areas of the shops is poor, contributing to a generally low visual amenity, irrespective of bin storage.

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- Permanent or long-term storage of private (commercial or domestic) bins on public land is not permitted without written Council approval. Currently, Council does not have an established approval process for the use of public land for private purposes such as bin storage.

Figures 2 to 5 show an overview of the area:

Figure 2



Figure 3



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Figure 4



Figure 5



Previous resolutions of Council designed at working with shopkeepers in order to tidy up the overall appearance of the location

Council has passed several resolutions concerning the area behind the Sanctuary Point Shopping Centre, including two specifically aimed at working with shopkeepers to improve its visual amenity:

- Notice of Motion [CL19.199](#) (2019), resolved under [MIN19.576](#), stated:

“That Council staff clearly establish the road reserve / property boundary at the rear of the Sanctuary Point Shopping Centre, adjacent to Francis Ryan Reserve on the southern side. Once complete and marked appropriately a meeting be convened with both owners and tenants to find a way forward in and endeavour to ‘soften’ the untidy appearance at the rear of the shops. This may include subtle fencing, minor landscaping or simply a regular programme to keep the area more tidy and better organised.”

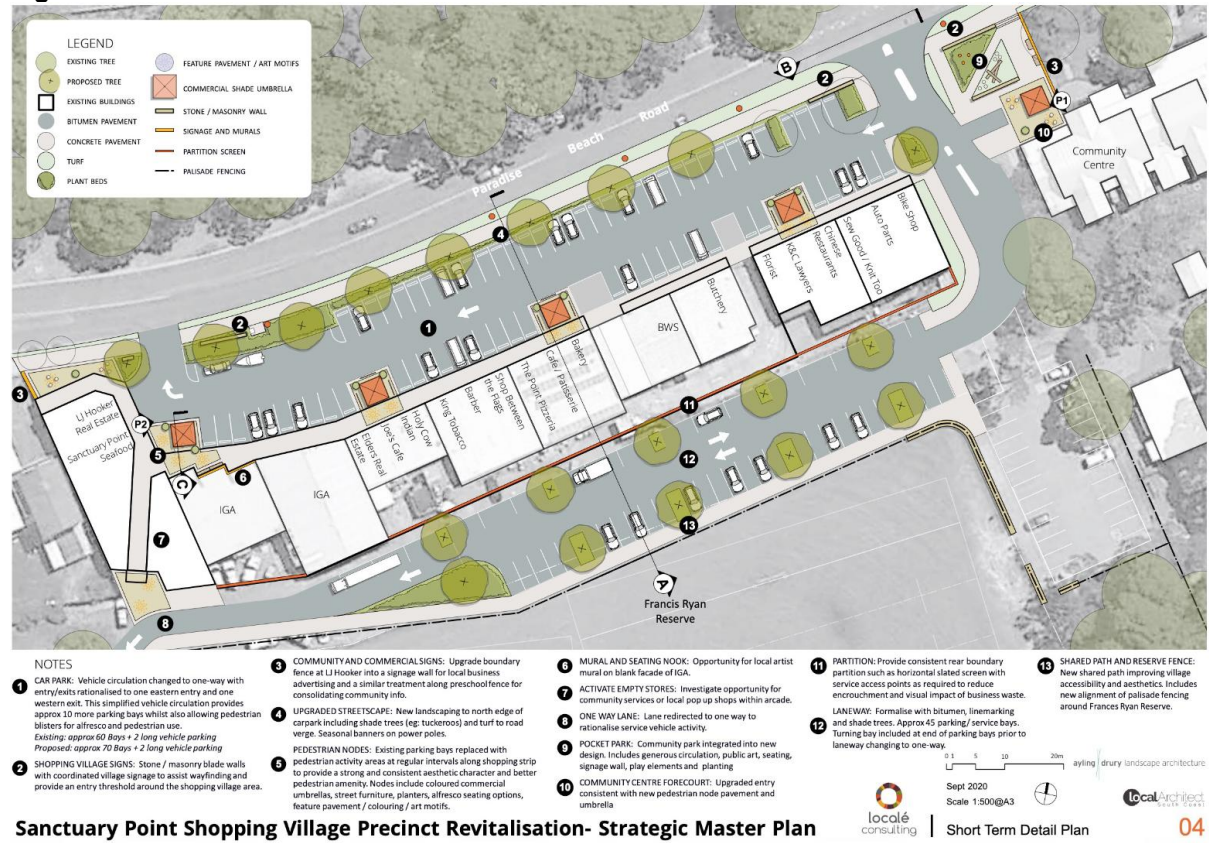
The outcome of this resolution was documented in [SA20.153](#), confirming that the property boundaries had been clearly established. In response, the Sanctuary Point Community Pride Committee engaged a consultant to prepare a Master Plan for the shopping precinct, aimed at softening the untidy appearance at the rear of the shops. The plan, an extract of which is

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shown in Figure 6, was completed but not adopted by Council. The meeting minutes from 'Revitalise Sanctuary Point Committee – Master Plan – 20/1/2021' note:

"The Sanctuary Point Community Strategic Plan is not able to be endorsed by Council as it is not a Council document or just about Council owned and managed land, however it could be reported for information only."

Figure 6



- Notice of Motion [CL23.226](#) (2023), resolved under [MIN23.373](#), stated:

"That Council carry out an inspection of the area of land behind the Sanctuary Point shops and Frances Ryan reserve with a view to determining if Council can enforce a tidy up of the area and also to determine if commercial waste bins and other storage items are located on Council land."

This resolution was marked complete on 4 September 2023 with the note: *"Inspection occurred on 8 August 2023. Currently working with Shop Owners on better ways to improve amenity of the area."*

However, there are no documented records of follow-up actions taken as part of this engagement, and the responsible staff member is no longer with Council.

Notably, more recent records indicate that in November 2024, Council Rangers approached shop owners and real estate agents managing the leases, requesting the removal of bins from the area behind the shops. Subsequent site inspections confirmed that this request did not result in any improvements.

The most recent survey which clearly defines the common boundary of the laneway and the rear of the shops

A survey conducted on 2 April 2012 identified the lot boundary between the shops and the adjoining reserve. It also documented the informal access lane through the reserve, as shown in Figure 7.

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As there have been no known changes to these boundaries, no further surveys have been carried out.

Figure 7



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Any identified health or safety issues with the location of large garbage disposal bins

An instance of community concern has been raised regarding limited safe access and egress to Sanctuary Point Public School, due to the placement of large garbage bins and other items at the rear of nearby shops. These obstructions reportedly resulted in children and parents walking along the “roadway”. In response, Council Rangers engaged with shop owners and associated land managers in November 2024, requesting the removal of the bins and any other unauthorised items. However, no changes were made following this request.

It is important to note that the school does not have a primary access point through this area. Additionally, the entire area behind the shops—extending up to the boundary fence of the adjacent sports fields—is considered a car park, not a formal road, as such, pedestrian interactions with vehicles in this space pose no greater risk than any other Council-managed car park.

There have also been a small number of concerns raised by residents regarding pavement deterioration in this area, which poses trip hazards. The frequent movement of garbage trucks servicing private bins is a likely contributor to this degradation. The pavement in question appears to have been installed in an unstructured manner, lacking formal planning or a defined design life.

While ongoing minor maintenance has been carried out to mitigate safety concerns, more extensive Capital Works will be necessary to upgrade the area to an acceptable standard, as the required improvements fall outside the scope of regular maintenance.

In summary, the health and safety risks linked specifically to the placement of garbage bins are considered low with the primary issue still being visual amenity.

The availability of government funds which could be used to provide an aesthetically pleasing facelift of the location which can best be described as neglected.

For the purpose of this report, it is assumed that any works aimed at improving the aesthetics of the area behind the shops will align with the proposed Master Plan for the Shopping

Precinct. This plan, which has been put forward by the community, reflects staff observations during site inspections—specifically, that visual screening should be installed along the property boundary and that all bins should be located within the footprint of the relevant private properties. Based on this, the scope of the proposed improvements is considered to fall under private property works.

In general, Government funding may be made available for private property works for projects that deliver a clear public benefit. In this instance, the primary public benefit would be improved visual amenity. However, a review of current grant opportunities accessible by Council did not identify any programs that would support the assumed scope of works.

That said, individual shop owners may be eligible to apply for grants such as the SafeWork NSW Small Business Rebate, which provides financial assistance for improvements that enhance workplace health and safety. Depending on the nature of the improvements, certain aesthetic enhancements on private premises may qualify.

Regarding Council's own contribution, it is noted that Council is exempt from contributing to the cost of dividing fences under Section 25 of the Dividing Fences Act 1991. However, some other councils have chosen to fund up to 50% of the cost of a standard dividing fence where the fence adjoins a car park. Such contributions are assessed on a case-by-case basis and are typically limited to the cost of a standard timber paling fence up to 1.8 metres in height. This type of fencing may also be considered a form of screening, as outlined in the Master Plan. There appears to be no precedent for contributions beyond those described above.

Additionally, Council may consider enforcement options under Section 124 of the Local Government Act 1993, which would allow Council to issue orders to shop owners requiring them to:

- Cease using the reserve for the storage of commercial waste and confine waste storage to their premises. (27 & 28a)
- Regulate the way waste is stored including limits on quantities and / or quality of storage containers / arrangements. (21 & 22)
- Fence their land or erect screens and plant trees to provide visual and physical separation between waste storage areas and Francis Ryan Reserve (7 & 10)

Should this enforcement pathway be pursued, all associated costs would be borne by the shop owners, with no financial contribution required from Council or external agencies.

In summary, although government funding opportunities for aesthetic upgrades at this location are limited, there are viable compliance pathways available to address the issue of neglect. These pathways can be used to improve the site's visual amenity by leveraging the responsibilities of adjoining property owners. It is recommended that Council pursue the compliance pathway to resolve the visual amenity concerns at this location if the shop owners do not comply with Council's initial request.

Future Location Options for Sanctuary Point Library

Council is currently considering alternate locations for a future Sanctuary Point Library, including Council-owned sites in close proximity or adjacent to the laneway behind the Sanctuary Point shops. Depending on the proximity of the selected site, consideration could be given to integrating improvements to the laneway area as part of access and parking provisions for the library facility.

Internal Consultations

City Services, Technical Services and City Development have been consulted in the development of this report.

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The Enterprise Project Management Officer was also consulted regarding the capital budget considerations outlined in this report.

External Consultations

Not Applicable.

Community Consultations

Not Applicable.

Policy and Statutory Implications

Enforcement options under Section 124 of the Local Government Act 1993 are available to progress visual amenity improvements to this area.

Financial Implications

If Council were to contribute to the construction of a boundary fence or screen, the total estimated cost would be approximately \$14,400, based on a supply and installation rate of \$120 per linear metre. A 50% contribution from Council would therefore equate to \$7,200.

This estimate assumes the installation of a 1.8-metre-high Colourbond fence (which depending on the supplier and installer is comparable to a standard timber paling fence) and does not include any gates or decorative features. The cost of gates and other embellishments would remain the responsibility of the property owner, with double gates anticipated to cost between \$1,000 and \$1,300 each. It is recognised that additional private property adjustments may be required to facilitate the above.

Risk Implications

The current condition of the area presents only a low-level health and safety risk. However, the primary concern is the ongoing poor visual amenity.

The main risk associated with adopting the recommendation in this report is potential resistance from shop owners, due to the costs and works required to comply with the proposed order.

If Council chooses to contribute to the cost of a dividing fence, there is currently no identified funding source. Any contribution would therefore need to be:

- Allocated in a future financial year, or
- Funded through savings identified in existing capital projects, provided there are no other higher priority works requiring those funds.

It is important to note that Council's current asset renewal ratio is below acceptable levels. As such, diverting funds from critical asset renewal projects to new or upgrade works is not recommended until the asset renewal ratio returns to a sustainable level.

CL25.287 Proposed New Licence - 20 Otway Street, Orient Point - Culburra & Districts Preschool Inc.

HPERM Ref: D25/344236

Department: Buildings & Property Services

Approver: Kevin Norwood, Acting Director - City Services

Purpose

The purpose of this report is for Council to consider approval of a new five-year Licence to Culburra & Districts Preschool Inc. at Lot 185 DP 8789, 20 Otway Street, Orient Point.

Summary and Key Points for Consideration

- The land is classified as Council-owned operational land and Council can enter a proposed five-year Licence.
- Council resolution is required to determine the proposed Licence on the basis the annual rent exceeds \$5,000 per annum.

Recommendation

That Council:

1. Enter a five-year Licence with Culburra & Districts Preschool Inc. (ABN 17 648 135 107) over Council operational land Lot 185 DP8789, 20 Otway Street, Orient Point.
2. Establish commencement gross rental of \$15,000 (excluding GST) per annum with annual step-up rent increases of \$3,000 (excluding GST) for the term of the licence, notwithstanding the licensee is separately responsible for associated usage charges (waste, electricity, gas, fire safety compliance).
3. Authorise the Common Seal of the Council of the City of Shoalhaven to be affixed to any document required to be sealed and delegate authority to the Chief Executive Officer or Delegate to sign any documentation necessary to give effect to this resolution.

Options

1. Resolve as recommended.

Implications: Culburra & Districts Preschool Inc. will be able to continue their services to the community using the premises as a preschool.

2. Seek opportunity for new tenancy.

Implications: If Culburra & Districts Preschool Inc. do not secure these premises under a new licence, the preschool would require an alternative property to continue this community service. If the property was vacated, an Expression of Interest process would be undertaken by Council for a new licensee under a future licence agreement, with terms to be negotiated following any EOI process.

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Background and Supplementary information

The property located at Lot 185 DP 8789, owned by Council, comprises a free-standing building situated on an 897m² land parcel. A covenant on the property stipulates that any building erected must be suitable to conduct public meetings, aligning with its designated purpose as a public hall and preschool.

