

Development & Environment Committee

Meeting Date: Tuesday, 05 March, 2019
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.0pm

Membership (Quorum - 5)
Clr Joanna Gash - Chairperson
Clr Greg Watson
All Councillors
General Manager or nominee

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

Agenda

1. **Apologies / Leave of Absence**
2. **Confirmation of Minutes**
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3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
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8. Confidential Reports

Nil

Development & Environment Committee

Delegation:

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

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

Schedule

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

MINUTES OF THE DEVELOPMENT & ENVIRONMENT COMMITTEE

Meeting Date: Tuesday, 5 February 2019
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.01pm

The following members were present:

Clr Amanda Findley (left 5.56pm)
Clr Joanna Gash - Chairperson
Clr Patricia White
Clr John Wells
Clr John Levett
Clr Nina Digiglio (left 6.08pm)
Clr Kaye Gartner (left 6.08pm)
Clr Andrew Guile
Clr Mitchell Pakes
Clr Greg Watson (arrived 5.04pm)
Clr Mark Kitchener (arrived 5.03pm)
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Apologies / Leave of Absence

An apology was received from Clr Alldrick.

Confirmation of the Minutes

RESOLVED (Clr Digiglio / Clr White) MIN19.47

That the Minutes of the Development & Environment Committee held on Monday 21 January 2019 be confirmed.

CARRIED

Declarations of Interest

Clr Guile – less than significant non-pecuniary interest declaration – DE19.7 Update – Possible Heritage Listing – Former Huskisson Anglican Church – potential community perception that his association with the Anglican Church may be a conflict of interest, he is not employed by the organisation, his current employer is another diocese of the Anglican Church – will remain in the room and will take part in discussion and vote.

Note: Clr Kitchener arrived at the meeting, the time being 5.03pm.

Note: Clr Watson arrived at the meeting, the time being 5.04pm.

DEPUTATIONS AND PRESENTATIONS

DE19.7 - Possible Heritage Listing - Former Huskisson Anglican Church (page 11)

Tim Peach, representing Save Husky Church, spoke for the recommendation.

Steve Bartlett spoke against the recommendation.

Procedural Motion - Bring Item Forward

RESOLVED (Clr Gartner / Clr Guile)

MIN19.48

That the matter of item DE19.7 Update – Possible Heritage Listing – Former Huskisson Anglican Church be brought forward for consideration.

CARRIED

DE19.7 Update - Possible Heritage Listing - Former Huskisson Anglican Church

HPERM Ref:
D19/12940

Clr Guile – less than significant non-pecuniary interest declaration – DE19.7 Update – Possible Heritage Listing – Former Huskisson Anglican Church – potential community perception that his association with the Anglican Church may be a conflict of interest, he is not employed by the organisation, his current employer is another diocese – remained in the room and took part in discussion and voted.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Receive the report for information.
2. Note the correspondence received from the Heritage Division of the NSW Office of Environment & Heritage dated 2 January 2019.
3. If necessary, reconsider this matter following the further consideration of the site by the NSW Heritage Council's State Heritage Register Committee during February 2019.

MOTION (Clr Gartner / Clr Findley)

That Council:

1. Receive the report for information.
2. Note the correspondence received from the Heritage Division of the NSW Office of Environment & Heritage dated 2 January 2019.
3. If necessary, reconsider this matter following the further consideration of the site by the NSW Heritage Council's State Heritage Register Committee during February 2019.

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

AGAINST: Clr Gash, Clr White, Clr Wells, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener and Clr Proudfoot

LOST

Clr Findley raised a Point of Order against Clr Guile that his comments about “middle-ranking bureaucrats” being inappropriate and brought Council into disrepute.

The Chair asked Clr Guile to temper his comments.

Clr Guile refused to temper or withdraw his comments, advising his comments were in accordance with the Code of Meeting Practice.

FORESHADOWED MOTION (RESOLVED) (Clr Guile / Clr Pakes)

MIN19.49

That Council:

1. Receive the report for information.
2. Note the correspondence received from the Heritage Division of the NSW Office of Environment & Heritage dated 2 January 2019.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Mr Pigg

AGAINST: Clr Levett, Clr Digiglio and Clr Gartner

CARRIED

REPORTS

DE19.6	Annual Grant Funding - Biosecurity Weed Management for Shoalhaven City Council	HPERM Ref: D19/9876
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Recommendation (Item to be determined under delegated authority)

That Council:

1. Accept the grant funding of \$164,324 (ex GST) to support Council's activities to meet its obligations under the Biosecurity Act 2015, NSW Invasive Species Plan 2015-22 and the South East Regional Strategic Weeds Management Plan 2017-22.
2. Accept the grant funding of \$33,715 (ex GST) to undertake on ground intensive inspections of urban areas to identify and eradicate Boneseed in the southern Shoalhaven.
3. Write to the NSW Local Land Services to thank them for the grants.

RESOLVED (Clr Guile / Clr Findley)

MIN19.50

That Council:

1. Accept the grant funding of \$164,324 (ex GST) to support Council's activities to meet its obligations under the Biosecurity Act 2015, NSW Invasive Species Plan 2015-22 and the South East Regional Strategic Weeds Management Plan 2017-22.
2. Accept the grant funding of \$33,715 (ex GST) to undertake on ground intensive inspections of urban areas to identify and eradicate Boneseed in the southern Shoalhaven.
3. Write to the NSW Local Land Services to thank them for the grants.

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

AGAINST: Nil

CARRIED

**DE19.7 UPDATE - POSSIBLE HERITAGE LISTING - FORMER
HUSKISSON ANGLICAN CHURCH****HPERM REF:
D19/12940**

Item dealt with earlier in the meeting see MIN19.49.

Procedural Motion - Matters of Urgency**MOTION** (Clr White)

That an additional item regarding making representations to relevant agencies in relation to the opening to Lake Conjola be introduced as a matter of urgency.

The Chairperson ruled the matter as urgent as a meeting will be held tomorrow with the Community Consultative Body Executive, Government agencies, Shelley Hancock MP and Council staff.

Note: Clr Findley left the meeting, the time being 5.56pm.

DE19.8 Lake Conjola Opening

Note: Clr Digiglio and Clr Gartner left the meeting, the time being 6.08pm.

RESOLVED (Clr White / Clr Proudfoot)

MIN19.51

That Council make urgent representations to the relevant agencies for approval to remove the "channel plug" and the entrance opened at Lake Conjola to relieve the flooding that has been affecting residents and foreshore areas for over 7 weeks and in accordance with the recommendation from the Lake Conjola Community Consultative Body.

FOR: Clr Gash, Clr White, Clr Wells, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Clr Levett and Mr Pigg

CARRIED

Note: Clr Wells asked when the next regional planning committee meeting is to be held. The General Manager advised that a response will be provided.

Note: Clr Gash – Directed to Mr Costello (Director Planning Environment and Development) – asked can an update please be given on the development at Bawley Point Equestrian Centre. It has been in the pipeline for almost 12 months. The General Manager advised that a response will be provided.

There being no further business, the meeting concluded, the time being 6.18pm.

Clr Gash
CHAIRPERSON

DE19.9 Draft citywide Shoalhaven Vegetation Vandalism Strategy

HPERM Ref: D19/29905

Group: Planning Environment & Development Group
Section: Environmental Services

Attachments: 1. Draft Shoalhaven Vegetation vandalism Strategy (under separate cover)
[→](#)

Purpose / Summary

To inform Council on the progress of the draft citywide Vegetation Vandalism Strategy and seek endorsement from Council to place the draft Strategy on public exhibition.

Recommendation (Item to be determined under delegated authority)

That Council;

1. Adopt the Draft Vegetation Vandalism Strategy for public exhibition;
2. Place the Draft Vegetation Vandalism Strategy on public exhibition for 28 days; and
3. Receive a report following the public exhibition outlining any submissions received and any proposed to the draft Strategy in response to submissions.

Options

1. As recommended. The Council receive the report and place the draft strategy on public exhibition.

Implications: Provides a way forward to protect and deter vegetation vandalism that has occurred and is occurring sites across the Shoalhaven including Collingwood Beach. This option implements Council's resolutions of 11 November 2017 and 14 August 2018 which included the development of a citywide vegetation vandalism strategy.

2. Choose an alternative recommendation.

Implications: This would depend on the alternative recommendation; however, this may delay the progress of the implementation of the *Collingwood Beach Action Plan* and the citywide Strategy.

Background

On 14 August 2018, Council's Development Committee resolved the following:

That Council endorse the Draft Collingwood Beach Vegetation two-year trial Action Plan to enable implementation of the actions contained within the Plan.