The building was purpose-built in 1987 to serve dual function as a pre-school and a public meeting hall. The pre-school staff accommodate the dual use by clearing space when required to facilitate public meetings.

Culburra & Districts Preschool Inc. operates from the site as a not-for-profit organisation. For over 37 years, the preschool has provided vital early childhood education and care to families facing financial hardship. Their mission extends beyond education, aiming to build a strong foundation for children's future success, thereby contributing to the overall wellbeing of the community.

To ensure accessibility, the preschool maintains low fees, offering two free days per child each week. Additional attendance days are charged at a reduced rate, reflecting their commitment to affordability for local families.

Figure 1 - Proposed licence area



Internal Consultations

Internal stakeholder consultation was undertaken with no concerns raised with the new Licence.

External Consultations

No external consultation was required for this proposal as Council is re-negotiating with the existing occupant for a new term.

Community Consultations

The land is classified as operational land, and no consultation/notification is required.

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Policy and Statutory Implications

The proposed licence is in accordance with Council's Occupation of Council Owned or Managed Land Policy ([POL22/98](#)). The Rental Assessment Framework (RAF) was utilised to determine a fair rental subsidy after the community group provided information through a Proposal to Occupy Council Property.

Financial Implications

In accordance with Council Policy POL22/98, a market rent assessment was undertaken. A Proposal to Occupy Council Property was submitted, and the RAF calculator applied to evaluate new subsidised rent. The RAF rental assessment was assessed at \$32,778 per annum (27% rental subsidy).

Subsequent negotiations occurred with the licensee where they have advised that their childcare service fees are capped under federal government regulations, limiting their ability to generate additional revenue and sustain large rent increases over a new Licence term. In response, discussions took place with the licensee to explore options to establish new rental amount while acknowledging the financial constraints imposed by the regulations.

A step-up rental arrangement was proposed for the term of a new Licence. This approach balances Council's objective of achieving a fair rental return with the licensee's operational limitations. It also supports the sustainability of the childcare service and its continued benefit to the community. In consideration of the new Licence term and rent arrangement, the licensee does not have exclusive use of the premises and market-based negotiated rental terms has not been in place previously.

Under the agreed terms, Council will receive an immediate rental increase of \$15,000, with annual increases of \$3,000 over the term of the licence. Total rental revenue over the Licence term will be \$105,000, representing a significant improvement in Council's revenue position. The new rental arrangement is structured as a gross lease, inclusive of outgoings such as building insurance, water, and sewerage, however, the licensee remains responsible for garbage disposal, utilities, and fire safety compliance.

The licensee will also cover the costs associated with the preparation of the new licence as required by POL22/98.

Consultation has been undertaken, and the licensee has agreed with the proposed new rents.

Risk Implications

It is normal practice to allow for an interest in land in the form of a Licence. Council's interests have been considered and there is minimal risk associated with the recommended new Licence agreement.

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CL25.288 Proposed Renewed Lease - Cottage 1/80 Park Road, Nowra - Family Services Illawarra Ltd

HPERM Ref: D25/355118

Department: Buildings & Property Services

Approver: Kevin Norwood, Acting Director - City Services

Purpose

The purpose of this report is for Council to consider approval of a renewed 5-year lease agreement to Family Services Illawarra Ltd at part Lot 2 DP708441, 1/80 Park Road, Nowra.

Summary and Key Points for Consideration

- The land is classified as Council-owned operational land and Council can enter the proposed renewed 5-year lease.
- Council resolution is required to determine the granting of the proposed lease on the basis the annual rent exceeds \$5,000 per annum.

Recommendation

That Council:

1. Enter a five-year lease with Family Services Illawarra Ltd (ABN 47 907 536 122) over Council operational land known as Cottage 1/80 Park Road, Nowra (part Lot 2 DP 708441) as shown in **Figure 1** of this report.
2. Establish lease rental of \$15,000 (excluding GST) per annum.
3. Apply annual rent increases in line with the Consumer Price Index (All Groups Sydney).
4. Authorise the Common Seal of the Council of the City of Shoalhaven to be affixed to any document required to be sealed and delegate authority to the Chief Executive Officer or Delegate to sign any documentation necessary to give effect to this resolution.

Options

1. Resolve as recommended.

Implications: Council will secure a suitable long-term tenancy and Family Services Illawarra Ltd will be able to continue their work in the community.

2. Seek opportunity for new tenancy.

Implications: If Family Services Illawarra Ltd do not secure a new lease, the lessee will require an alternate property to continue their services. If the property was vacated, an Expression of Interest process would be undertaken by Council for a new lessee under future lease agreement, with terms to be negotiated following any EOI process.

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Background and Supplementary information

The property located at Lot 2 DP708441 (Park Road/Holloway Road, Nowra) owned by Council, comprises seven free-standing buildings situated on a 9,017 m² land parcel (refer Figure 1).

Figure 1 – proposed leased premises 1/80 Park Road Nowra (highlighted in green)



In July 2018, Family Services Illawarra Ltd, trading as Family Services Australia (FSA), merged with Nowra Family Support Services Inc. This merger aimed to strengthen and expand the delivery of community services across the Shoalhaven region. FSA continued its occupancy of 1/80 Park Road, Nowra, where family support services had been operating since 1998.

FSA has expanded its services in the Shoalhaven region to include intensive family preservation, support for families affected by drug and alcohol use, child and youth services and early intervention programs. It also offers mental health and wellbeing support for all age groups. These services are integrated across NSW and Queensland, with additional programs such as Staying Home, Leaving Violence, disability support, and employment services.

FSA delivers holistic support through a central triage team, led by their National Clinical Lead, Triage Chair, and Practice Governance Committee. Their approach ensures continuity of care, streamlined referral pathways, and a strong focus on safety, wellbeing, and connection for clients and families.

FSA's vision is for all children, young people, and adults to live safely and well within their families. They are committed to diversity and prioritise the inclusion of all members of the community.

Internal Consultations

Request for internal stakeholder comment was undertaken, and no comments were received.

External Consultations

No external consultation was required for this proposal given Council is re-negotiating with the existing lessee for a new lease term.

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Community Consultations

The land is classified as operational land, and no consultation/notification is required.

Policy and Statutory Implications

The proposed lease is in accordance with Council's Occupation of Council Owned or Managed Land Policy ([POL22/98](#)).

The land is classified as operational land and there are no statutory requirements for the consideration of a lease under the *Local Government Act 1993*.

Financial Implications

FSA submitted a Proposal to Occupy Council Property to enable Council to determine the applicable rental subsidy for a renewed lease using the Rental Assessment Framework (RAF).

A market rent assessment was conducted by a registered valuer in accordance with POL22/98, determining the annual rent at \$41,500 (excluding GST). The RAF calculator was applied to determine subsidised rent resulting in a rental subsidy of 65%, equating to a new annual rent of \$14,711.75 (excluding GST) and an additional \$1,500 for building insurance costs.

Discussions were held with the lessee regarding the proposed rent increase. The lessee expressed concerns that the proposed new rent (a 390% increase) would be financially unsustainable at this time when factoring in outgoings as well. In response, the lessee proposed a gross annual rent of \$15,000 (excluding GST), which includes the separate outgoing amount of \$1,500 for building insurance. This was accepted by Council officers considering the current rent amount is \$3,759 p.a. and is favourable for Council.

The lessee will also bear the cost of preparing the new lease as required under POL22/98.

Risk Implications

Council's interests have been considered and there is minimal risk associated with the recommended new lease agreement.

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CL25.289 Acquisition of Land for Road Widening - Part Lot 1 DP 576975, 9 Worrigea Road, Worrigea

HPERM Ref: D25/230759

Department: Buildings & Property Services
Approver: Kevin Norwood, Acting Director - City Services

Purpose

The purpose of this report is to provide Council with an opportunity to consider a confidential report for the acquisition of land for road widening of Greenwell Point Road, at the intersection of Worrigea Road and Millbank Road, Worrigea.

Further information is provided in a separate confidential report in accordance with Section 10A(2)(c) and (d)(iii) of the *Local Government Act 1993*.

Summary and Key Points for Consideration

Council has authority under section 177 of the *Roads Act 1993* to acquire land for the purpose of road widening. Land acquired under this authority must be carried out in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* ('Just Terms Act'). The Just Terms Act sets out compensation provisions for acquisition of land by a public authority. Council is obliged to attempt a negotiated outcome for acquisition of the land after which time acquisition by compulsory process can take place, if required.

Council resolution is required for the acquisition of land under section 377 of the *Local Government Act 1993*.

Recommendation

That Council consider a separate confidential report in accordance with Section 10A(2)(c) and (d)(iii) of the *Local Government Act 1993* in relation to the acquisition of Part Lot 1 DP 576975, 9 Worrigea Road, Worrigea.

Options

1. Accept the recommendation.

Implications: Consider a separate confidential report on the matter.

2. Reject the recommendation.

Implications: Information regarding the acquisition would be made public.

Background and Supplementary information

The Australian Government through the Infrastructure Investment Program has committed \$40 million to upgrade six road locations within the Shoalhaven (Shoalhaven Roads Package). One of the locations identified is the upgrade of the Greenwell Point Road, Worrigea Road and Millbank Road intersection to a roundabout.

The existing Greenwell Point Road/Worrigea Road/ Millbank Road T-intersection at Worrigea has been flagged for its poor safety performance, degraded pavement conditions, limited

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capacity for heavy vehicles (including A-doubles for local industry) and insufficient drainage in a flood-prone area.

To facilitate this upgrade, additional land needs to be acquired.

Internal Consultations

Consultation has taken place with the relevant stakeholders.

External Consultations

Details relating to external consultations are contained in the confidential report.

Community Consultations

Community engagement is not required for operational purposes such as land acquisition being made under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Policy and Statutory Implications

The acquisition process is in accordance with policy [POL22/120](#) – Acquisition of Land by Shoalhaven City Council.

Financial Implications

Details relating to financial implications are contained in the confidential report.

Risk Implications

Acquisition of land is required to facilitate future public road access and intersection improvements including dedication as public road reserve.

The acquisition process is funded by the Federal Government. In the event a negotiated agreement to acquire land is not able to be reached, it will be necessary to complete the acquisition by compulsory process and ensure the Federal Government funding is accessed.

CL25.290 Acquisition of Land for Road Widening - Part Lot 1 DP 228057, Croobyar Road, Croobyar

HPERM Ref: D25/345737

Department: Building & Property Services
Approver: Kevin Norwood, Acting Director - City Services

Purpose

The purpose of this report is to provide Council with an opportunity to consider a confidential report for the acquisition of part Lot 1 DP 228057, (No. 687a) Croobyar Road, Croobyar under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* for the purpose of public road requirements.

Further information is provided in a separate confidential report in accordance with Section 10A(2)(c) of the *Local Government Act 1993*.

Summary and Key Points for Consideration

Council has authority under section 177 of the *Roads Act 1993* to acquire land for the purpose of road widening. Land acquired under this authority must be carried out in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* ('Just Terms Act'). The Just Terms Act sets out compensation provisions for acquisition of land by a public authority.

Council resolution is required for the acquisition of land under section 377 of the *Local Government Act 1993*.

Recommendation

That Council consider a separate confidential report in accordance with Section 10A(2)(c) of the Local Government Act 1993 in relation to the acquisition of Part Lot 1 DP 228057, Croobyar Road, Croobyar.

Options

1. Accept the recommendation.

Implications: Consider a separate confidential report on the matter.

2. Reject the recommendation.

Implications: Information regarding the acquisition would be made public.

Background and Supplementary information

In 2022, a new bridge was designed and constructed immediately adjacent to the existing timber bridge on Croobyar Road across the Croobyar Creek (Pettys Bridge). During the design phase, it was identified that the new bridge would be partially constructed on privately owned land.

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Internal Consultations

Consultation has taken place with relevant stakeholders.

External Consultations

Details relating to external consultations are contained in the confidential report.

Community Consultations

Community engagement is not required for operational purposes such as land acquisition being made under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Policy and Statutory Implications

The acquisition process is in accordance with policy [POL22/120](#) – Acquisition of Land by Shoalhaven City Council.

Financial Implications

Details relating to financial implications are contained in the confidential report.

Risk Implications

Acquisition of land is required as the upgraded Pettys Bridge has been constructed partially on privately owned land. Formalising this acquisition mitigates the risk of future legal or access disputes by securing public ownership of the land currently used as part of the road corridor.

CL25.291 Half Yearly Compliance Report

HPERM Ref: D25/288850

Department: Certification & Compliance

Approver: Lindsay Usher, Acting Director - City Development

Purpose:

The purpose of this report is to advise Councillors as per MIN24.574 that the Half Yearly Compliance Report (February 2025 to July 2025) is available on Council's website and Councillor Portal for viewing.

Summary and Key Points for Consideration:

Council resolved at the Ordinary Meeting 28 October 2024, that a half yearly Compliance report be published on Council's website and on the Councillor Portal on a 6 monthly basis covering periods from August to January, and February to July respectively. (MIN24.574).

Recommendation

That Council note the Half Yearly Compliance Report for February 2025 to July 2025 available on Council's website and the Councillor Portal for Councillors information.

Options

1. Council adopts the recommendation as shown.

Implications: Nil

2. Council receives the report and provides additional direction.

Implications: Any changes or additional matters will need to be assessed by staff and advised accordingly.

Background and Supplementary information

The half yearly Compliance report (D25/340457) will be published on Council's website and the Councillor portal to coincide with this report.

Report

Compliance activities are completed by the following Units within City Development:

- (a) Compliance (Certification and Compliance): Development compliance matters including unauthorised development, development not in accordance with development consent, land use issues and swimming pool safety issues.
- (b) Environmental Health (Environmental Services): Pollution incidents (noise, water, and sediment control), environmental incidents, food shops and the operation of on-site sewage waste management facilities.

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- (c) Ranger Services (Certification and Compliance): Parking, animal management, unauthorised camping, littering, rubbish dumping, unattended vehicles, and other environmental offences.
- (d) Fire Safety (Certification and Compliance): Fire Safety relating to commercial buildings.

This report provides Council with an update on the penalties issued (number, type and ticket value) and any Local or Land and Environment Court matters determined or progressing.

This report relates to 1 February 2025 to 31 July 2025.

Internal Consultations

Internal consultation is undertaken with City Development departments who contribute to the report.

External Consultations

There are no external consultations required. However, data from Revenue NSW is included in the report.

Community Consultations

There is no community consultation required to compile this report. However, the report is made available to the public for information.

Policy and Statutory Implications

There are no policy implications related to this report. However, policies such as the Compliance and Enforcement Policy underpin enforcement decisions and reporting outcomes.

Financial Implications

There are no financial implications related to this report. The report is for information.

Risk Implications There are no risk implications related to this report. The report is for information.

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CL25.292 Modification of Development Application – 59 South St Ulladulla – Lot 1 DP 530697

DA. No: MA25/1123/4

HPERM Ref: D25/312266

Department: Development Services

Approver: Lindsay Usher, Acting Director - City Development

Attachments:

1. Amended Plans - 59 South Street ULLADULLA (under separate cover) [⇒](#)
2. Letter from Southern Cross Housing (under separate cover) [⇒](#)
3. Modification Assessment 4.55 (under separate cover) [⇒](#)
4. Draft Consolidated Consent (under separate cover) [⇒](#)

Description of Development: Modification to DA22/1078 (MA2025/1123) – Amendments to building design and height, and reduction of Affordable Housing Units from twenty-four (24) to Eight (8).

Owner: Southern Cross Community Housing Ltd

Applicant: Alex Pontello

Notification Dates: 3 May 2025 to 19 May 2025

No. of Submissions: Nil

Purpose / Reason for consideration by Council

The original application determined by Council on 9 October 2023, MIN23.599 requested a Clause 4.6 variation to Division 1 In-fill affordable housing, Section 18 (2)(b) of State Environmental Planning Policy (Housing) 2021 (SEPP Housing 2021) in relation to the landscaping requirement.

The current modification application is seeking to amend the number of Affordable Housing Units and make changes to the design including increasing the height of the building.

Given this modification seeks a significant change to the composition of affordable housing resolved by the council, staff have formed the view that Council should also determine the modification application.

Recommendation

That Council in relation to the modification of Development Application DA22/1708 (MA2025/1123) for a Mixed Use building containing comprising three (3) commercial offices and twenty four (24) residential apartments, with Eight (8) units to be allocated as affordable rental housing, basement car parking for twenty one (21) vehicles, tree removal and landscaping works at Lot 1 in DP 530697, 59 South St, Ulladulla:

1. Confirm that it supports the proposed application as modified.
2. Approve the Modified Application (MA2025/1123) in accordance with the recommended conditions of the consent (**Attachment 4**).

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Options

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

Implications: This would allow the applicant to pursue construction of the development and increase the available supply of affordable rental housing stock.

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

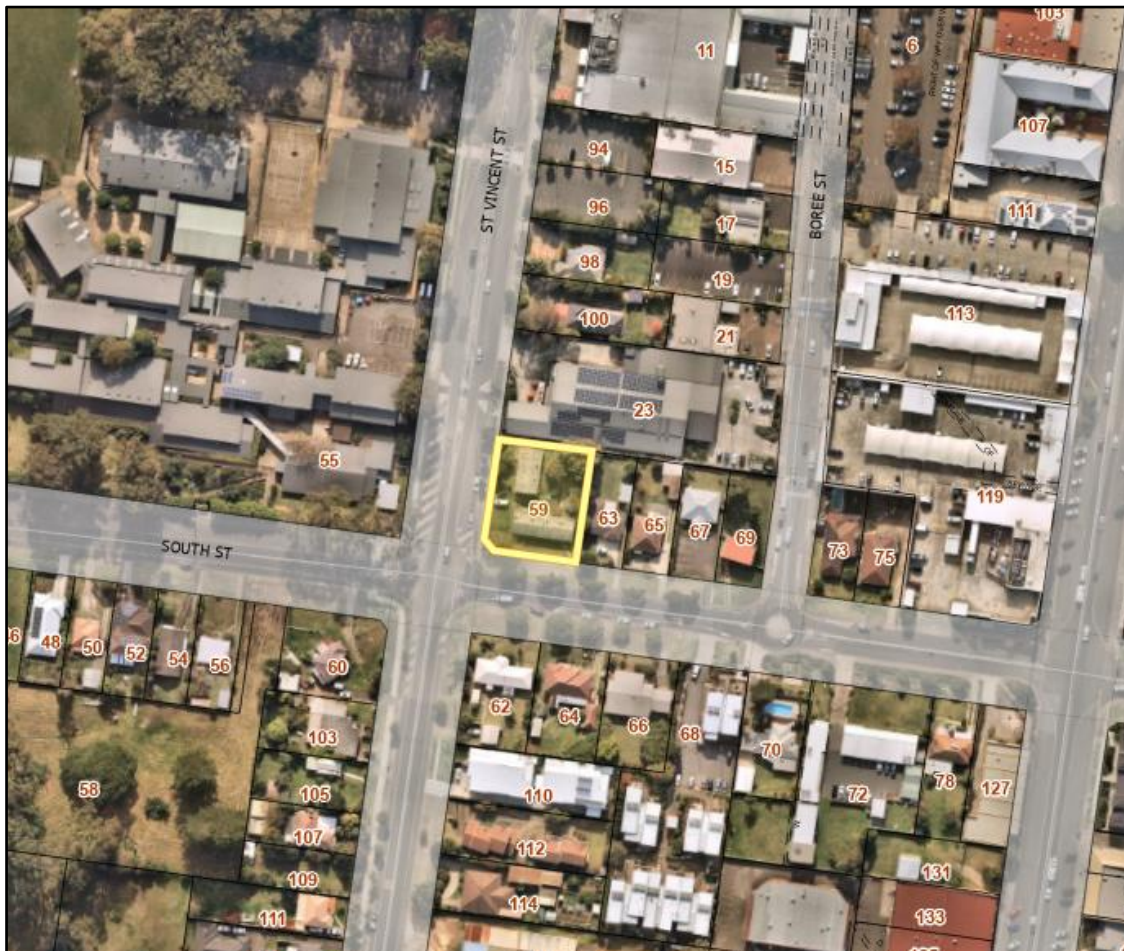


Figure 1 – Locality Map

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Background

Proposed Development

Development consent for DA22/1078 was issued on 9 October 2023 with a deferred commencement condition for demolition of existing residential buildings and structures, construction of a four (4) storey mixed use development comprising three (3) commercial office and 24 residential apartments as affordable rental housing, basement car parking for 21 vehicles, tree removal and landscaping works.

Operational consent was granted on 30/5/2024.

An application for the modification of DA22/1078 was lodged on 14/4/2025 .

The application proposes to make the following modifications to the development consent.

- A minor increase to the building floor levels and roof heights to accommodate garbage truck turning bay head clearance, in the lower ground floor carpark.
- The inclusions of additional services plant rooms for fire services and general services.
- Services risers in the Units and Corridors.
- General amendments to window sizes and set out to accommodate brick rod set out.
- Changes to the proposed footpaths and stairs on public land to allow for the deletion of Condition 17.
- Modifications to Condition 4 for the reduction in Affordable Housing Units from 24 units to 8 units as the Housing SEPP only requires a minimum of 10% to be provided as affordable units. The modified application provides over 30% of the development for Affordable Housing Units.

The Design Amendments can be summarised as follows:

Lower Ground Floor

- Carpark / Basement floor level raised to align with Civil driveway levels. Driveway levels are set by the SCC DA Conditions for the stormwater overland overflow path to the public street stormwater.
- Carpark footprint extended to the southern boundary.
- Reduced area of Commercial 1.
- Added services plant room, fire pump room, fire services break tanks.

Ground Floor

- Floor level increased to allow for garbage truck clearance in carpark below.
- Relocated Stair 2 egress door to eastern façade.
- Amended Landscape design to the southern boundary (pathway changes).
- Roof over Commercial 1 extended over Fire Pump Room.
- Windows modified.

First Floor

- Floor level increased.
- Windows modified.

Second Floor

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- Floor level increased.
- Windows modified.

Third Floor

- Floor level increased.
- Windows modified.
- Bin chute deleted from communal open space.

Site and Roof

- Added external path from new fire pump room to St. Vincent Street.
- Relocated fire booster from South Street to St. Vincent Street.
- Roof height increased.
- Skylight added to roof.

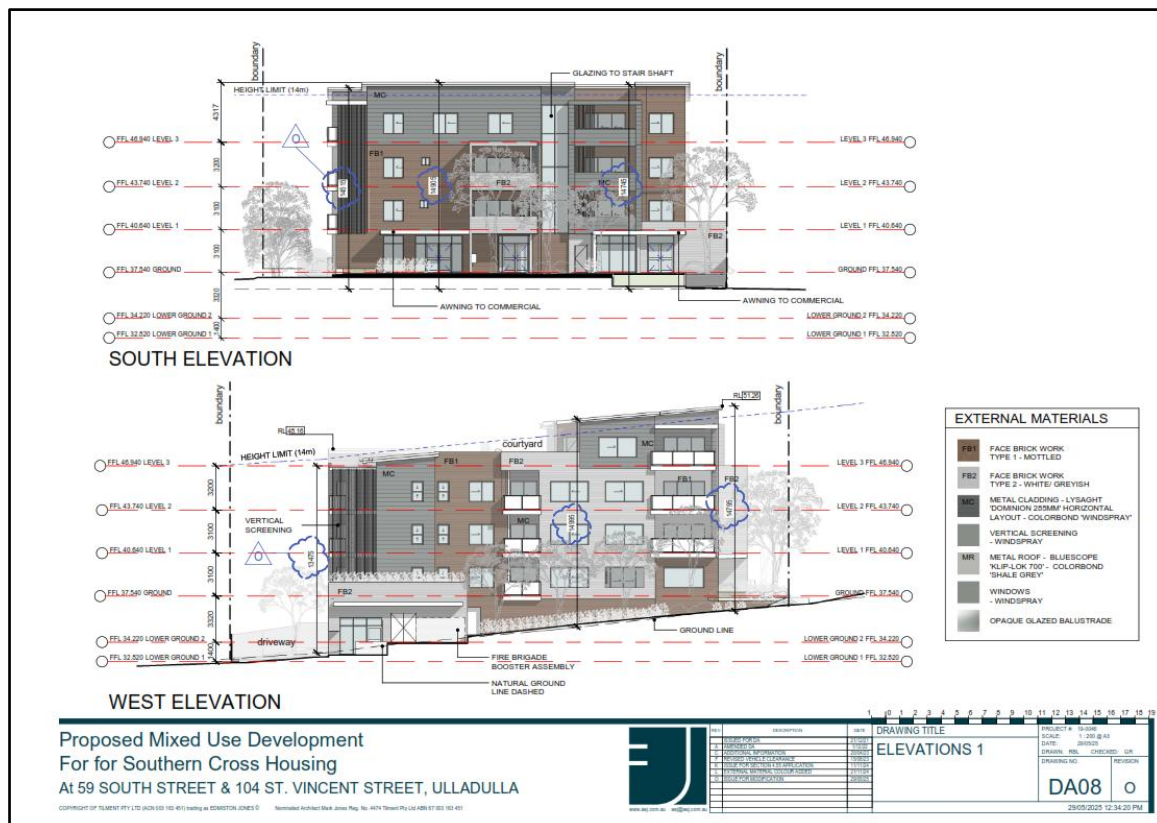


Figure 2 – Amended South & West Elevations

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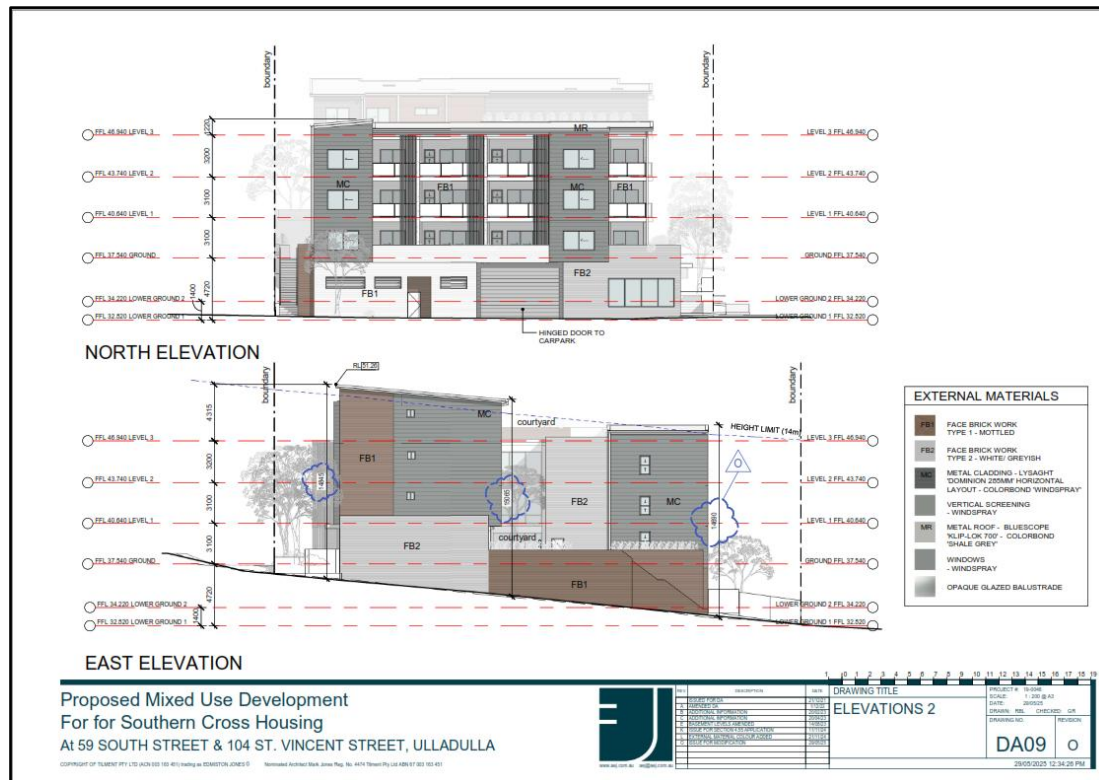


Figure 3 – Amended North and East Elevations

Subject Land

The subject site is legally described as Lot 1 DP 530697. It is located on the northern side of South Street at the corner of South Street and St Vincent Street in the Ulladulla town centre. The site has a southern frontage of 29.87m to South Street and a western boundary of 36.6m to St Vincent Street. The corner of the site is splayed and has a length of 5.17m. Adjoining the site on the eastern side is an existing residential dwelling at 63 South Street and the rear of the site on the northern boundary adjoins the existing Aldi loading dock.