Council has commenced implementing the Collingwood Beach Action Plan (the Plan), as adopted by Council. The aim of the Plan is to implement a collaborative approach to manage the dune vegetation and vandalism issue. There has been extensive vegetation vandalism, primarily via tree removal/pruning and poisoning of vegetation.

On 11 November 2017, Council also resolved that a *Vegetation Vandalism Strategy* be developed and implemented across the city as follows:

Develop a robust Shoalhaven Tree Vandalism policy to be rolled out across the Shoalhaven. In the interim Council immediately adopt the anti-vandalism strategy as outlined in this report to be adopted and implemented to mitigate against continuing vandalism.

The draft Strategy

Council researched the strategies and policies other coastal Councils have in place that are working to deter vegetation vandalism.

The Objectives of the draft Strategy are to:

- Promote the value of vegetation
- Provide citywide consistency in the deterrence, investigation & response to vandalism
- Encourage the sharing of experience, expertise and resources among Councils in the region
- Promote and guide broader community involvement

The draft Strategy, contained in attachment 1, sets out a number actions or responses to reduce vegetation vandalism as set out in Figure 1 below.

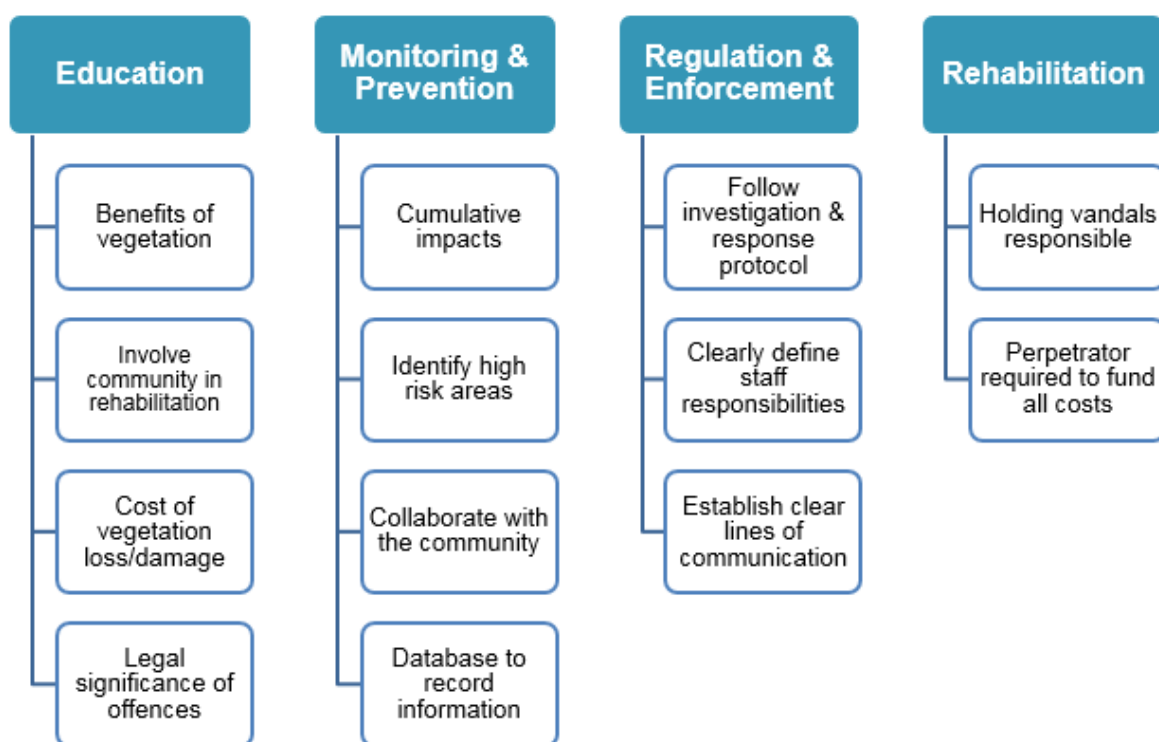


Figure 1: Strategy key actions and responses

The draft Vegetation Vandalism Strategy includes the use of surveillance cameras in vandalism hotspots to monitor and deter vandalism. The Collingwood Beach Action Plan also includes installation of surveillance cameras. The Collingwood Beach surveillance options are the subject of a separate report in this business paper.

Community Engagement

Council has engaged with the Collingwood Beach Reference Group regarding the Collingwood Beach Action Plan and the implementation of a Vegetation Vandalism Strategy and surveillance cameras. If supported, the draft strategy will be publicly exhibited.

Policy Implications

The development of the Shoalhaven Vegetation Vandalism Strategy and the consequent proposal of surveillance cameras, as per the Council resolution, will have an impact on the current Shoalhaven Foreshore Reserve Policy, as this policy currently outlines how Council manages vegetation vandalism to enhance or improves views. Once Council has adopted the Strategy, minor amendments to the Compliance Policy and Foreshore Reserves Policy will be made to reference the Strategy.

The Strategy will not replace these policies but will set out the response framework to address vegetation vandalism that is identified in both policies.

Financial Implications

Council allocated a budget of \$99,296 (job #15857) for 2018/19 to fund implementation of the Collingwood Beach Dune Vegetation 2-year Trial Action Plan of which this draft Strategy is a part. Most of actions within the Plan have been implemented, with ongoing monitoring (including arborist assessment of trial pruning site), weed management and replacement failed plantings where required to be carried out throughout the two-year trial. A budget of \$55,775 remains which will fund the installation of the viewing platform (scheduled for completion in April 2019) and these ongoing actions.

Once the Strategy is adopted by Council, part of the remaining funds could be allocated to the education and monitoring actions set out in the draft Strategy.

Risk Implications

There are risks in not taking action to implement a citywide Vegetation Vandalism Strategy in the Shoalhaven. The vegetation vandalism occurring at Collingwood Beach is extensive and ongoing. A lack of action will likely result in further destruction to the health and resilience of the existing dune system that provides coastal hazard protection to public and private assets.

A lack of action from Council may also be seen by the community as 'doing nothing' in terms of implementing Council's previous resolutions to adopt a robust policy and addressing the many community submissions Council has received in recent years requesting that vegetation vandalism occurring at Collingwood Beach and other hotspots across the Shoalhaven be addressed.

DE19.10 Collingwood Beach Surveillance - Vegetation Vandalism

HPERM Ref: D18/396803

Group: Planning Environment & Development Group
Section: Environmental Services

Purpose / Summary

To inform Council on the options available for installing surveillance cameras at Collingwood Beach, Vincentia, to deter vegetation vandalism.

Recommendation (Item to be determined under delegated authority)

That Council;

1. Install a combination of surveillance camera devices (approximately 25 in total being 15 poles with 2 cameras per pole at 50 metre intervals and 10 trail cameras) and warning signs at appropriate locations within the Collingwood Beach Foreshore Reserve subject to budget allocation;
2. Purchase some of the surveillance camera devices from any remaining funds in the Collingwood Beach Dune Vegetation Two-Year Trial Action Plan budget (15857) and consider supporting a 2019/20 budget bid to cover the cost of purchasing all 25 surveillance camera devices; and
3. Continue to allocate Ranger Unit resources to compliance and education activities and monitor vegetation vandalism at Collingwood Beach Foreshore Reserve.

Options

1. As recommended. Council support the implementation of a combination of surveillance techniques (15 purchased CCTV poles with 2 cameras per pole at 50 metre intervals, 10 trail cameras and provide ranger resources). This option equates to approximately \$100,000.

Implications: Provides a way forward to protect vegetation and deter vegetation vandalism at Collingwood Beach, Vincentia.

2. Alternatively, Council can support the implementation of 20 purchased poles (2 CCTV cameras per pole) at 50 m intervals. This option equates to approximately \$80,000.

Implications: Provides a way forward to protect vegetation and deter vegetation vandalism at Collingwood Beach, Vincentia. The detectability may not achieve the best results due to:

- the density of the vegetation at the subject site
- the conspicuous nature of the camera structure
- the perception of individuals being observed attentively in a public reserve setting
- uncharacteristic with landscape features

3. Alternatively, Council can support the implementation of 20 purchased trail cameras. This option equates to approximately \$20,000.

Implications: This would depend on the aspirations that Council wished for in the area i.e. it may be viewed by the public as not doing enough due to the inconspicuous nature of these camera structures. Additionally, it may not gain community support due to the perception of individuals being watched in a public reserve setting

4. Alternatively, Council can support the implementation of a solar powered, motion activated trailer mobile camera system with fixed CCTV cameras. This option equates to approximately \$25,000 per unit purchased.

Implications: This may be subject to the issues outlined in option 2. It may be viewed as not doing enough as multiple units would be required to adequately monitor the majority of Collingwood Beach.

5. Alternatively, Council could resolve to not install surveillance cameras along Collingwood Beach.

Implications: It should be noted that it has been expressed that the vegetation vandalism occurring at this site is extensive and ongoing and needs to be addressed to protect the health and resilience of the dune system.

Background

On 14 August 2018, Council adopted the Collingwood Beach Dune Vegetation Management Two-Year Trail Action Plan (MIN18.607). One of the actions in the Plan included investigating “CCTV camera installations to monitor vandalism activities”.

This report outlines CCTV camera installation options.

Council also previously resolved to develop a citywide Vegetation Vandalism Strategy that includes monitoring options to deter vegetation vandalism (MIN17.974). The draft Strategy is the subject of a separate report within this business paper.

CCTV Camera Options

Type 1: Purchased Outdoor Solar Powered System

This is a solar powered infrared system which is capable of holding 2 cameras per pole. It is a heavy-duty system (1.5 tonne, 5m high) requiring fixture to the ground but is also relocatable (as shown in figure 1). This system provides up to 180° vision and has powerful night-time capabilities.

Pros

- The CCTV systems are highly visible to the public and may be seen as a proactive action taken by Council to deter vandalism.
- Council owns the infrastructure.
- The infrastructure is solar powered (approximately 1m²) and heavy (approximately 1.5 tonnes, 5m high) reducing the risk of tampering/damage.
- Relocatable infrastructure.
- No ongoing maintenance issues.

Cons

- Approximately \$5,000 per pole (supply and installation).

- It is unknown if CCTV would achieve the best results as the reserve pathway, adjacent houses and foreshore vegetation are in close proximity which may obscure the vision, resulting in poor image quality for compliance purposes.
- There may be issues connecting the CCTVs by Wi-Fi as the connection is not in a 'straight line', i.e. relies on Wi-Fi connectivity.
- CCTV is recorded onto an SD card; there would be only a few days of recording before it was overwritten.
- The existing pathway is not reinforced concrete and the weight of the infrastructure may be an issue (particularly during installation).



Figure 1: Outdoor Solar Powered System

Type 2: Covert Trail Camera

The Reconyx covert trail camera is a high output infrared camera capable of being utilised during the day and night. The trail camera is triggered by movement (motion sensed), battery operated and approximately 13cm by 7cm in size (as shown in figure 2).

Pros

- Have previously been used as part of the RID program.
- Can be covertly located.
- Produces high definition images at speeds as fast as 2 frames per second.
- Small and easy to install.
- Approximately \$1,000 each, equating to \$20,000 for 20 cameras.

Cons

- Limited visual distance.
- Can be easily removed/tampered with.

- Battery life is approximately 6 days.
- Many hours will need to be set aside for processing the images and recharging batteries.
- Utilises a memory card that requires regular checking.



Figure 2: Covert Trail Camera

Type 3: Hired Outdoor Solar Powered System

This is an agile solar powered system, weighing 500kg and is 4m high. This system provides up to 180° vision and has night-time capabilities (as shown in figure 3).

Pros

- The CCTV systems are highly visible to the public and may be seen as a proactive action taken by Council to deter vandalism.
- The infrastructure is solar powered and heavy (approximately 0.5 tonnes, 4m high) reducing the risk of tampering/damage.
- Relocatable infrastructure compliant with AS1170.2
- No ongoing maintenance issues.
- 3 months' video storage.

Cons

- Approximate cost equates to >\$150,000 for 18 months.
- Council does not own the infrastructure.
- There may be issues connecting the CCTVs by Wi-Fi as the connection is not in a 'straight line', i.e. relies on Wi-Fi connectivity.
- The pathway is not reinforced concrete and weight of the infrastructure may be an issue (particularly during installation).



Figure 3: Hired Outdoor Solar Powered System

Type 4: Trailer Camera

This is a solar powered, motion activated mobile camera system with fixed CCTV cameras (as shown in figure 4). Live footage (day and night) can be obtained with an internet connection.

Pros

- The CCTV system would be highly visible to the public and may be seen as a proactive action taken by Council to deter vandalism.
- Relocatable infrastructure.
- In rare occasions when there is not sufficient sunlight, a fully integrated generator provides a back-up charging capability.
- Self-sufficient in operation for months without the need for human interaction.
- Live footage accessible on multiple devices.
- 360-degree camera dome.

Cons

- Relies on Wi-fi connectivity.
- Visual distance unknown.
- Can be easily removed/tampered with.



Figure 4: Trailer Camera

DE19.10

Community Engagement

Extensive community wide consultation has been undertaken. Council's resolution (MIN18.607) and various meetings with the Collingwood Beach Reference Group have indicated there is a strong desire for the implementation of a vegetation vandalism strategy and the installation of surveillance camera devices. Furthermore, if Council chooses to proceed with the installation of CCTV cameras, notifications via electronic media to inform residents and ratepayers within Vincentia will be undertaken.

Policy Implications

To comply with the Surveillance Devices Act (2007), Council has a Standard Operating Procedure for the use of CCTV in Nowra CBD that could be utilised or adopted for the proposed surveillance cameras (D14/194781 and D14/109904). Compliance monitoring and the installation of CCTV cameras to deter vegetation vandalism will also be carried out in accordance with Council's Compliance Policy (POL13/85).

Financial Implications

Council allocated \$99,296 (15857) to fund the Collingwood Beach Dune Vegetation Two-year Trial Plan of which this proposal is a part. A budget of \$55,775 remains following implementation of most actions within the Plan. Within this budget, no funding has been allocated to install surveillance cameras to assist with the management of vegetation vandalism of the area. Any funds that remain after suitable budget is allocated to construction of the viewing platform and ongoing monitoring could be used to purchase some surveillance cameras. The table below outlines the financial implications of each option;

Option	Description	Cost
1	Purchase 15 Outdoor Solar Powered Systems (includes 2 CCTV cameras per pole), 10 trail cameras and ranger resources (\$10,000).	\$100,000
2	Purchase 20 Outdoor Solar Powered Systems (includes 2 CCTV cameras per pole).	\$80,000
3	Purchase 20 covert trail cameras.	\$20,000
4	Hire 20 Outdoor Solar Powered Systems (2 CCTV cameras per pole) for an 18-month period.	\$150,000
5	Purchase solar powered, motion activated trailer mobile camera system with fixed CCTV cameras.	\$25,000
6	Take no action.	Nil

Risk Implications

There are serious risks in not taking action to monitor Collingwood Beach via surveillance cameras. It must be emphasised that the vegetation vandalism occurring at this site is extensive and ongoing and needs to be addressed to protect the health and resilience of the dune system. A lack of action from Council may be seen as 'doing nothing' to the community at large in terms of addressing the vegetation vandalism occurring at this site.

Concerns relating to safety and environmental damage need to be taken into account when Council considers the future of this site. There is also a risk the community may not accept the visual amenity of the surveillance cameras.

DE19.11 Proponent Initiated Planning Proposal - Lot 5 DP 1225356, Sealark Road, Callala Bay

HPERM Ref: D19/32152

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Proponent's PP - Sealark Road (under separate cover) [↗](#)
2. OEH Referral - Sealark Rd PP [↓](#)

Purpose / Summary

Present a proponent-initiated Planning Proposal (PP) that has been received to rezone land at Lot 5 DP 1225356, Sealark Road, Callala Bay for consideration and to obtain direction in this regard.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Not proceed with a Planning Proposal to rezone Lot 5 DP 1225356, Sealark Road, Callala Bay to a mix of residential, recreation and environmental zones.
2. Advise the proponent and submitters of this decision.
3. Advise the proponent of the opportunity to make a submission during the upcoming public exhibition of the Shoalhaven Growth Management Strategy.

Options

1. Not proceed with the PP.

Implications: This is the recommended option and would maintain the existing environment protection zoning. The proponent would however have the ability to request a review of this decision by the Regional Planning Panel.

2. Proceed with the PP as submitted.

Implications: The proponents PP would be submitted for Gateway determination. Depending on the outcome of this the PP may or may not proceed.

3. Proceed with an amended version of the PP.

Implications: It has been concluded that this PP is fundamentally inconsistent with the current strategic planning for Callala Bay. No amendments have been identified that would address this inconsistency. If an amended PP were to be considered, advice could then be provided based on the particular amendments proposed.