The site has a four (4) metre fall and slopes from south to north, with the highest point being the South Street southern frontage and the lowest point the rear northern boundary adjoining the Aldi property.

Two (2) single storey buildings containing eight (8) x attached dwellings and ancillary structures owned by Southern Cross Community Housing, currently occupy the site.

There are thirteen (13) trees on site. There are two (2) existing Council Street trees along the South Street frontage and three (3) existing Council Street trees on St Vincent Street frontage.

In terms of existing development, the surrounding area is a mix of different land uses with the Ulladulla High School located west across the road on St Vincent Street, older residential housing stock on the eastern and southern side of South Street and retail stores like the Aldi north of the site in the Ulladulla Town Centre.

Site & Context

In terms of zoning, the site is located at the intersection of four (4) different zonings, being the E2 Commercial Centre Zone in which the site is located, the SP2 Educational Establishment Zone across the road, MU1 Mixed Use Zone on the southern side of South Street and the R2 Low Density Residential Zone on the south-western end of South Street (Refer to **Figure 2**).

The area is in transition and one where the existing older residential housing stock will likely be redeveloped into the land uses permissible with consent in the zones surrounding the site.

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Out of the existing block of existing residential dwellings (bounded by St Vincent Street and Boree Street), the subject site is the first redevelopment proposed which has triggered consideration of the public domain infrastructure envisioned under the Shoalhaven DCP 2014.

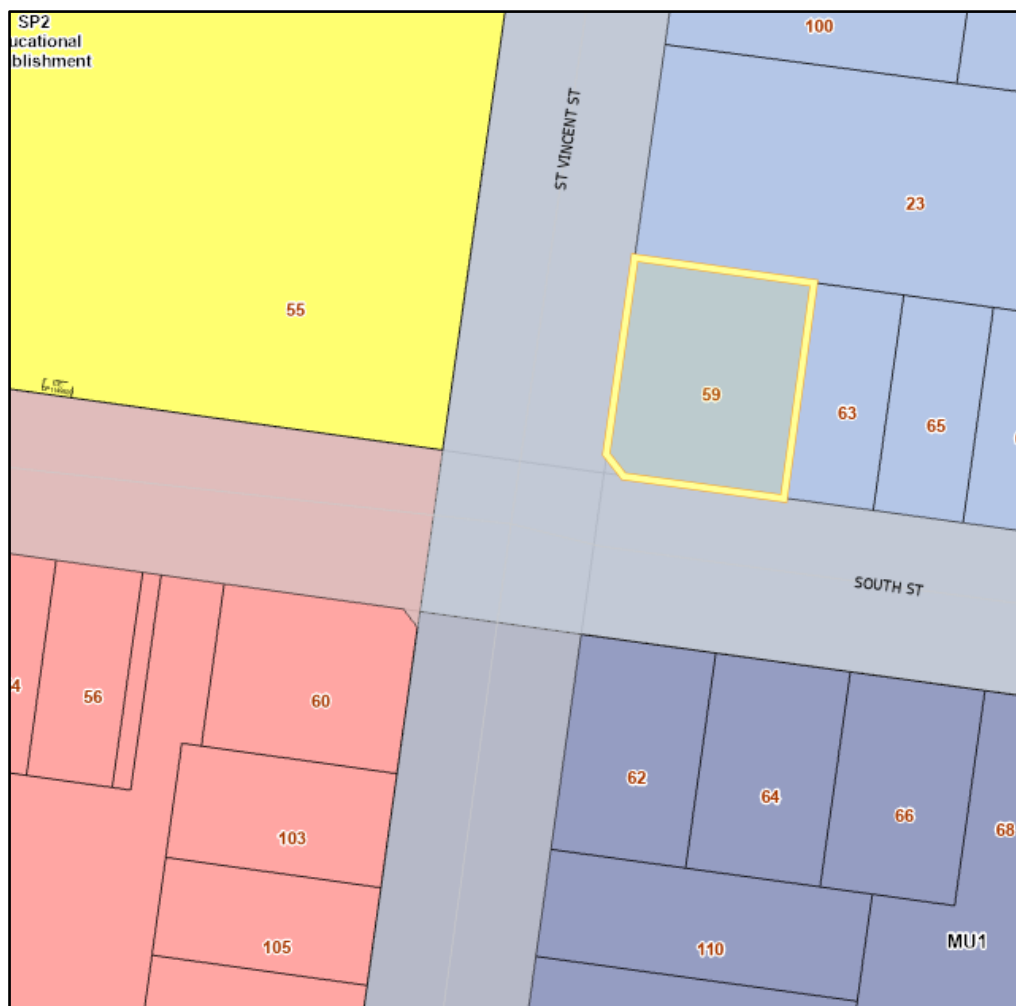


Figure 4 - SLEP 2014 – Zoning Map

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Figure 5 - View of subject site - As viewed from the corner of St Vincent Street and South Street



Figure 6 - View of the St Vincent Street frontage of the site

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Issues

Reduction in the number of Affordable Housing Units

As part of the modification to the original approval, the applicant is proposing a reduction in the number of affordable housing units from 24 (which is the total number of units) to 8 units.

Under the State Environmental Planning Policy (Housing) 2021 (SEPP), the development is only required to provide 10% of units as affordable, in this instance they are providing 33% affordable housing units.

Applicant's Submission

The applicant has provided a letter supporting Southern Cross Housing's decision to reduce the number of Affordable units:

As a Community Housing Provider, our core mission is to provide safe, secure, and affordable housing to those most in need. In line with this mission, we intend to utilise all dwellings in this project as affordable housing. However, our policy states that we will only formally commit to the minimum number of affordable housing units required under planning controls. This approach is intentional and necessary to ensure the long-term sustainability of our organisation and the services we provide.

While we are committed to maximising affordable housing outcomes, we also need to maintain a level of operational flexibility. The ability to divest or sell a portion of our housing stock, if required, allows us to respond to evolving business needs, manage financial risk, and reinvest in future housing projects or services that benefit the community. Without this flexibility, our capacity to deliver ongoing and expanded support may be compromised.

In short, this policy enables us to balance our social mission with the financial and strategic realities of operating a not-for-profit housing organisation. It ensures we remain resilient and responsive while continuing to prioritise the delivery of affordable housing for those who need it most.

Notwithstanding the above, Southern Cross will formally commit 8 units as Affordable Housing for 15 years, with the intention to sell 8 dual key units to owner occupiers via our shared equity scheme and lease back 8 studio units for affordable housing for 10 years.

Increase in height and amendments to the design

The new proposed overall height of the building is **15.025m** which is central to the site and reduces to around **14.9m** at the edge of the building. The LEP maximum height of building for the site is 14m. This variation amounts to a 7% height variation overall.

Modifications of development applications do not require LEP Clause 4.6 variation requests to accompany their submission.

The change in height is a result of having to increase the height in the basement to enable a waste servicing truck to enter and service the bins, as well as accommodating fire safety measures (sprinkler valve/fire pump room) now required under NCC 2022.

The objectives of LEP clause 4.3 Height of Buildings are as follows:

- a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- c) *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

The applicant has provided a revised SEE explaining how the revised height and the increase of 7% over the maximum height of building of 14m will meet the objectives of Clause 4.3.

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Applicant's Submission

- a) *The site is located in the B3 Commercial Core zone and the existing character of the locality immediately to the north comprises commercial buildings and structures. The height of the proposed development would be consistent with the height, bulk, scale of the existing and desired future character of the locality.*

The proposed buildings would have a different bulk and height to existing adjoining development to the north and east in the commercial core area and properties in the southern neighbouring mixed use residential area. Notwithstanding, the proposed variation of the development standard will not limit the potential for adjoining sites to be developed to their permitted capabilities in the future. Further, the sloping topography of the site which falls away from south to north will significantly reduce the height, bulk and scale of the development meaning no discernible change in the locality's character would occur.

The height non-compliance with the 14 metre height control results from the change in levels to permit vehicle servicing in the rear lane while maintaining safety at the St Vincent St intersection for pedestrians and increase in fire safety measures now required to this development under the NCC 2022. The variation of 1.025 is minor in nature and has been located on the highest internal floorplate element which is central on the site and then reduces to around 900mm at the edge of the building. The ground level at the building line is over 2m below the level of south Street reducing the overall height of the building from the street and the neighbours to the south who would be most impacted. These buildings to the south continue to step up the hill further reducing any impact that the height of the building would have on the future character of the locality.

- b) *There are no existing residential developments on the adjoining property to the north (102 St Vincent Street). The existing school to the west is separated by St Vincent Street and residential properties (62, 64 South Street) to the south are separated by South Street. The site to the east (63 South Street) is the only adjoining site that currently contains residential development and based on the proposed development layout no adverse visual or acoustic privacy issues will occur. The site and 63 South Street (to the east) is advantaged by its northerly aspect and the proposed development will not detrimentally impact solar access.*
- c) *The site of the proposed development does not contain any historic items, is not in or near a conservation area and is not associated with any Aboriginal heritage values. The proposed variation will have no effect on heritage matters.*

In addition State Environmental Planning Policy (Housing) 2021 (SEPP) provides up to 30% height incentives to developments that propose at least 10% of units as affordable housing units. The proposal is for eight (8) of the units 33% to be affordable units and the proposed 7% height increase is well under what would be available under the SEPP.

The other amendments to the design which include fire safety services, window and door modifications, floor level increases are considered to be minor and do not have any adverse impacts on surrounding development.

Removal of proposed stairs on South St Road Reserve

With the redesign, and change in ground floor level, the applicant is proposing to remove the stairway access to the building on the South Street elevation. The new design is based on the installation of a walkway with no stairs, retaining walls or balustrades on public land. This is an improvement to the safety of the access within the road reserve.

Discussion

Within the proposed development, the 8 of 24 units are designated as affordable housing which are **Units 1, 2, 7, 10, 15, 18, 23 and 24**. This provides for a range of unit sizes throughout the development. As the applicant has explained, they intend to utilise all

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dwelling in this development as affordable housing, 8 of the units will be set aside for affordable housing for a period of 15 years as defined by the SEPP (Housing), 10 of the studio units will be committed to affordable housing for 10 years and the other dual key units are to be sold to owner occupiers via a shared equity scheme.

The main change to the built form and scale is the increase in the overall height to 15.025m to accommodate the increase in the basement ceiling height to accommodate garbage truck turning. Due to the sloping site, the building has been designed with the highest section towards South St. The building's scale is reduced down to the rear (north) which adjoins commercial premises with a 7m setback due to future service lane as per specific DCP.

The building as modified is still consistent with the character of the original building, the increase in height is minor and the impacts on amenity will not be significantly different to the building as approved. The increase in height will allow the building to function more effectively and achieve fire safety measures for National Construction Code (NCC) compliance.

Planning Assessment

The DA has been (or will be) assessed under s4.55(2) of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 3.

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 a section 8.2 Review and / or 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 height variation sought is justified for the reasons outlined in this report and the assessment of the other development standards relevant to the proposed modification have been satisfied. It is recommended that the proposed modification MA2025/1123 to DA22/1078 for the mixed-use development comprising three (3) commercial offices and twenty-four (24) residential apartments, comprising eight (8) affordable housing units, is compliant with the relevant planning instruments and recommended for determination by way of approval subject to conditions outlined in **Attachment 4** - the draft determination.

CL25.293 DA24/1462 - 177 Princes Highway South Nowra - Lot 23 DP841302

DA. No: DA24/1462/4

HPERM Ref: D25/228356

Department: Development Services

Approver: Lindsay Usher, Acting Director - City Development

Attachments:

1. Draft Development Consent (under separate cover) [⇒](#)
2. Assessment Report (under separate cover) [⇒](#)
3. Plans - Height Plane Analysis Diagrams (under separate cover) [⇒](#)
4. Plans - Height Plane Analysis Diagrams - 2 (under separate cover) [⇒](#)
5. Photomontage Views (under separate cover) [⇒](#)
6. Plans- Architectural Plans (under separate cover) [⇒](#)

Description of Development: Demolition of main existing building & construction of two new multi-storey self-storage buildings, construction of two new smaller buildings, construction of a new driveway and circulation area, car parking, landscaping works and business identification signage

Owner: Kennards Self Storage Pty Ltd

Applicant: Kennards Self Storage

Notification Dates: 20 November 2024 - 5 February 2025 (extended notification)

No. of Submissions: Nil

Purpose / Reason for consideration by Council

Clause 4.6 Variation lodged under the Shoalhaven Local Environmental Plan (SLEP) 2014. Staff do not have delegation to determine a variation exceeding 10% of the principal standard

Recommendation

That Council approves Development Application (DA24/1462) for multi-storey self-storage buildings at 177 Princes Highway, South Nowra subject to the conditions of consent listed in the Draft Determination Notice listed at Attachment 1.

Options

1. Approve the application in accordance with the recommendation.

Implications: This would enable the development to proceed

2. Refuse the application

Implications: Council would need to determine the grounds on which the application is refused, having regard to section 4.14(1) considerations. The applicant would be entitled to seek a review and/or pursue an appeal in the Land and Environment Court.

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3. Alternative Recommendation

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



Location Map

CL25.293

Background

Proposed Development

Demolition of main existing building & construction of two new multi-storey self-storage buildings, construction of two new smaller buildings, construction of a new driveway and circulation area, car parking, landscaping works and business identification signage. A detailed description of the proposal as described in the submitted Statement of Environmental Effects includes the following:

Demolition

Demolition works comprise:

- removal of the main warehouse building through the centre of the site
- removal of the existing fence along the front (eastern) boundary
- removal of two trees and associated kerb and gutter at the north-western corner
- removal of the existing retaining wall aligning the southern boundary
- removal of the existing sheds and fence at the western end of the allotment.

Construction

The proposed works comprise:

- a new building (Building 1) at the eastern end of the allotment, including a showroom, separate tenancy (the use of which will be subject to a separate development application) and self-storage units. The building will be four storeys in height (15.7m)
- a building at the western end of the allotment (Building 2) comprising self-storage units, over four levels

- a new building (Building 4), located adjacent to Building 3 at the south-western corner, containing self-storage units
- a new building (Building 8), located adjacent to Building 7 at the north-western corner, containing self-storage units
- a new driveway circulation system to provide access to each of the buildings and seventeen car parking spaces (including one disabled space) to the east of Building 1
- relocation of an existing electricity pillar at the eastern end of the allotment
- relocation of an existing power pole located in the proposed position of Building 4
- a new entry and exit gate, restricting access to the storage units, on the northern and southern side of Building 1
- a new retaining wall along the southern boundary
- a new driveway egress point at the north-western corner
- a new blade sign, 6m in height is the front landscape setback.

In accordance with the submitted SEE, the applicant nominates the proposed land use as being 'Storage Premises' and a 'separate tenancy – the use of which will be subject to a separate development application'. Accordingly, no land use characterisation would be applied to the 'retail tenancy' and any consent would be conditioned with the requirement for the tenancy to be the subject a first use Development Application.

Landscaping

Minor landscaping works are proposed to the frontage with the service road.

Materials and finishes

The exterior built form will be treated with non-combustible cladding and paint finish; corrugated sheeting and concrete blockwork, or similar materials, as shown on the Architectural Drawings. These will surround aluminium-framed windows and doors.

Lower-level openings will also be treated with powder coat finish roller doors.

Signage

Building identification signage will:

- one signage panel on the ground floor of the northern elevation
- four signage panels along the ground floor of the eastern elevation of Building 1, fronting Princes Highway
- one signage panel on the ground floor of the southern elevation, approximately 5.34m long and 0.8m high
- illuminated corporate wall sign, measuring 6.6m in length and 2m in height on the fourth level of Building 1, facing east, in conjunction with the illuminated corporate 'lock' logo to the south of this
- illuminated wall sign, 5.34m in length and 1.23m in height on the southern elevation of Building 1 at the fourth level
- one pylon sign located on the eastern frontage, partially illuminated, and measuring 6m in height and 2.38m wide.

Subject Land

The subject land is described as Lot 23 DP 841302 at No. 177 Princes Highway, South Nowra and is depicted in Figure 1 above.

CL25.293

Site & Context

The site:

- Is located on the western side of the Princes Highway, off a service road and is approximately 175m north of Central Avenue
- Is occupied by an existing self-storage facility and associated outbuildings. Refer to Location Map.
- Currently has four main buildings and some peripheral, shed-like structures distributed across this, with the main building, running in an east-west direction.
- Has vehicular entry via a combined entry and exit point that is located at the end of the Princes Highway service road.
- Contains the existing Kennards Self Storage Facility with Nowra Creek running through the western section of the site.
- Is zoned E3 Productivity Support and has a total area of 1.123ha.
- Is identified as being part flood and bush fire prone land.
- Adjoins land zoned E4 General Industrial under SLEP 2014.
- Is located within an area characterised by industrial and bulky goods retail developments including:
 - Four (4) industrial buildings to the immediate north with a recently constructed 2 storey motor showroom fronting the site.
 - Bunnings Warehouse (further north) which has a maximum height of 15.5m.
 - Coates Hire to the immediate south, which consists of a double storey building and a large industrial building and an open area for storage of hire equipment
 - A bulk retail precinct (further south) including Harvey Norman and Carpet Court located on Central Avenue.
 - Nowra Creek to the immediate west and an industrial precinct with buildings that fronting Bellevue St further west.

A section 4.15 assessment of the proposal is provided at Attachment 5.

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Photo 1 - View looking west to the subject site



Photo 2 - View looking west to the subject site and to existing development on southern boundary

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Photo 3 - View looking east along southern elevation of existing storage facility (from rear of site) and adjoining ancillary building



Photo 4 - View looking south near north-eastern corner of subject site

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Photo 5 - View looking west along northern elevation of existing storage premises



Photo 6 - View looking east along northern elevation of storage premises and ancillary detached building

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Photo 7 - View north along northern boundary with existing development of immediate adjoining northern lot



Photo 8 - View looking southwestern boundary of subject site

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Photo 9 - View looking north near western boundary of subject site

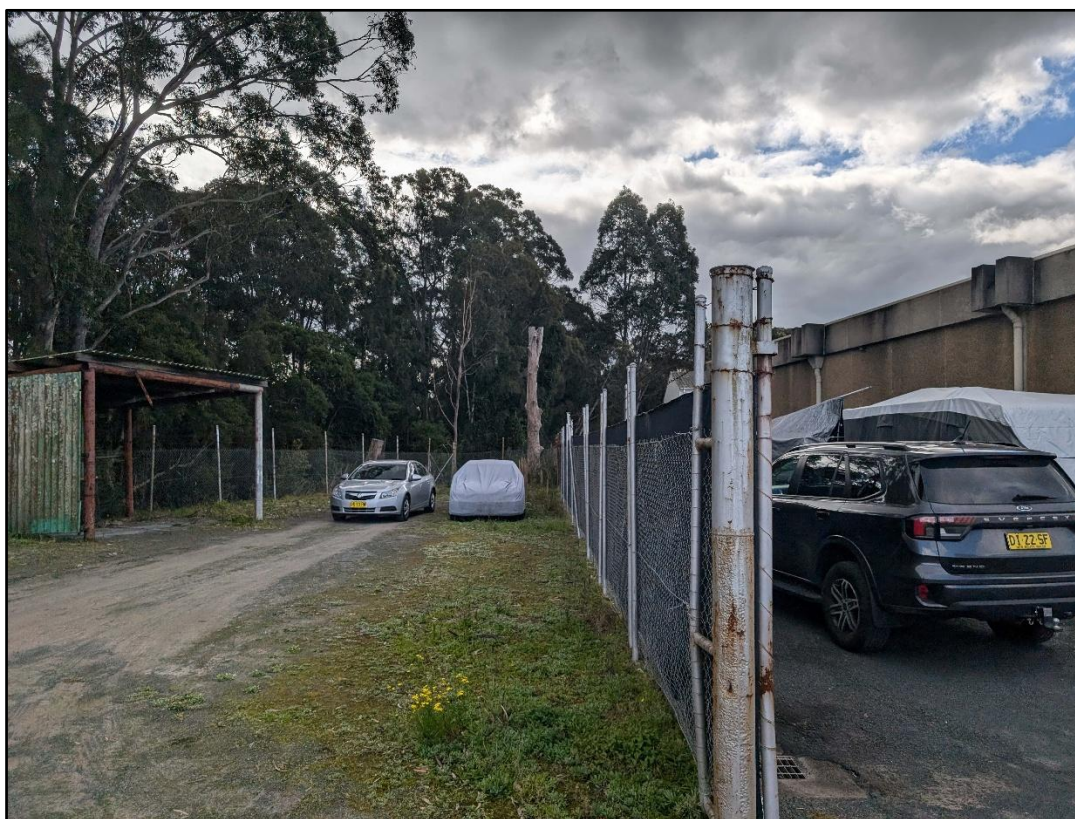


Photo 10 - View looking north near western boundary of subject site

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Photo 11 - View looking to south-west boundary of subject site



Photo 12 - View looking north along eastern boundary of subject site

CL25.293



Photo 13 - View looking north-west along frontage of subject site with Bunnings in background



Photo 14 - View looking south to frontage of Bunnings Warehouse

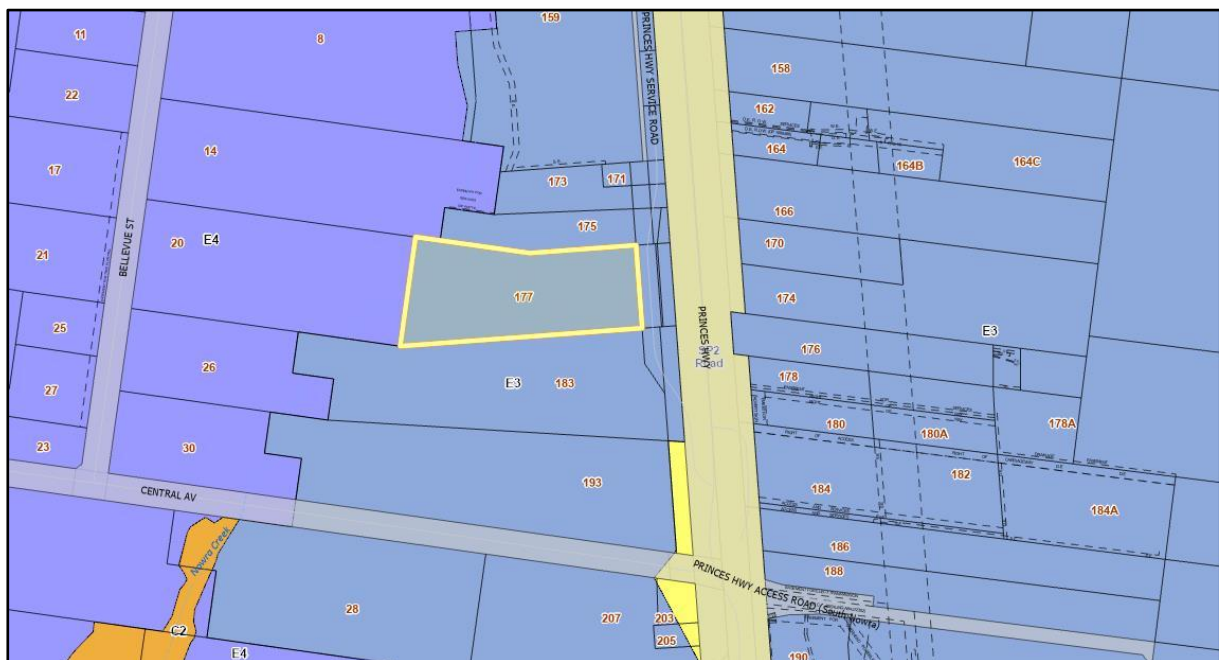
Zoning

CL25.293

The site is zoned E3 Productivity Support under the *Shoalhaven LEP 2014*. The proposed development is best described as Storage Premises which is permissible with consent. The objectives of the zone are:

The E3 Productivity Support zone objectives are:

- To provide a range of facilities and services, light industries, warehouses and offices.
- To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.
- To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.
- To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.
- To provide opportunities for new and emerging light industries.
- To enable other land uses that provide facilities and services to meet the day-to-day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.
- To allow diversity of activities that do not significantly conflict with the operation of existing or proposed development.



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History

The following applications listed are considered relevant to the current proposal, having previously been considered over the subject site and/or adjoining sites:

Application	Appl. Date	Proposal	Status	Status Date
DA96/3205	7/06/1996	Advertising Structures	Approved	14/06/1996
DA96/3018	23/01/1996	Bulk Store	Approved	6/03/1996
DA95/3170	25/05/1995	Warehouse	Approved	26/07/1995
DA88/2075	30/06/1988	Other Storage & Goods Handling N.E.C.	Approved	24/08/1988
DA85/1449	13/03/1985	Manufacturing (General)	Approved	4/12/1985

Issues

Clause 4.3 (Height of buildings) of SLEP 2014

The objectives of this clause are as follows.

- a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- c) *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

In this instance, the 'Height of Buildings Map' has no specific maximum building height provisions for the development site. As such, the maximum height of any building, under this clause, must not exceed 11m as required by subclause (2A). The development does not comply with this development standard as it will have a maximum height of 15.7m, see height plane analysis in attachments 2 & 3. This represents a variation to the numerical standard of 42%.

The property is situated within an area where there is no maximum building height specified hence Clause 4.3 (2A) is applicable where there is no maximum height for any land, the height of a building on the land is not to exceed 11 metres.

This application proposes a maximum building height of 15.7m. The applicant seeks to vary this building height development standard via a Clause 4.6 variation.

A variation of 42% (4.7m) is sought.

Clause 4.6 (Exceptions to development standards) of SLEP 2014

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure.

Clause 4.6 states the following:

(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks 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 development standard."*

Further, the consent authority must be satisfied that:

- i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objective for development within the zone in which the development is proposed to be carried out.*

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Applicant's Submission

The applicant provided Council with a justification to variation of the development standards as follows:

The objectives of clause 4.3 are:

- *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
- *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

In response to these objectives, despite non-compliance with the height of building standard, the proposal satisfies these as follows:

(a) Compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary is set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. Cases such as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Randwick Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and, most recently, *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, have confirmed that adopting the *Wehbe* principles remains an appropriate approach.