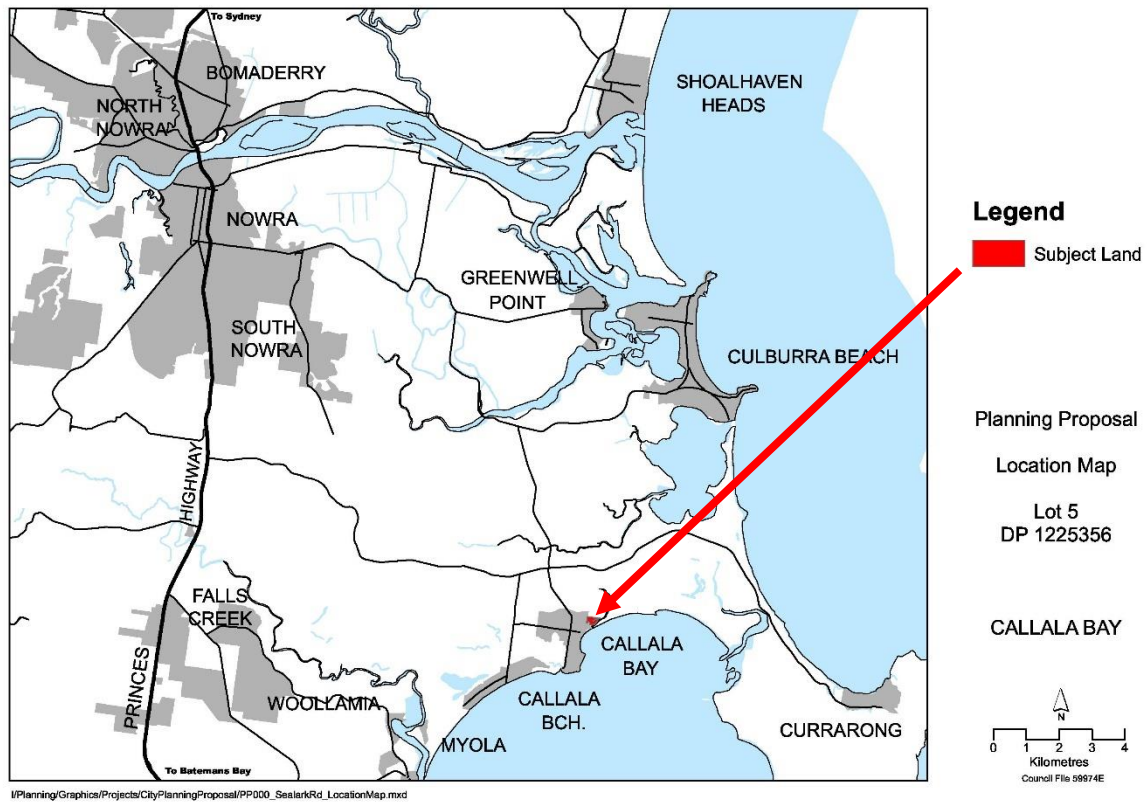
Background

The Subject Land

The subject land (Lot 5 DP 1225363) is located on Sealark Road on the eastern edge of Callala Bay. The subject land adjoins Jervis Bay National Park to the north and northeast,

Wowley Creek to the east, Monarch Place and a Council foreshore reserve to the south and Sealark Road to the west. The site is currently undeveloped.

Maps showing the subject land and its location are provided below:



Subject Land – Location

DE19.11



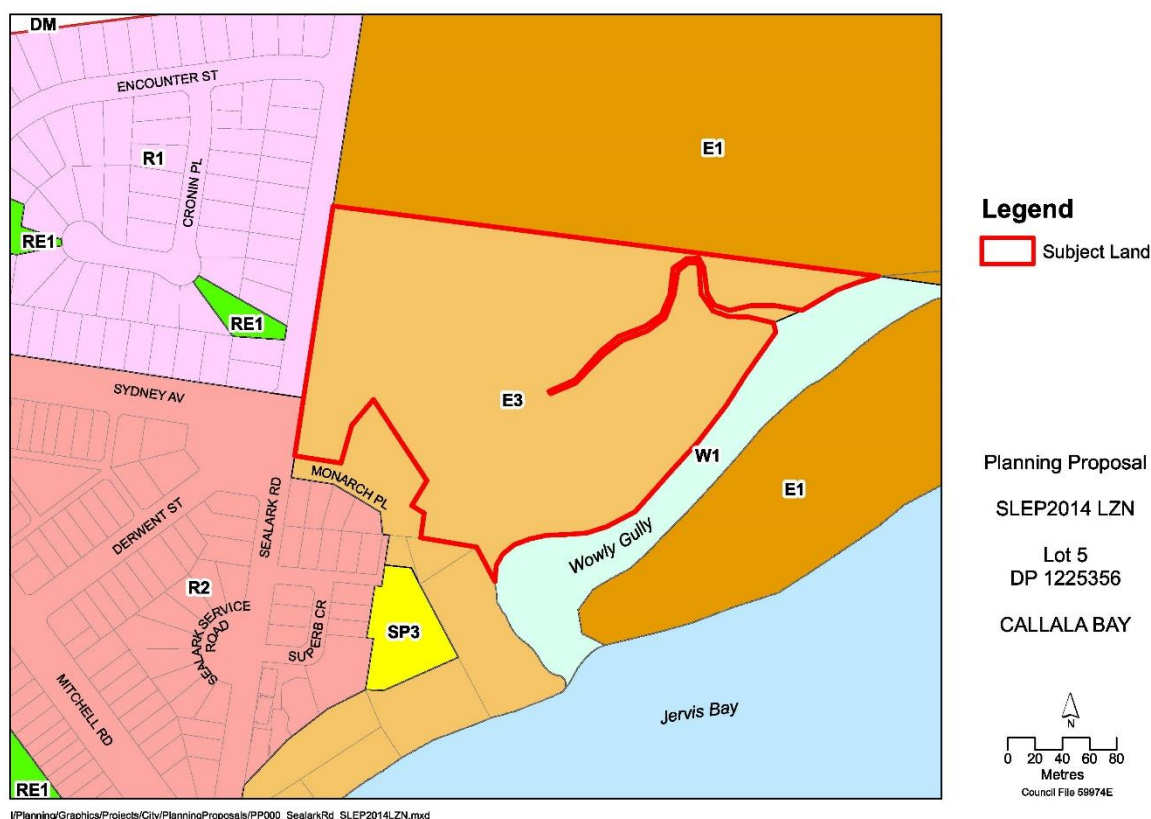
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Aerial Photograph Showing Subject Land - Lot 15 DP 1125356

Shoalhaven Local Environmental Plan (LEP) 2014

The subject land was previously zoned Environment Protection 7(f3)(foreshores protection) through the Rural Plan Amendments to the Shoalhaven LEP1985 that were gazetted in 1999. The land is currently zoned E3 Environmental Management under Shoalhaven LEP 2014, as shown on the map below.

DE19.11



Shoalhaven LEP 2014 Land Zoning Map Showing Subject Land

The zoning of the subject land was specifically considered during the preparation of the Shoalhaven LEP2014. As part of the exhibition process for the draft LEP a rezoning submission was received that sought to rezone the previous land parcel (Lot 15) that contained the subject land to enable residential development.

Council initially supported the overall requested rezoning; however, it was ultimately resolved that the part of the then property (Lot 15) south of Monarch Place would be rezoned to R2 (this was considered minor infill development at the time) and Council also resolved:

that in regard to Part of Lot 15 DP 1002772, Sealark Road, Callala Bay (north of Monarch Place), Council:

- Progress to exhibition of draft SLEP 2013 with the E3 zoning as required in the S65 certificate; and*
- 'Express support for the landowner lodging a Planning Proposal (at the proponent's cost and subject to appropriate environmental studies/strategic justification) following the commencement of SLEP 2013, should the landowner wish to pursue this matter.'*

As such under the final Shoalhaven LEP 2014, the previous Lot 15 was zoned E3 north of Monarch Place and R2 south of Monarch Place. The area south of Monarch Place has subsequently been subdivided into four (4) residential lots.

In regard to part (b) of the above resolution, whilst Council previously expressed support for a possible PP, this does not fetter the requirement to appropriately consider it if received and then support it.