There are five alternatives set out in *Wehbe*, but only one alternative need be satisfied as provided in the table below.

Table 1: The *Wehbe* Principles

The objective of the development standard is achieved notwithstanding non-compliance with the standard	In this case, the objective of the development standard is achieved, notwithstanding non-compliance with the standard. This is addressed below
The underlying objective or purpose of the development standard is not relevant	Not applicable
The underlying objective or purpose would be defeated or thwarted if compliance was required	Not applicable
The standard has been abandoned or destroyed	Not applicable
The zoning of the land was unreasonable or inappropriate such that the standards for the zoning are unreasonable or unnecessary.	Not applicable

Objective (a)

Strategic context is provided by the Shoalhaven 2040 Strategic Land Use Planning Statement, at Planning Priority 3 Providing jobs close to home, targets the creation of 7,400 new jobs by 2036 and Planning Priority 9, which deals with Industrial and defence related opportunities, with focus being on safeguarding industrial and urban services from competing land use pressures.

In response to these objectives, despite non-compliance with the height of building standard, the proposal satisfies these as follows:

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The land on which the proposed building is located is within the E3 Productivity Support zone, with E4 Industrial land to the south and west, of substantial scale and demonstrating the importance of these land uses within the Shoalhaven district, demonstrating both the existing and desired future character of this locality, as set out in the Strategic Land Use Planning Statement.

In terms of the bulk and scale in context of surrounding built form, the scale of the buildings replaces existing built form on the site and is suitable in context, while benefiting opportunities to provide local storage services and additional employment generation which is a plank to achieving the outcomes of the Strategic Land Use Planning Statement.

While the proposed built form, at its maximum height exceeds the development standard, this is distributed across the site, in two separate building forms, set back from the site boundaries. This allows for a reduce presence of built form over the existing situation, where there is only one long building, stretching through the centre of the site. The proposal (including that part of the building that is not compliant with the building height) reduces the concentration of built form.

The consequence of the additional height is also limited when viewed from the streetscape as the shorter building dimension faces the street, with the length of the building running through the site itself.

The design of the proposed roof profile, which includes both rectangular and angled elements, also ensures modulation that does not result in a bulky appearance when the building is viewed from different angles.

Having regard to the design, the position of the proposed building and their setback from the site boundaries and the shorter building proportion facing the street frontage, ensures that that element of the building form which is non-compliant with the development standard, is regulated in terms of bulk and scale, while allowing for floor space that will contribute to the provision of industrial-style land use, in demand in this location, for storage purposes and aid employment generation.

Therefore, the height of the building (including that part of the building that is non-compliant with the development standard) will not have significant impact.

Objective (b) Visual Impact

Similar to the reasons set out above, in relation to the bulk and scale of the proposal, the visual impact of the proposal when considered from adjacent boundaries is limited. The building form is set back from the street and side boundaries and will provide a contemporary building form to Princes Highway, despite non-compliance with the height of building standard, that is comfortable in its context, without causing adverse visual impact to the streetscape, or when viewed from surrounding properties.



Figure 1: Photomontage of proposal, looking north (Source: MCHP Architects)

Disruption of views

The site is in an industrial area and, whilst a major thoroughfare, there are no significant views proximate to, nor surrounding, the site that require retention. Therefore, the height of the building (including that part of the building that is non-compliant with the development standard) will not have any impact in that regard.

Loss of privacy

The area proximate to the site, as evidenced in both the aerial photograph and zoning map below, is predominantly for industrial-style land uses and there is no residential land use, nor mixed use development, proximate to the site that warrants the protection of privacy between allotments, specifically to the extent that the non-compliant part of the building has any impact in that respect on adjoining land uses.

Therefore, the height of the building (including that part of the building that is non-compliant with the development standard) will not have any impact in that regard.

Loss of solar access

The proposal, including that part of the building that is not compliant with the height of building standard, will cause additional shadow impact to the property to the south of the site, noting that the orientation of the land, being almost on a direct north-south axis, makes this outcome inevitable.

While the proposal will increase the shadow affectation to 183 Princes Highway, the area to be impeded is largely without building form and used for circulation purposes, along the northern side of the site.

Further the height of the building will not result in adverse solar access conditions over vegetation that may otherwise impede the health of this.

There are also no prescriptive controls or standards that apply to industrial style development (such as the numerical controls that apply for residential development, where solar access is to be preserved for three hours at mid-winter to adjoining properties), of which the proposal must comply with. Given that the strategic planning policy does not nominate the future use of this area for anything other than industrial purposes, the additional building height proposed that exceeds the development standard, does not affect the amount of solar access to adjoining properties that may otherwise be used for an alternative purpose.

Further, additional shadow diagrams have been prepared which demonstrate the variation in solar access between and compliant building height and that proposed (DA 230-232, Revision A) (Appendix 1). These demonstrate that while there is additional shadow over the adjoining property, the impact remains generally over the driveway and parking area aside from the 9am shadow, where there is some impact to windows over the western elevation of the building. However, the projection of additional shadow has cleared from these windows by 12 noon. Therefore, while there is some additional impact as a result of the proposed building height in terms of solar access, it is not to the extent that solar access impedes the use of the existing building or the land.

Objective (c)

There are no heritage items proximate to the site, nor is the site located in a heritage conservation area. Therefore, the height of the building (including that part of the building that is non-compliant with the development standard) will not have any impact in that regard.

The proposal, despite non-compliance with the development standard for height of buildings, satisfies the objectives of that standard to the extent that clause 4.6(3)(a) is achieved.

Sufficient environmental planning grounds

There are sufficient environmental planning grounds to support non-compliance with the development standard for the height of buildings standard as:

- the design of the building provides a form, scale and materiality that is commensurate with that presented in the context of the site
- non-compliance does not compromise the amenity of adjoining properties, being of a light-industrial nature
- the scale of the building allows for the orderly and economic use of the land, with the requisite provision of setbacks, landscaping and car parking to service the site
- the design allows for the retention of the public spaces surrounding the site, including maintaining existing landscaped areas, so as not to compromise the appearance of the allotment within the streetscape context and ensure that it balances the relationship between land uses
- the provision of additional floor space accommodated by the proposed building height will assist to satisfy demand for storage purposes, desired in this location. It will also allow for more contemporary facilities, with improved streetscape presentation over the existing building, while being of a scale, including that portion of the building that breaches the development standard, that is commensurate with other industrial property proximate to the site. This will assist employment opportunities, both direct and indirect, in association with the proposed building.

Having regard to the above, there are sufficient environmental planning grounds to justify contravening the development standard for height of buildings.

Discussion

In accordance with 4. (a)(i) of Clause 4.6 of the SLEP 2014, the applicant's written request is considered to have adequately addressed the matters required to be demonstrated by subclause (3) that is,

- a) *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and*
- b) *There are sufficient environmental grounds to justify contravening the development standard.*

The applicant's written request demonstrates sufficient environmental planning grounds to justify contravening the height development standard for this particular planning proposal for the following reasons:

- The proposal is consistent with the key objectives of the E3 zone in that it provides a land use that subject to condition is compatible with surrounding light industries and warehouse uses and provides a use for the needs of the community which would not be suited to locations in other employment zones
- In considering the objectives of the zone for the provision of *a range of facilities and services, light industries, warehouses and offices* the proposal is considered contextually appropriate.
- The height of the development exceeds the height of surrounding development however it is consistent with the bulk and scale of Bunnings Warehouse. The height is considered appropriate in the context of the zone and surrounding existing development where its visual impact is reduced due to these elements.
- The proposal is compatible in the urban landscape when compared to the Bunnings building which has greater overall mass and proportions. Further there are no local character statements or area specific controls, and the development is consistent with the existing and anticipated future character of industrial development of the area.
- The proposed intrusion above the 11-metre height limit is essentially only the roof portion of the buildings and the main height increase is from the lift overrun which is only a small portion of the roof. Most of the building at the roof pitching point is 12.6m which is a 1.6m height intrusion.
- The proposal is consistent with the objectives of the height standard, to ensure that the height of development is appropriate to the condition of the site and its context:
- The building height variation does not generate overshadowing impacts which could impact the amenity of surrounding properties given the site context of a light industries and bulky goods.

Consistency with the underlying objectives of the standard:

The objective of the Height Standard is listed at Clause 4.3 (1) of SLEP 2014.

- a) *to ensure that buildings are compatible with the height, bulk and scale of existing and desired future character of the locality,*
- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- c) *to ensure that the height of building on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

As discussed in the preceding section of the report, the proposed height of the development is appropriate to the context and is compatible with the 11-metre height limit.

The proposal positively responds and satisfactorily addresses the characteristics of the site and its broader context. The proposal is of a height and scale that is sympathetic to its immediate context and does not impede views, it is not visually intrusive, nor does it create privacy or overshadowing issues.

The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Having regard to the objectives of the zones (refer to the objectives cited earlier in this report) the development does not compromise the objectives of either the Business Development or General Industrial zones. Notably, the proposal will provide for a range of employment opportunities as well as providing storage facilities. It is also noted that this development is replacing effectively the same development, albeit at a larger scale.

Although the height contravention appears numerically large, the height is consistent with existing height, bulk and scale of the existing character of the locality. Further the visual impact is minimised by use of front and side setbacks and the height is distributed across two

separate built forms and has shorter building proportion facing the street due to the orientation of the site.

The applicant justifies that the proposed height is required for, *the provision of additional floor space accommodated by the proposed building height will assist to satisfy demand for storage purposes, desired in this location. It will also allow for more contemporary facilities, with improved streetscape presentation over the existing building, while being of a scale, including that portion of the building that breaches the development standard, that is commensurate with other industrial property proximate to the site. This will assist employment opportunities, both direct and indirect, in association with the proposed building.*

The surrounding area also reflects the height with the existing Bunnings Warehouse located north of the site already has a maximum height of 15.5m and accordingly the height of the proposed development is not inconsistent with the height of surrounding existing buildings and will not appear as significantly different in scale.

The contravention does not raise any matters of significance having regard to State or regional environmental planning. It does not have implications for any State Environmental Planning Policies in the locality or impacts which are considered of a State or regional scale.

Planning Assessment

The DA has been assessed under s4.15 of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 2.

Policy Implications

Not applicable

Community Consultations

The application was notified in accordance with Council's Community Consultation Policy with letters being sent within a 120m buffer of the site, including Shoalhaven Business Chamber during the period 20 November 2024 to 5 February 2025. The proposal was also advertised in the local press on one occasion (South Coast Register) and is viewable on Council's DA tracking website.

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

Financial Implications

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

Legal Implications

Pursuant to section 8.2 of the EP&A Act, a decision by the Council may be the subject of a review by the applicant in the event of approval or refusal. If such a review is ultimately pursued, the matter would be put to Council for consideration.

Alternatively, an applicant may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act.

Summary and Conclusion

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the *Environmental Planning and Assessment Act 1979*. As such, it is recommended that the Development Application (DA24/1462) be approved subject to the conditions of consent recommended at Attachment 1.

In particular, the variation considered as part of the assessment of the application is considered to be acceptable and therefore, strict compliance with the development standard (building height) is considered to be unnecessary as the requirements under Clause 4.6 of the Shoalhaven LEP 2014 are considered to have been satisfactorily addressed.

CL25.293

**CL25.294 DA25/1448 – 682 Yalwal Rd Bamarang – Lot 3
DP 1277665****DA. No:** DA25/1448/4**HPERM Ref:** D25/338781**Department:** Development Services**Approver:** Lindsay Usher, Acting Director - City Development

Attachments:

1. s4:15 Assessment Report (under separate cover) [⇒](#)
2. Draft Determination (under separate cover) [⇒](#)
3. Applicants Clause 4.6 Variation Statement (under separate cover) [⇒](#)
4. Notification Plan (under separate cover) [⇒](#)

Description of Development: Change of use of the existing approved training centre building into a dwelling house

Owner: TJ Jirgens**Applicant:** Stephen Richardson**Notification Dates:** 23.04.2025 to 8.05.2025**No. of Submissions:** One**Purpose / Reason for consideration by Council**

The purpose of this report is to seek Council direction with respect to a request for a variation of a development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 (SLEP 2014). The variation relates to minimum lot size for the erection of a dwelling house. The minimum lot size that applies to the lot under SLEP 2014 is 40ha and the applicants lot is 3.13ha, this is a 92.14% variation to the development standard.

Recommendation

That development application DA25/1448 to change the use of the existing approved training centre building into a dwelling house at 682 Yalwal Rd Bamarang, Lot 3 DP 1277665, be refused for the reasons contained in Attachment 2 of this report.

Options

1. Resolve to not support the proposed variation to the development standard for the minimum lot size for the erection of dwelling houses in the C2 Environmental Conservation zone and refuse the application.

Implications: The development would be unable to proceed as applied for, and a section (s)8.2A Review could be sought by the applicant and / or an appeal lodged with the Land and Environment Court (LEC).

2. Resolve to support the proposed variation to the development standard and refer the application back to staff to negotiate further information required in relation to the biodiversity impacts of the proposal.

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Implications: Council will need to provide planning grounds for which the application could be approved, having regard to section (s)4.15(1) considerations.

3. Alternative recommendation.

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

Location Map



Figure 1 - Locality Map



Figure 2 - Aerial imagery of subject site

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Background

The application is seeking to vary the development standard by 92.14% for the minimum lot size for a dwelling house under Clause 4.2D of SLEP 2014. The applicant has submitted a written request in accordance with Clause 4.6 of SLEP 2014.

Proposed Development

The proposal includes:

- Change of use of the existing approved training centre building into a dwelling house.
- Clause 4.6 variation request to vary clause 4.2D of SLEP 2014 for the minimum lot size for a dwelling house.
- Alterations to the existing building to convert it into a 3 bedroom dwelling, with open living, kitchen and dining area, bathroom, laundry and toilet facilities.
- Vehicular access to the site is provided by an all-weather driveway from Yalwal Road.
- The development application also includes a Vegetation Management Plan that proposes environmental protection works for the site that will be tied to the conversion of the training centre to a dwelling house.
- Telephone, electricity and bottled gas are available to the site. Roof water is currently collected in a 20,000L rainwater tank. Sewerage effluent will be managed on site.

Subject Land

The development site comprises Lot 3 DP 1277665 (682 Yalwal Road Bamarang). Refer to Figure 2.

Site & Context

The subject site is accessed via an existing right of way from Yalwal Road. The site contains a former mud brick making industry and ancillary training centre building and other non-habitable structures.



Figure 3 - Existing former mud brick training facility building

The lot is traversed by easements for electricity and there is a water main that runs adjacent to the electricity easement.

The access to the site is from a right of carriageway over the adjoining lot to Yalwal Road. The site is on top of the ridge and the land slopes away to the east.

As noted in the Applicant's Statement of Environmental Effects, the mud brick making industry ceased operations in 2017.

The surrounding area is rural in character and the site is adjoined by bushland to the north, south, east and west.

The site is predominantly zoned C2 Environmental Conservation and with narrow western portions zoned C3 Environmental Management under SLEP 2014.

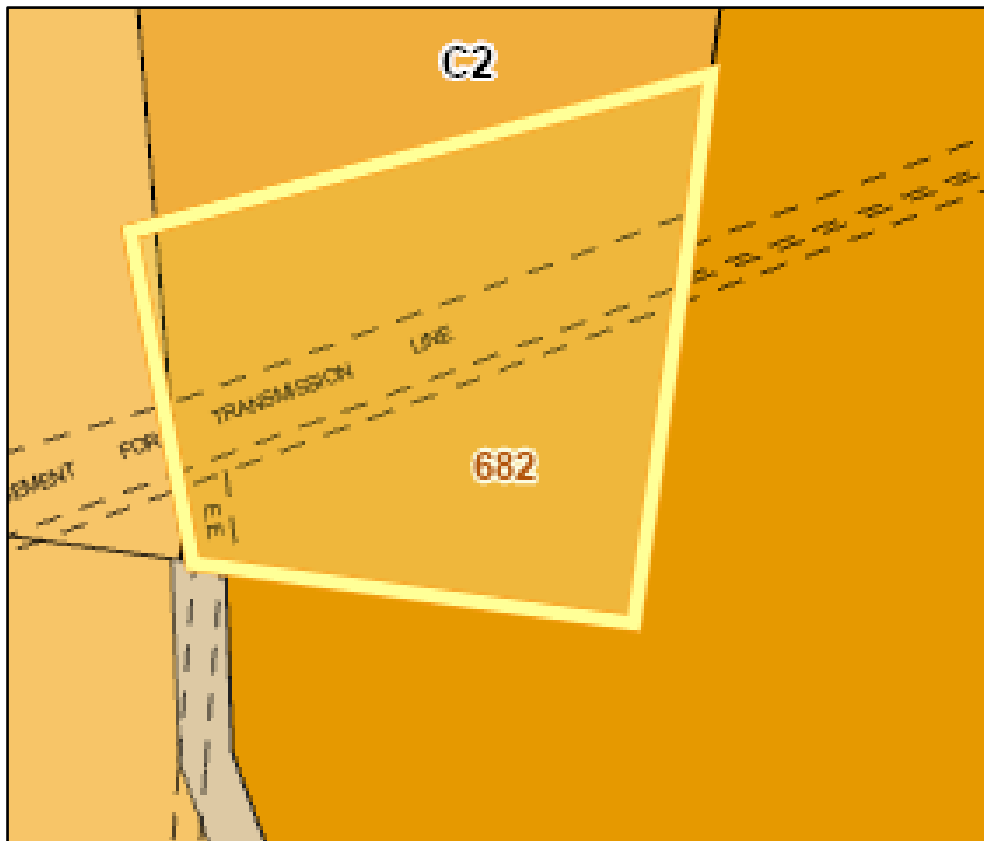


Figure 4 – Zoning Map – C2 Environmental Conservation

History

In 1998 Council resolved to prepare a Local Environmental Plan (LEP) over part of Lot 22 DP 746233 to enable the establishment of a mud brick making operation through an allowance clause in Shoalhaven LEP 1985. The amended LEP was subsequently made on 19.3.1999 (Amendment no.154)

A development application (DA99/1500 for an Industry – Mud Brick Making) was granted on 23.4.1999. The industry commenced soon after.

The subject land at the time of approval was Lot 22 DP 746233 having an area of approximately 50 hectares and its use was a tourist facility comprising a guesthouse and two holiday cabins.

On 30.8.1999 Council granted consent to the subdivision of Lot 22 under Clause 11 (3) of Shoalhaven LEP 1985 to enable the excision of a of the tourist facility from the mud brick making operation.

- Lot 1 – 7.145 ha for the tourist facility
- Lot 2 – 43.34 for the residue which included the mud brick making operation

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In 2005 a Development application DA05/4017 was submitted originally proposing a training centre, a managers' residence, and subdivision. Following correspondence from Council outlining issues with the residence not being subservient to the training facility, the managers' residence was withdrawn from the proposal. This DA was approved on 23 January 2008 minus the manager's residence. In the assessment of DA05/4017 it was made clear in the assessment and correspondence with the Applicant, that the subdivision of the land that resulted in the creation of Lot 3 DP 1277665 (the subject site) would not have a dwelling entitlement. DA05/4017 approved a mud brick making industry and ancillary training centre building and subdivision. The land with the mud brick making operation was excised from the remainder of Lot 2 and created Lot 3 DP 1277665.

Clause 11(3)(a) from Shoalhaven LEP 1985 which applied at the time of determination of DA05/4017 read as follows:

- 3) *The Council may grant consent for a subdivision of land to which this clause applies (except land within Zone No 7 (d2) or 7 (f2)) so as to create an allotment of less than 40 hectares if the Council is satisfied that:*
 - a) *the allotment proposed to be created is currently lawfully used for a purpose (other than agriculture, forestry, a dwelling-house or dwellings, or tourist accommodation under clause 20) for which it may be used without or only with the consent of the Council, or will be used for such a purpose before the plan of subdivision or strata plan is registered, and*

It is evident from the assessment of DA05/4017 and clause 11(3) of Shoalhaven LEP 1985 which applied at the time Lot 3 DP 1277665 was created that the intent of the allotment was to restrict its use to prevent residential accommodation and not grant consent for a dwelling entitlement.

An application DA23/1640 was submitted on 21/08/2023 to change the use of the existing training centre to a dwelling house, requesting a Clause 4.6 variation to the minimum lot size for dwelling houses under Clause 4.2D of SLEP 2014. It was refused on 12/2/2024, for the following reasons.

1. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is non-compliant with the development standards set out in clause 4.2D Shoalhaven LEP 2014 and inconsistent with the clause objectives.*
2. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application has not satisfied the requirements of clause 4.6 Shoalhaven LEP 2014 as it has been sought to apply to varying the development standards set out in clause 4.2D in that the application does not demonstrate that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case.*
3. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application has not satisfied the requirements of clause 4.6 Shoalhaven LEP 2014 as it has been sought to apply to varying the development standards set out in clause 4.2D in that the application does not demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, Council is not satisfied that the proposal is compatible with the considerations set out in clause 5.16 of Shoalhaven LEP 2014.*
5. *Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use.*

6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, having regard to the above matters to address the relevant provisions of Environmental Planning and Assessment Act, 1979, the granting of development consent is not considered to be in the public interest.

The current application DA2025/1448 subject of this report for the same proposal, change of use of training centre to dwelling house, was received on 14/04/2025. The applicant's Statement of Environmental Effects explains the reasoning behind the resubmission of the development application for the same proposal.

At the time of the assessment of DA23/1640, the variation to the development standard required concurrence from the then Planning Secretary of the Department of Planning & Environment in accordance with Clause 4.6(4) (b) . The Department however determined not to grant concurrence citing the following reasons:

- *the subject site was created under Shoalhaven Local Environmental Plan 1985 for the purpose of "training centre" (commercial) use, with no dwelling entitlement.*
- *the applicant has not adequately demonstrated that the proposed 92.14% variation from the minimum lot size for the erection of a dwelling development standard is reasonable or necessary.*
- *the proposal could set an undesirable precedent for the erection of dwellings on other undersized lots in rural and environmental zones*
- *the proposal could set a precedent for adverse environmental impacts that would be inconsistent with the Illawarra Shoalhaven Regional Plan 2041 and Shoalhaven LEP 2014; and*
- *it is in the public interest that a variation of this size is not supported. Rather, should the proposal have merited a strategic planning process should be used to consider changing the development standard.*

Council refused DA23/1640 on 12.2.2024 based on the reasons outlined above.

Since Councils determination, Clause 4.6 of the LEP has been amended to remove the requirement of the Planning Secretary's concurrence to vary a development standard.

The applicant is of the belief that the Planning Secretary incorrectly referred to the proposal as being for the erection of a dwelling when there was no new building proposed to be erected, as the proposal was for a change of use only. Their opinion is that the approval of the change of use to a dwelling is not a precedent for the erection of dwellings on other undersized lots. The building already exists and was constructed lawfully. However, the intention of the statement from the department and the use of the word erection comes from Clause 4.2D which uses the word erection and is the reason for this clause 4.6 variation request.

The new application additionally provides a Vegetation Management Plan for remediation of the site which the applicant states '*will ensure the objectives of the C2 zone that apply to the site are achieved and which will ensure a net beneficial environmental outcome*'.

Issues – Clause 4.2 Erection of dual occupancies (attached) and dwelling houses on land in certain rural, residential and conservation zones

The objectives of the clause area as follows:

- 1) The objectives of this clause are as follows—
 - a) to minimise unplanned rural residential development,

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- b) to enable the replacement of lawfully erected dwelling houses in certain rural, residential and conservation zones,
- c) to control rural residential density affected by historical subdivision patterns in Zone R5 Large Lot Residential.

The lot is zoned C2 Environmental Conservation where the existing mud brick training centre is located. The minimum lot size on the Lot Size Map that applies to the site is 40ha.

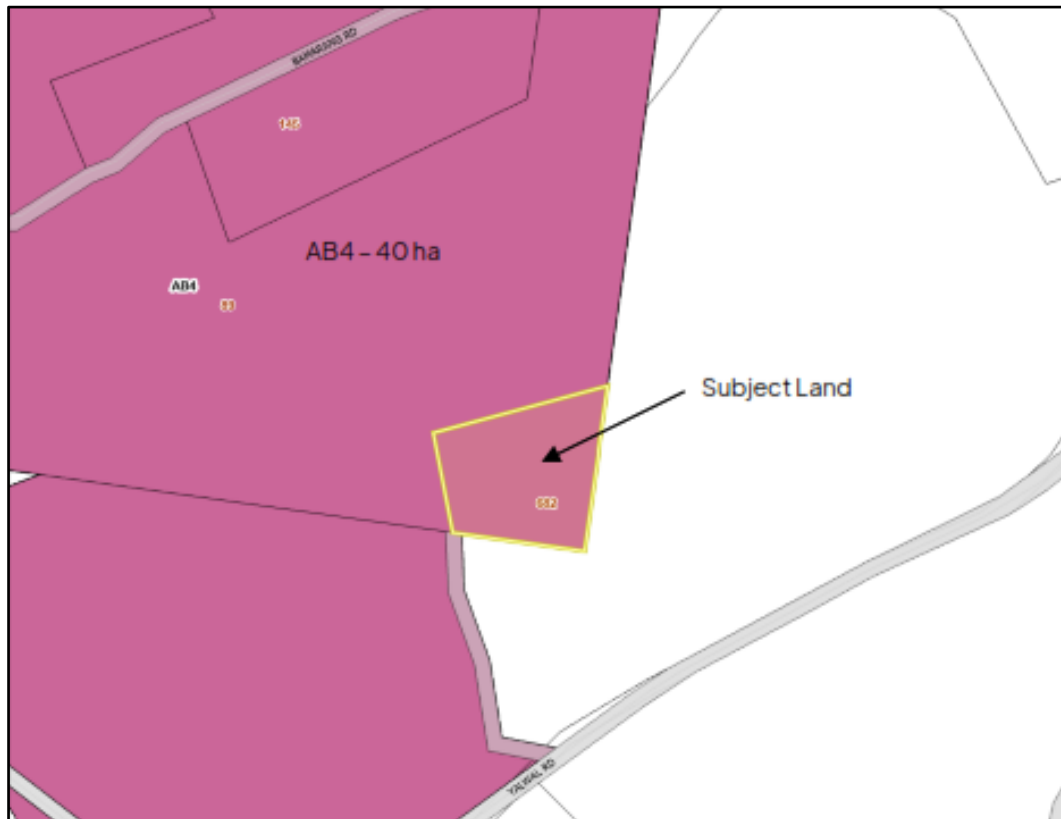


Figure 5 – Minimum Lot Size Map SLEP 2014

Clause 4.2D (3) (a) applies to the subject lot and states:

(3) Development consent must not be granted for the erection of a dwelling house on land to which this clause applies unless the land—

- (a) is a lot that has at least the minimum lot size shown on the [Lot Size Map](#) in relation to that land*

The subject lot is 3.13ha and therefore the applicant is requesting to vary the lot size by 92.14%.

The applicant has submitted a written request to justify the contravention of the development standard. Council is required to consider subclauses (3) of clause 4.6. Clause 4.6(3) is extracted from SLEP 2014 below:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

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Unreasonable and unnecessary

The consent authority must form the positive opinion that the applicant has adequately addressed those matters required to be demonstrated by clause 4.6(3)(a).