DE19.11

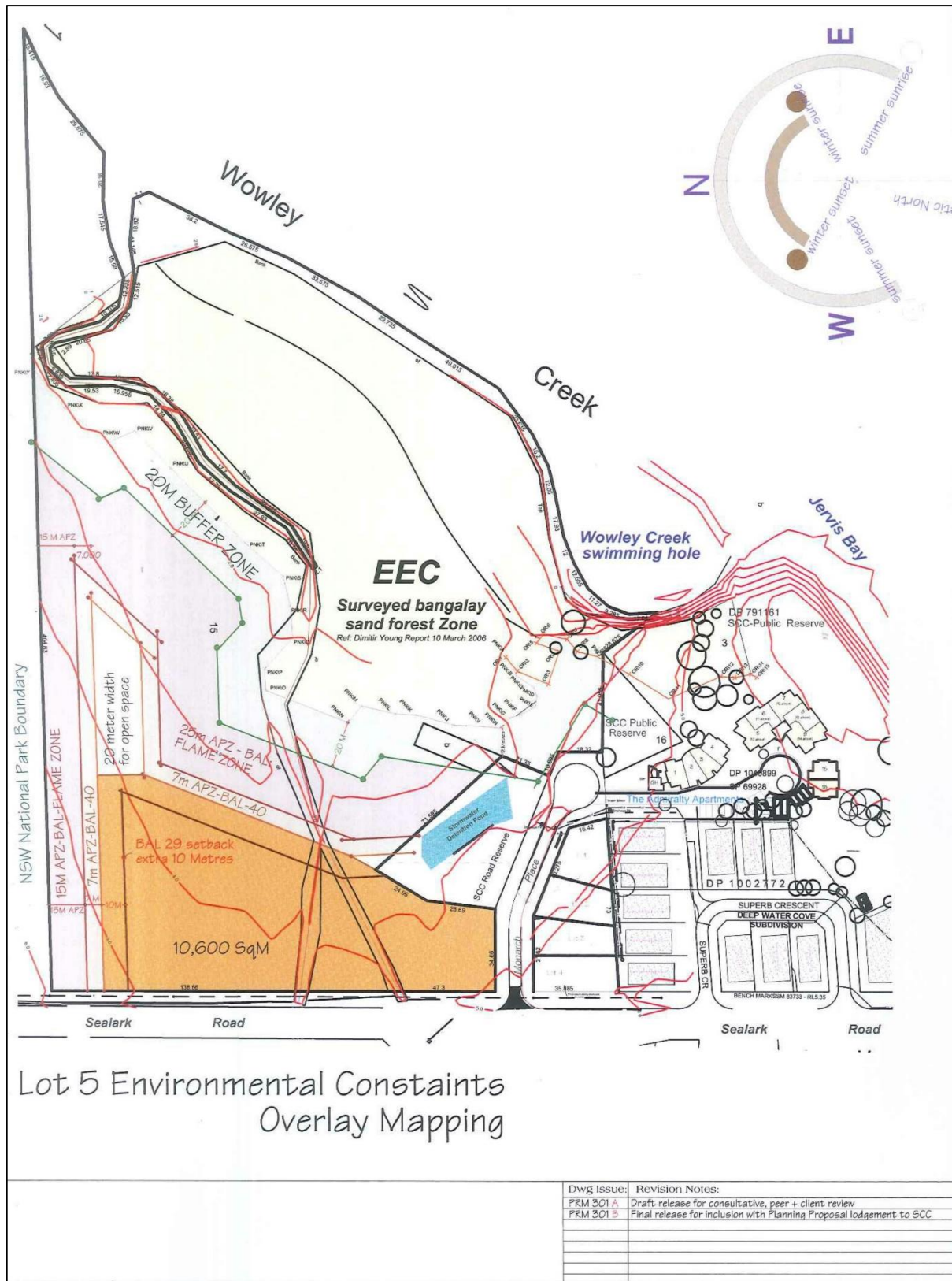
The Proponent's PP

The proponent's PP request was received on 2 January 2019 from PRM Architects (on behalf of the owners, Hare Bay Consortia) and seeks to amend Shoalhaven LEP 2014 to rezone the land from E3 Environmental Management to a mix of residential, recreation and environmental zones. The proposed mix of land use zones is summarised in the table below:

Proposed Zone	Area	Percent of the land	Description
R2 Low Density Residential or R3 Medium Density Residential	1 ha	16%	Area of land along the western edge of the subject land. Its width varies from 35 to 90m.
RE1 Public Recreation or RE2 Private Recreation	1.4 ha	25%	An area of land that buffers the proposed residential zone. Contains most of the asset protection zones needed for the proposed residential zone and a nominated recreation area of approximately 2000 m ² .
E3 Environmental Conservation	3.6 ha	59%	The balance of the site including the land fronting on to Wowley Creek.

The proponent's submission (**Attachment 1**) includes a draft PP and a map of their proposed development areas, which is provided below:

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Proponent's Development Layout

The proponent's submitted PP package also includes a number of detailed supporting reports (flora/fauna, bushfire, Green and Golden Bell Frog) dated 2005 and other supporting material. These can be viewed on Council's website at:

<https://shoalhaven.nsw.gov.au/Planning-and-Building/Strategic-planning/Planning-Proposals>

The proposal that has been received would extend the urban residential footprint of Callala Bay in this location and depending on the zone and lot size chosen, it could yield between 10 and 30 additional dwellings.

It is noted that prior to the lodgement of this PP a range of discussions were held in recent years going back to 2013 with consultants working for the owners; however, a formal pre-lodgement meeting consistent with Council's adopted PP Guidelines (Nov 2018) was not requested or held prior to the recent lodgement of the PP.

Preliminary Planning Assessment

The following is an overview of strategic planning documents that are relevant to this proposal.

- *Illawarra-Shoalhaven Regional Plan*

The Illawarra-Shoalhaven Regional Plan (ISRP) was released by the NSW Government in late 2015. Its provisions regarding new urban residential releases are contained in part 2 of the plan. It states:

"No new release areas are required for ... Shoalhaven beyond those already identified under the ... Shoalhaven Growth Management Strategy."

For a PP proposing to create a new urban residential zone to be consistent with this plan it must be demonstrated that the land is *identified* under the GMS. The current GMS adopts the Jervis Bay Settlement Strategy (JBSS) and identifies only one investigation area for new urban residential development at Callala Bay. The GMS states:

"Callala Bay – investigate possible expansion to the west and resolve the existing small lot rural subdivision in association with any rezoning."

The area identified in GMS is currently being investigated and considered in detail through the Halloran PP process.

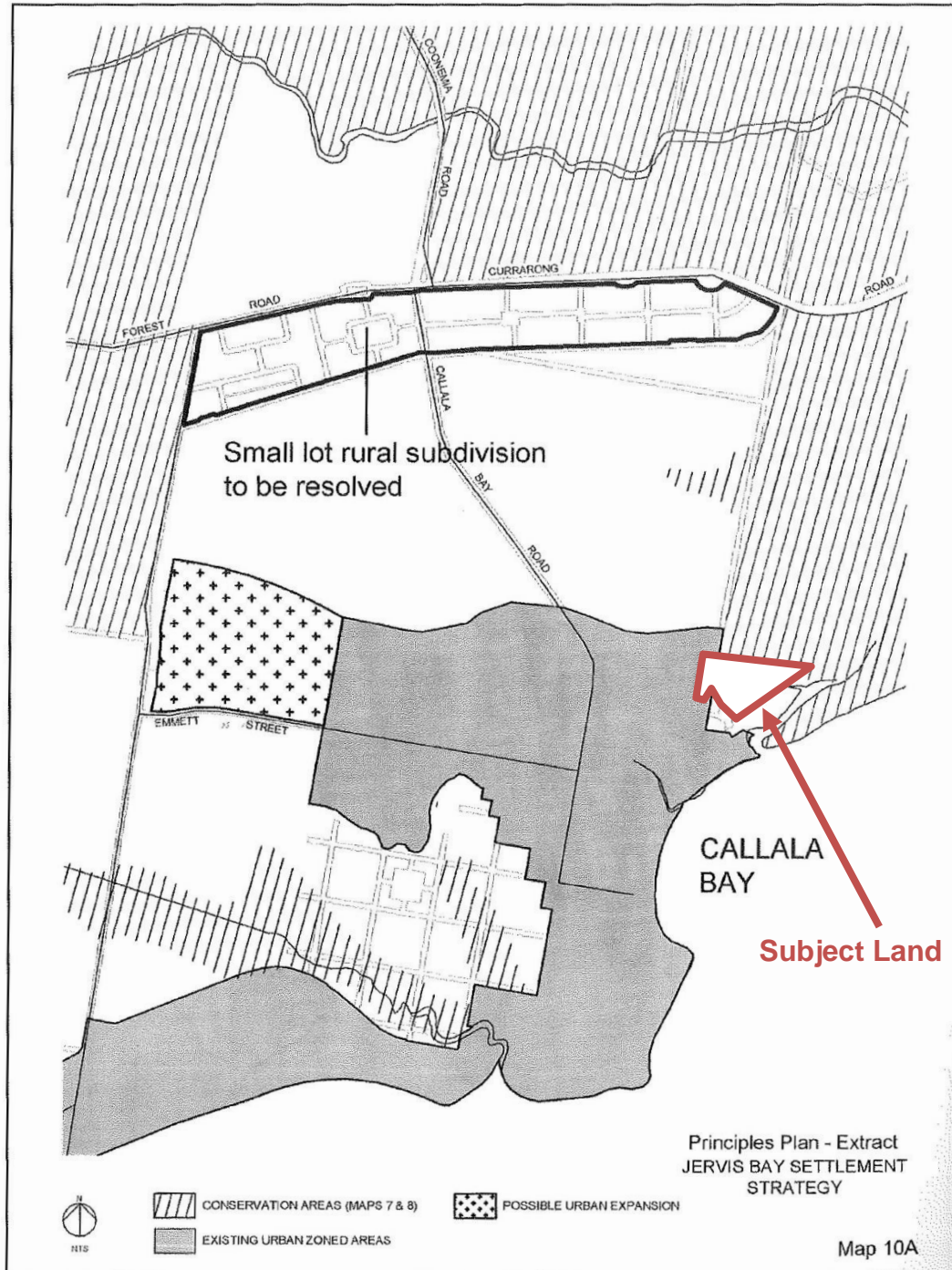
The subject land is on the eastern side of Callala Bay and is not *identified* as a growth area in the JBSS/GMS. Thus, any rezoning of the subject land for urban residential purposes at this point would be inconsistent with the ISRP on this basis.