The applicant must demonstrate that compliance with the development standard is unreasonable and unnecessary in the circumstances.

Applicant's submission

The argument put forward in the Applicants Clause 4.6 variation statement has been summarised as follows:

The strict compliance with the 40-hectare minimum lot size as required by Clause 4.2D(3)(a) of the LEP is unnecessary and unreasonable under the specific circumstances of this case:

- *that compliance with this standard is unnecessary given the objectives that underpin both the clause and the zones will be achieved without compliance with this minimum lot size development standard;*
- *The Shoalhaven Local Environmental Plan (SLEP) 2014 does not define the term “unplanned rural residential development” in Clause 4.2D(1)(a).*
- *In the Sharp v Kiama case, Commissioner Espinosa clarified that a development can still be considered “planned” even if it contravenes a development standard, as long as that contravention is justified under Clause 4.6 of the LEP.*
- *Therefore, a dwelling on a lot smaller than the minimum size (e.g., 40ha in a C2 zone) is not automatically “unplanned” if:*
 - *The minimum lot size is treated as a development standard (not a prohibition), and*
 - *There is a valid Clause 4.6 written request justifying the variation.*
- *If Clause 4.6 is satisfied, the development may be considered a “planned outcome”, even if it doesn’t meet the minimum lot size.*
- *The proposal involves the adaptive re-use of an existing training centre into a dwelling which was lawfully constructed.*
- *The building, made of high-quality rammed earth, is energy-efficient and well-suited for residential use. The adaptive re-use is considered sustainable and permissible under the C2 zoning, which offers limited viable alternatives for the site.*
- *Leaving the training centre vacant poses a high risk of property crime, including vandalism and arson. Its location within C2 and C3 environmental zones highlights the importance of encouraging permanent occupation to enhance site security.*
- *Further the proposed change of use will not necessitate any additional vegetation clearing. The development application is supported by a Bushfire Assessment that demonstrates the required APZ can be achieved within the existing cleared managed yard area surrounding the existing building.*
- *The development application is supported by a Vegetation Management Plan (VMP) which links the change of use of the training centre to site-wide environmental remediation. Due to past brickmaking activities and a powerline easement, the site’s vegetation is disturbed. The VMP outlines rehabilitation measures that consider bushfire and easement constraints. Allowing someone to reside on-site will support long-term vegetation management and help restore the site’s environmental values, contributing to a better planning and ecological outcome.*

- *The historical development of Nowra and planning practices in the Shoalhaven area have resulted in many lawful dwellings on lots smaller than 40 hectares. Within a 5.5 km radius of the subject site, there are at least 80 such allotments. This pattern of development suggests that the 40-hectare minimum lot size standard under Clause 4.2D(3)(a) is not consistently applied in the locality. Therefore, strict enforcement of this standard in this case is considered unreasonable.*

Discussion

Council staff do not concur with the justification set out in the applicant's submitted clause 4.6 exception statement; the following points are made in response to the Applicant's commentary:

Council staff do not agree that the objectives of the clause 4.2D(3)(1) development standard are achieved notwithstanding non-compliance with the development standard. The objectives of clause 4.2D are as follows:

- a) to minimise unplanned rural residential development,*
- b) to enable the replacement of lawfully erected dwelling houses in certain rural, residential and conservation zones,*
- c) to control rural residential density affected by historical subdivision patterns in Zone R5 Large Lot Residential.*

Objectives (b) & (c) do not apply to the subject case.

With regard to objective (a) clause 4.2D establishes a minimum lot size (or other criteria) for dwelling entitlements in rural and environmental zones with the objective of minimising unplanned rural residential development. As discussed above, it was made clear in the assessment of DA05/4017 and in correspondence with the Applicant and their clients, that the subdivision of the land that resulted in the creation of Lot 3 DP 1277665 did not benefit from a dwelling entitlement.

Accordingly, the use of the land for rural residential development as proposed by the current application DA25/1448 was not planned, intended or accounted for. DA25/1448 is not consistent with objective (a) of clause 4.2D and the application has not demonstrated that compliance with the development standard is unreasonable or unnecessary.

The argument that proposed adaptive reuse of the existing building for residential accommodation will provide improved security and address abandonment issues is not a suitable justification that compliance with the development standard is unreasonable or unnecessary; any security issues for the site could be addressed through non-residential measures e.g. fencing, security cameras, regular maintenance of the property. The land could also be consolidated with adjoining land or the buildings could be demolished. Cessation and abandonment of the approved use (mud brick training centre) does not justify contravention to the clause 4.2D development standard.

This was further reiterated in the correspondence from the (then) Department of Planning and Environment which declined secretary's concurrence (note – secretary's concurrence is no longer a requirement under clause 4.6) for the previous application DA23/1640 which was subsequently refused.

The Department cited reasons for the decision including "the proposal would set an undesirable precedent for the erection of dwellings on other undersized lots in rural and environmental zones" and "the proposal could have adverse environmental impacts that would be inconsistent with the Illawarra Shoalhaven Regional Plan 2041 and Shoalhaven LEP 2014". The Department went on to say that the proposal is not in the public interest and rather if the proposal has merit, a strategic planning process should be used to consider any change to a development standard. It is noted that the requirement for secretary's concurrence has been repealed from the legislation, previously subclause (4)(b), and no longer required.

Council does not agree that the development standards set out in clause 4.2D(3) have been abandoned. The Applicant's clause 4.6 exception statement identifies some properties below the minimum lot size that have dwellings. As noted by the Applicant these allotments below the 40ha minimum lot size can be attributed to early settlement of the area and subsequent history of planning provisions and the erection of dwelling houses on these allotments are likely to have complied with development standards/controls applicable at that time. Clause 4.2D deals with historical settlement patterns and historical planning provisions by providing other criteria (other than minimum lot size) to establish a dwelling entitlement and also permits the replacement of lawfully erected dwelling houses. The existence of allotments with dwelling houses which have less than 40ha does not mean the clause 4.2D(3) development standard has been abandoned. The application does not demonstrate that compliance with the development standard is unreasonable because the development standard has been abandoned. Conversely, not applying the standard will set an undesirable precedent which will then create the conditions whereby it will be much harder to refuse to refuse similar applications.

The applicant has provided a Vegetation Management Plan (VMP) to improve the environmental aspects of the lot. The assessment by Council's Biodiversity Officer has concluded that although the objectives of the C2 zone are difficult to achieve on a lot that has an electricity transmission line running through it which requires ongoing maintenance of vegetation, the objectives of the C2 Environmental Zone are considered reasonable and necessary to this parcel of land given its position in the landscape. The subject land is located between two conservation areas, being Bamarang Nature Reserve and Crown Land reserve. The parcel is also surrounded by in-tact native vegetation on all sides that provide habitat for threatened species and from part of the Illawarra Shoalhaven Regional Plan 2041 Nowra biodiversity corridor, making the site environmentally sensitive.

While consents have been granted for dwelling houses on lots smaller than the minimum lot size by Council in the Bamarang locality, an aerial image review of these locations appear that a balance between development and the conservation of environmentally sensitive bushland could be achieved, hence meeting the objectives of the zone. The existing clearing on the subject lot required by the electricity easement restricts the bushland area to be conserved in the lot, making it smaller in comparison to the developed area.

While the VMP generally meets Council's requirements for such plan, the question is raised whether the plan has proposed actions that the landowner already has a legal obligation to complete, including regeneration of land cleared without consent (unless approval for this clearing has been obtained by other relevant authorities) and weed control under the Biosecurity Act 2015.

The change of land use will result in the increase of human presence on the subject land with the potential for indirect or future adverse impacts to sensitive environments within and adjoining the subject land, making the proposal inconsistent with the aims of the Illawarra Shoalhaven Regional Plan 2041 biodiversity corridor.

The legal mechanisms protecting vegetation proposed to be set aside for conservation on the subject land are generally weak and have the potential to be varied or modified in the future if a precedence of a dwelling house is set.

Council does not agree that compliance with the development standard is unreasonable or inappropriate due to the existing use of the land. The commercial viability of the previously approved land use and subsequent cessation of the use does not justify that conversion of the building to a dwelling house and resultant creation of a dwelling entitlement on an undersized allotment that was not intended for rural residential development. The previous land use does not provide planning grounds for contravention to the clause 4.2D development standard.

The justification by the applicant does not demonstrate that compliance with the development standard is unnecessary or unreasonable

Sufficient Environmental Planning Grounds

The consent authority must form the positive opinion that the applicant's written request has adequately addressed those matters required to be demonstrated by clause 4.6(3)(b).

The applicant must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

Applicant's submission

The applicant's clause 4.6 request seeks to justify the variation by setting out environmental planning grounds in favour of the variation. Those grounds are summarised as follows:

There are also sufficient environmental planning grounds to justify contravening the 40 hectare minimum lot size development standard of Clause 4.2D(3)(a) of the LEP :

- *The proposal will be consistent with and better achieve the aims of the Illawarra – Shoalhaven Regional Plan and the Shoalhaven LEP 2014 and the objectives of the C2 and C3 zones that apply to the land under the LEP.*
- *The proposal will not have any significant effects on flora and fauna, local amenity, or heritage values. Both the existing building and access road are existing and located within existing cleared areas of the site. No vegetation disturbance is required either for the construction of new buildings (as none are proposed) or to satisfy bushfire requirements. Such is entirely consistent with the thrust of the aims and objectives of the above planning instruments and provisions. The proposal will not adversely affect the ecological, scientific, cultural or aesthetic values of the site. The proposal will not result in any significant impact on the environmental values of the subject site.*
- *Enabling the adaptive re-use of the existing building as a dwelling will allow for better management of the land in respect to bushfire and rehabilitation. Such would provide a better outcome for the ongoing management of the environmental and biodiversity values of the land by allowing flexibility in these particular circumstances.*
- *The development application is supported by a VMP which will tie the change of use of the existing training centre building to a dwelling house to the rehabilitation of vegetation of the overall site*
- *The rehabilitation of vegetation within the site, and providing a means by which the site can be managed in the longer term by having someone reside on the land, will restore the inherent environmental values of this site and will ensure an improved overall town planning outcome.*
 - *There are also site-specific environmental grounds that justify the proposed variation to the minimum 40-hectare allotment size development standard:*
- *The adaptive re-use of the existing training centre into a dwelling house will involve a sustainable re-use of an existing under-utilised building. To deny the use of this building for residential use would be to deny an eminently suitable structure to be used.*
- *The proposal is supported by Bushfire Assessment that confirms no additional vegetation disturbance will be necessary to accommodate the change of use.*
- *The proposal is also supported by a VMP that ties the change of use of the existing building to the rehabilitation of existing disturbed areas within the site.*
- *The proposal will not set an undesirable precedent given the specific circumstances of this case. The proposal involves the adaptive re-use of an existing building that was lawfully constructed. These circumstances, and the history surrounding the creation and use of the subject land are specific to this particular case.*

Discussion

The Applicant's clause 4.6 statement contends that by contravening the development standard and permitting the residential use of the land it would enable better management of the land and natural areas.

Council staff do not agree with the applicant's justification and are of the view that the development and noncompliance with the development standard is contrary to the objects of the Environmental Planning and Assessment Act 1979. Although the applicant is planning to rehabilitate and manage the land subject to obtaining dwelling entitlement, it is Council staff opinion that the proposal does not promote the orderly and economic use and development of land, in that the proposal facilitates unplanned rural residential development in areas not intended to do so. Similarly, the proposal is not consistent with the underlying objectives of clause 4.2D, rather it is contrary to objective (a) in clause 4.2D in that it facilitates unplanned rural residential development on an allotment that was not intended to do so.

The application has not demonstrated that there are sufficient environmental planning grounds to justify contravening the clause 4.2D development standard.

Planning Assessment

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

Internal Consultations

The application was referred to Council's Biodiversity Officer who reviewed the Vegetation Management Plan and raised concerns with the proposal that were included in the discussion above. Should the Clause 4.6 variation be supported they have requested further details to be provided in relation to the biodiversity impacts and a revisions to the Vegetation Management Plan.

External Consultations

The application was referred to Endeavour Energy and the NSW Rural Fire Service who have no objections to the proposal.

Community Consultations

One submission was received from Crown Lands as an adjoining owner, in relation to Council's notification of the development, raising no objections to the proposed development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a one hundred (100)m buffer of the site.

Financial Implications

There are potential cost implications for Council in the event of a refusal of the application. Such costs could be associated with defending an appeal in the Land and Environment Court of NSW.

Legal Implications

Pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act), a decision of the Council may be subject to a section 8.2 review or an appeal to the Court against the determination under section 8.7 of the EP&A Act.

Summary and Conclusion

Council staff have considered the proposed change of use to a dwelling house and resultant dwelling entitlement would be incompatible with the preferred and predominant use of the land given the lot size. The proposal would have negative social and environmental impact by setting an undesirable precedent for the erection of dwellings on other undersized lots in rural and environmental zones, and contribute to unplanned rural residential development. Council staff recommend that the application be determined by way of refusal.

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CL25.295 2025 Australian Coastal Councils Conference

HPERM Ref: D25/370017

Submitted by: Cllr Patricia White
Cllr Selena Clancy

Attachments: 1. Report (under separate cover) [↗](#)
2. Australian Coastal Councils Association Report - Short term rentals in Australia's coastal regions (councillors information folder) [↗](#)

Reason for Report

To provide a report (Attachment 1) from Cllr Patricia White and Cllr Selena Clancy on the 2025 Australian Coastal Councils Conference held in Mooloolaba, QLD 31 July to 1 August 2025 in accordance with Clause 3.3(e) of the Council Members – Payment of Expenses and Provision of Facilities Policy.

Recommendation

That Council receive the report from Cllr Patricia White and Cllr Selena Clancy on the 2025 Australian Coastal Councils Conference for information.

Options

1. Receive the report for information
2. Request further information on the conference

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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.