- *Jervis Bay Settlement Strategy (JBSS) and Shoalhaven Growth Management Strategy (GMS)*

The subject land is within the area covered by the JBSS. The relevant extract from the JBSS mapping for Callala Bay/Callala Beach is provided below, with the subject land identified:

Jervis Bay SETTLEMENT STRATEGY

Detail Map 10A - Callala Bay/Callala Beach



The proponent has attempted to justify the proposal in the context of the JBSS. Their argument can be summarised into the following points:

1. The JBSS is silent in relation to this site because it is 'white' on the Principles Plan.
2. The JBSS contains a strategic principle that more urban expansion should be sought for Callala Bay.
3. The site has desirable characteristics for a new release area as identified by the JBSS.
4. The JBSS has an imperative for land to be released quickly for Culburra Beach and Council has failed to achieve this with the identified investigation area in that location.
5. Investigative work (bushfire, flora and fauna, etc) has already been undertaken for this land.

On review, these arguments are not supported as outlined below:

1. The JBSS is not silent

The proponent has correctly stated that the JBSS has not identified the land as a priority for environmental conservation or any other use. On this basis, they argue, the land can be considered for urban residential expansion because it is not prohibited or excluded by the JBSS.

To support their case, the proponent has provided email correspondence (dated 9 May 2013) from an officer in the NSW Department of Planning and Environment (DP&E) which states:

"The potential rezoning of the land is not 'prohibited' or expressly denied by the Jervis Bay Regional Strategy. Accordingly, I see the next relevant step being the landowner/proponent lodge a planning proposal with the Council for the rezoning of the land. I see no obstacle in progressing along this process."

The problem with this approach is it assumes that the JBSS contains provisions that prohibit or exclude land from being considered for rezoning. The JBSS does not have this function. The exclusion of land from rezoning is achieved by a set of directions from the NSW Minister for Planning under Section 9.1 of the Act. The current Ministerial directions that would exclude this land from rezoning at this point are:

- 2.1 Environmental Protection Zones (dated 14 April 2016)
- 5.10 Implementation of Regional Plans (dated 14 April 2016)

These provisions have closed the gap in the previous strategic planning framework so that strategic plans like the JBSS can function properly. These plans identify land to be specifically investigated for release, they do not work through prohibition. It is also noted that the JBSS and GMS were both endorsed by the NSW Government and a PP can be inconsistent with Direction 2.1 if it is justified by a Strategy or is minor.

This position is also consistent with the ISRP (2015) which is based on a GMS or similar *identifying* land for potential release rather than land to be prohibited.

Thus, at present there is no strategic basis for this PP.

2. The JBSS does not seek more land for release at Callala Bay

The proponent's PP document relies heavily on the following paragraph of the JBSS:

"The lack of available developable land in the Callala Bay area would suggest that early action should be taken to determine the capability of the locality to support further urban development."

The proponent contends that this paragraph highlights a deficiency of land for urban residential development in Callala Bay (*"the lack of available developable land"*) and that

there is an urgent need for this to be addressed (*“early action should be taken”*). However, this interpretation of the paragraph is erroneous for a number of reasons.

Firstly, it assumes that the *“lack of developable land”* refers to a problem. The JBSS identifies a number of settlements with a little or no developable land including Huskisson, Myola, Tomerong and Sanctuary Point. There is no underlying assumption in the JBSS that every settlement in the region must have an expanding urban footprint. The reference to a limited supply of land for further urban development at Callala Bay is not necessarily a statement of a problem that needs to be solved and that encourages proponent PPs.

Secondly, it assumes that the phrase *“early action”* means that action needs to be taken promptly. This is not the most natural or appropriate reading of this phrase in its context. Rather, the phrase is referring to preliminary or high-level action. The JBSS is saying that a preliminary assessment needs to be taken of the Callala Bay area to see if urban expansion should be part of the development mix for this area in the longer term. It may be, for example, that after the existing investigation area is developed, the footprint of Callala Bay will not expand any further.

Thirdly, it assumes that the JBSS is only concerned with the release of new urban areas. The JBSS also contains provisions relating to infill and urban renewal with the view of the existing settlements providing more housing stock without having a larger urban footprint. The interpretation provided by the proponent has not given adequate regard to the potential for the long-term planning for Callala Bay to take this approach.

3. The merit considerations for release areas do not apply to this site

The JBSS provides a range of considerations when rezoning land. The Proponent’s PP applies these to the subject land and suggests that it has some desirability within this framework. The difficulty with this approach is it assumes that all land, particularly land that is not specifically mapped (shown as ‘white’ on the maps) within the JBSS region is a potential investigation area for urban release. It fails to recognise that the JBSS does identify land for investigation. The various criteria do not apply to the subject land because the JBSS did not specifically identify it as a site for future urban expansion.

4. There is no imperative for the prompt release of land at Callala Bay

As outlined at Point 2, there is no imperative in the JBSS to promptly release land for urban development at Callala Bay. The phrase *“early action”* refers to preliminary and high-level assessment, not quick land release.

5. The Proponent’s investigations are out-dated and will need to be redone

The Proponent argues that this PP is ‘ready to act’ and should be supported because they have investigated the land. The proponent’s supporting studies are now out-dated. For example, both the flora and fauna and the bushfire reports were written prior to 2006, under old legislation that has since been repealed. If this PP were supported, the investigations would need to be redone or at least updated.

Furthermore, additional assessments would need to be prepared if the PP were to be supported, such as water quality.

The current GMS (2012) states that Callala Bay’s growth should proceed in a westerly direction through the existing investigation area. It did not identify the subject land as an investigation or release area. Consequently, the PP is considered to be inconsistent with the GMS and it currently has no strategic justification.

Council is undertaking a review of the GMS and it is intended that a draft revised version of the GMS will be exhibited in 2019 for community review.

- *Council's Planning Proposal (Rezoning) Guidelines*

These adopted guidelines (2018) detail the circumstances when a PP is likely to be supported by Council and provide a range of detail on the PP process. The note that a PP is likely to be supported in the following circumstances:

- *Proposed amendment is supported by Council or State Government strategy or plan.*
- *Clear zoning anomaly exists on site.*
- *Proposed amendment is considered to be minor in nature and has been sufficiently justified to Council.*

The guidelines also note that proponents should have pre-lodgement dialogue with Council staff before formally lodging a PP.

The guidelines make it clear that PP's that are not supported by a strategy or plan and are considered speculative will generally not be supported by Council.

The Proponent argues that the proposed PP is justified because the JBSS is silent in relation to this site. This argument is not supported as discussed earlier in this report. This PP is inconsistent with Council's guidelines because it does not meet any of the three criteria for supporting a PP.

- *NSW Guide to Preparing PPs*

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

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

The strategic planning framework does not identify the subject land as a rezoning investigation area. No strategic study or report has been received that current provides strategic justification for this PP.

Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

At this point, a PP is the only means of achieving the proponent's intended outcome.

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

The ISRP is the relevant regional plan.

As discussed above, the PP is considered to be inconsistent with the ISRP.

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

As discussed above, the PP is considered to be inconsistent with both the JBSS and the GMS.

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

No inconsistencies have been identified at this stage as part of the initial review.

Q6. Is the Planning Proposal consistent with applicable Ministerial Directions?

Two inconsistencies with Ministerial Directions have been identified at this stage.

Direction 2.1 Environment Protection Zones

This direction requires that a PP not “*must not reduce the environmental protection standards that apply*”. The proposal would rezone land from an environmental zone to an urban residential zone and would provide for urban lot sizes. This is inconsistent with this direction as there is no strategy or specialist study that has justified this inconsistency.

Direction 5.10 Implementation of Regional Plans

This direction requires that a PP not “*must be consistent with a Regional Plan released by the Minister for Planning*”. As discussed above the PP is considered to be inconsistent with the ISRP and, therefore, with this direction.

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

The ecological investigation provided has been reviewed by Council ecologists and the NSW Office of Environment and Heritage (OEH). The initial comments received from OEH are attached to this report (**Attachment 2**). Both have concluded that there is insufficient information to determine if the PP will have an impact on critical habitat or threatened species.

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

Wowley Creek is a state significant coastal wetland. There is currently insufficient information available to assess the potential impacts of the PP on this water body.

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

The argument advanced by the proponent essentially relies on the level of amenity that the proposed urban area will enjoy. It has not adequately addressed the broader social and economic effects that may result from the PP.

Q10. Is there adequate public infrastructure for the Planning Proposal?

The Proponent has argued that there is adequate infrastructure for this proposal. If this PP were supported, this would be investigated in detail after the issue of a Gateway determination.

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

No Gateway determination has been sought or issued at this stage. Initial consultation with OEH has however identified concerns with the adequacy of the information provided by the Proponent.

Conclusions

As detailed above, the submitted PP is inconsistent with the strategic plans for the Callala Bay area. It is recommended that the PP not be supported.

Community Engagement

CCBs and adjoining land owners were advised of receipt of the PP and provided an opportunity to review it. Three (3) submissions were received, including one from the Callala Bay Community Association (the local CCB) and two from local residents/owners. All submissions opposed the proposal.

The concerns raised are considered summarised and commented on below:

Concern	Comment
Proposal is the latest incremental development that is inconsistent with community expectations and standards	<p>The subject land is the residue of a 4-lot residential subdivision to the south of Monarch Place.</p> <p>The relevant strategic plans do not identify this site as an investigation or release area. The process of preparing a strategic plan (such as the GMS review that is underway) would be a more appropriate forum to engage with the community if the land were to be considered as a possible release area.</p>
Protection of Wowley Creek - stormwater impacts	The Proponent has not satisfactorily demonstrated at this point that storm water from the site can be satisfactorily managed and water quality protected. This issue remains unresolved and OEH have raised concerns in this regard.
There is no “need” for more land at Callala Bay	The Proponent has erroneously assumed that the JBSS implies a need for more land to be found for release at Callala Bay.
The proposal wrongly re-interprets the JBSS and GMS	This is discussed earlier in this report and it is agreed that the PP is inconsistent with the JBSS and GMS.
The PP has too many assumptions and not enough evidence	The PP is not accompanied by a complete set of up to date studies. While this could be addressed after the issue of a Gateway determination, it is considered that the PP is fundamentally inconsistent with the current strategic planning for Callala Bay.
The flora and fauna studies are too old	The Flora and Fauna study is outdated and further work would be required if the PP were permitted to progress.
The PP does not respond to more recent planning reforms	The PP has not responded to the more recent strategic planning work that has been undertaken, for example, the ISRP.
The PP would provide minimal diversity of land supply	The diversity of land supply is not a determinative matter for this PP.
The PP would provide little economic growth	It is unclear what economic benefits or impacts this PP might have. Given the small number of dwellings proposed, this is not a determinative matter for this PP.
The PP ignores the vacant blocks that are available and the potential for infill development	The importance of infill development and urban renewal is recognised in the JBSS and has not been given adequate consideration in the proponent’s PP.
It does not provide long term jobs for the region	It is unclear what economic benefits or impacts this PP might have. Given the small number of dwellings proposed, this is not a determinative matter for this PP.

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We have enough growth provided for in the LEP, Nowra Bombaderry Structure Plan and Regional Strategy	The ISRP asserts that sufficient land supply has already been identified within the existing GMS. This land has not been identified in the GMS.
The current zone provides better buffers to the EECs	There is insufficient information to assess the impacts of this PP on the EECs at this time.
There is already a lot of infill development in Callala Bay	The importance of infill development and urban renewal is recognised in the JBSS and has not been given adequate consideration in the proponent's PP.
The Halloran PP is the better option for Callala Bay	The "Halloran PP" relates to the investigation area identified in the JBSS and GMS. As such it is consistent with JBSS and GMS while the Sealark Lane PP is not. The detailed investigations for the Halloran PP are underway.
The PP's claims about infrastructure and studies are misleading	If the PP were to proceed more environmental and infrastructure assessment would be needed.
The majority of dwellings would be used for tourism	It is unclear what economic benefits or impacts this PP might have. Given the small number of dwellings proposed, this is not a determinative matter for this PP.
Car parking and congestion	Further traffic investigation would be required if the PP were to proceed.
The community benefits that are proposed are exaggerated or wrong	If the PP were to proceed, further assessment/consideration would be needed in this regard.
Impacts on pedestrians, especially on Sydney Street	Further traffic investigation would be required if the PP were to proceed.
Sediment flows into Jervis Bay	The Proponent has not satisfactorily demonstrated that water quality in the receiving waterways can be protected. This issue remains unresolved and OEH have also raised concerns in this regard.
The current owners purchased the land with an environmental protection zone on it and have never tried to use the site in accordance with its zoning. They have the property regularly slashed with the intent of rezoning it	It is understood that there have been past investigations into unauthorised activities on the land. Whether or not this is the case, it does not necessarily mean that the land does not provide habitat for threatened species. As already noted, an updated biodiversity assessment would need to be prepared if the PP were to proceed.
The land should be in public ownership as an environmental reserve	Council does not have an adopted position to acquire this land.
The foreshore reserve created by the developer on the neighbouring land do not work	Noted.

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National Parks and Wildlife should be asked to investigate and submit a report.	The PP was referred to OEH, of which NPWS are part.
All of Callala Bay should be advised on this and given the opportunity to comment	The PP was initially notified in accordance with Council's adopted PP guidelines. If it were to proceed through the Gateway a larger scale public exhibition would be undertaken later in the process.
It would be detrimental to the character of Callala Bay and amenity of nearby residents	This type of issue should be considered strategically where possible. Council is undertaking a review of the GMS and it is intended that a draft revised version of the GMS will be exhibited in 2019.
The developers had the chance when they developed the land to the south, they should not get a "second bite of the cherry"	It is noted that there is a history of development of the land to the south of the subject land. There is currently no strategic justification for the PP.

Policy Implications

As discussed earlier in this report, this PP is considered to be inconsistent with Council's PP Guidelines, GMS and the JBSS. Supporting this PP could set an undesirable precedent for other land owners who would like to potentially rezone their land and that are in similar circumstances.

Financial Implications

If Council support the PP it will be pursued on a 100% cost recovery basis, to be funded by the Proponent, in accordance with Council's adopted fees and charges.

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Office of
Environment
& Heritage

Date: 31 January 2019
Your reference: 59974E (D19/13853)
Our reference: DOC19/77167
Contact: Dan Robson
4224 4185

Grant Rokobauer
Strategic Planner – Special Projects
Shoalhaven City Council
NOWRA NSW 2540
E-mail: grant.rokobauer@shoalhaven.nsw.gov.au

Dear Grant,

RE: Preliminary Community Engagement, Planning Proposal – Sealark Road Callala Bay

Thank you for referring the abovementioned preliminary information on the draft planning proposal at Callala Bay. Please find below comments on the key components associated with the site. Overall, we raise no major objection to the proposal, subject to the following issues being adequately addressed and resolved as part of any future planning proposal.

Aboriginal Cultural Heritage

The planning proposal documentation does not consider Aboriginal cultural heritage or include an Aboriginal cultural heritage assessment. We recommend an Aboriginal cultural heritage assessment is conducted in accordance with OEH guidelines to determine whether the proposed rezoning will impact Aboriginal heritage. The assessment should be conducted at an early stage of the planning process, to provide the best opportunity to avoid harm to Aboriginal heritage values. This reflects the intent of the Illawarra Shoalhaven Regional Plan where Direction 3.4 is to protect the regional cultural heritage.

The Aboriginal cultural heritage assessment must include all proposed construction footprints, services and access requirements, including any beach access pathways. Vegetation management, such as weeding, revegetation and bushfire protection under the 10/50 Code, may also potentially impact Aboriginal heritage objects including culturally modified trees.

Aboriginal cultural heritage assessment process

Exercising due diligence is the first stage in conducting an Aboriginal cultural heritage assessment in NSW. OEH has developed a due diligence procedure to help people consider their obligations under the *National Parks and Wildlife Act 1974* (the Act) in relation to Aboriginal cultural heritage. Proponents need to make all reasonable efforts to determine whether their proposed activities will harm Aboriginal objects, or harm landscape features that are likely to contain Aboriginal objects.

Callala Bay is part of a significant Aboriginal cultural landscape and has a high number of Aboriginal cultural heritage sites. Given this location, the proponent is likely to require a full Aboriginal cultural heritage assessment. A full assessment moves beyond exercising due diligence and includes Aboriginal community consultation and an archaeological assessment. OEH guidelines (listed below) provide information on conducting these assessments.

Search the Aboriginal Heritage Management System (AHIMS)

You can search the AHIMS to see whether there are any recorded Aboriginal cultural heritage sites on your property. A free basic search is available on the OEH website: <http://www.environment.nsw.gov.au/licences/WhatInformationCanYouObtainFromAHIMS.htm> more detailed

site information is also available from AHIMS for a fee. AHIMS only records known sites. There are far more sites in existence than are recorded on AHIMS.

If the AHIMS search does not show any recorded sites in your study area, it may mean there are sites present that have not been recorded. Specialist archaeological advice and consultation with the Aboriginal community is likely to be required to determine whether there are unrecorded Aboriginal heritage sites present.

Recommendations

We recommend that the proponent conduct a full Aboriginal cultural heritage assessment to determine whether the proposed development will impact Aboriginal cultural heritage. The assessment must establish whether the impact area contains known Aboriginal objects or is likely to contain Aboriginal objects. The Aboriginal cultural heritage assessment must include all proposed construction footprints, services, stockpiling and access requirements, including any proposed beach access pathways. Vegetation management, such as weeding, revegetation and bushfire protection under the 10/50 Code, may also potentially impact Aboriginal heritage objects including culturally modified trees. The environmental constraints mapping and the planning proposal should be updated after an Aboriginal cultural heritage assessment is completed.

If Aboriginal objects are identified and harm cannot be avoided then the applicant must apply to OEH for an Aboriginal heritage impact permit (AHIP). Further information is available on the OEH website: <https://www.environment.nsw.gov.au/licences/achregulation.htm> and in the guidelines listed below.

OEH Guidelines

- *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*. OEH 2011. Available online at: <http://www.environment.nsw.gov.au/resources/cultureheritage/20110263ACHguide.pdf>
- *Code of practice for archaeological investigation of Aboriginal objects in New South Wales*, DECCW 2010. Available online at: <http://www.environment.nsw.gov.au/resources/cultureheritage/10783FinalArchCoP.pdf>
- *Aboriginal cultural heritage consultation requirements for proponents 2010*. DECCW 2010. Available online at: <http://www.environment.nsw.gov.au/resources/cultureheritage/commconsultation/09781ACHconsultreq.pdf>
- *Due diligence code of practice for the protection of Aboriginal objects in New South Wales*, DECCW 2010. Available online at: <http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>
- *Applying for an Aboriginal Heritage Impact Permit guide for applicants*, OEH (2011). Available online at: <http://www.environment.nsw.gov.au/resources/cultureheritage/20110280AHIPguideforapplicants.pdf>

Biodiversity

The biodiversity information submitted with the application is from 2005 (BES, 2005), and therefore is considered outdated. It does however identify the site as containing threatened ecological communities (TEC) and suitable habitat for numerous threatened species.

The Biodiversity Conservation (BC) Act 2016 was gazetted on 25 August 2017 and the transitional period in most local government areas ended on 25 February 2018. Development applications in the Shoalhaven LGA are now required to assess impacts by way of a Biodiversity Development Assessment Report (BDAR) under the BC Act and offset accordingly where mandated clearing thresholds are exceeded.

We recommend that an ecological assessment utilising the Biodiversity Assessment Method (BAM) be undertaken at the planning proposal stage so that the current value of the site is known, and any offset requirements are assessed and known early in the planning process. At a minimum, we recommend that a preliminary consideration of any BC Act/BAM considerations be done at the planning proposal stage. This will also address whether offsets for future DAs under the proposed rezoning will be required by the BAM.

The Illawarra Shoalhaven Regional Plan (ISRP) mapping indicates the site is predominantly high environmental value (HEV), with the exception of the north western strip. This means the provisions of Action 5.1.1 of the ISRP need to be addressed and deemed to be satisfied as part of any planning proposal. Actions

5.1.1 and 5.1.3 of the ISRP respectively state impacts to HEV lands should be avoided, minimised and offset, and that opportunities to improve the function and resilience of the corridor be investigated.

Whilst the cleared/slashed areas appear to support potential for limited residential development, the proposed R2 zoned area does not completely align with this cleared area. Given that the site is currently zoned E3, Council will need to address the relevant s9.1 Direction 2.1 and supporting Practice Note PN 09 002, which state that environmental protection standards are not be reduced on land already zoned for environmental purposes.

Flooding and Coastal

Coasts and Estuaries Risk and Environmental Management Comments

The information provided in support of the planning proposal does not meet the primary objective of Section 117 Direction 2.2 'Coastal Management' of the EP&A Act (1979) to protect and manage coastal areas of NSW, consistent with the objectives of the Coastal Management Act, 2016 or the provisions of the State Environmental Planning Policy (Coastal Management) 2018 (i.e. the CM SEPP).

Specifically, the subject site is mapped under the CM SEPP as Coastal Wetlands and Littoral Rainforest. It is also mapped as being part of the coastal zone and as such subject to coastal hazard considerations identified in clause 15 of the CM SEPP. We therefore consider that the planning proposal should be supported by an assessment to demonstrate how the proposed re-zoning can satisfy consistency with the provisions of the CM SEPP.

Whilst the planning proposal recognises the need to manage water quality impacts, the information provided in support of this proposal does not sufficiently characterise the potential water quality and estuary health impacts to coastal wetlands, including Wowly Creek and adjoining riparian lands or the coastal waters of Hare Bay. The impacts and how they will be managed requires further analysis as part of the planning proposal, including identification and zoning of land areas required to off-set stormwater quality and quantity impacts.

The planning proposal documentation submitted has not made an assessment of adverse impacts to the proposed lands subject to the re-zoning proposal in relation to coastal processes, including coastal hazards, impacts of climate change and tidal inundation. To allow for an informed assessment of the planning proposal to determine the potential coastal hazard impacts on and by the proposed re-zoning, we recommend that the planning proposal requires an assessment of coastal hazards to demonstrate consistency with the relevant s117 Direction and Coastal SEPP, including but not limited to clause 15. To address these matters, we consider that the following matters require further consideration:

- The impact of future residential housing on water quality and estuary health including impacts to coastal wetlands and receiving waterways, including groundwater;
- Water quality objectives and targets for the proposed development are consistent with the NSW Government's Risk-based Framework for Considering Waterway Health Outcomes in Strategic Land-use Planning Decisions;
- That further details are provided of the stormwater quality and quantity management measures required for the proposed development including spatial provisions to achieve water quality and quantity targets to off-set impacts to estuary health;
- That the proposal aligns with objectives, principles and any specific actions of the Shoalhaven Coastal Zone Management Plan (CZMP); and
- The potential impacts of coastal processes and hazards including the future implications of climate change consistent with the requirements of the Coastal Management SEPP and s117 Direction 2.2. This should also include an assessment of the interaction of coastal and catchment sourced flood hazards.

Should Council require additional advice regarding coastal management matters it should not hesitate to contact OEH or DPE for matters relating to the Coastal Management SEPP.

Floodplain Risk Management Comments

The primary objective of the NSW Government's Flood Prone Land Policy is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone land and reduce private and public losses resulting from floods. The most appropriate method to assess the development of flood prone land is through the floodplain risk management process detailed in the NSW Floodplain Development Manual (2005).

A primary objective of Section 117 Direction 4.3 Flood Prone Land of the EP&A Act (1979) is to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. While the planning proposal (PRM Architects, 2018) acknowledges the presence of flooding constraints across the site, these constraints have not been quantified and a flood study has not been undertaken. The planning proposal does not however demonstrate consistency with the section 117 Direction 4.3 Flood Prone Land or the principles of the Floodplain Development Manual.

As the site is subject to flooding, we recommend that the planning proposal addresses the following with relation to floodplain risk management and the need for consistency with the section 117 Direction:

- The impact of flooding on the proposed development (up to and including the PMF) accounting for both riverine and overland flooding;
- The impact of the proposed development (including stormwater modifications) on flood behaviour, hazard and associated risk, both on and off the site;
- The impact of flooding on the safety of people/users of the development for the full range of floods including issues linked with isolation and accessibility for emergency services; and
- The implications of climate change (particularly increased rainfall intensity) and estimated flood planning levels utilising appropriate flood estimation techniques.
- An assessment of flood hazard against proposed land use zones to demonstrate consistency with the s117 Direction 4.3 Flood Prone Land.

Should council require additional advice regarding floodplain risk management matters, it should not hesitate to contact OEH.

National Parks Estate

The vegetated parcel in the east of the site represents a logical addition to the National Parks Estate. Further investigation and discussion with the OEH's National Parks & Wildlife Service would be required should this form part of any future plans.

Please contact me on 4224 4185 or via e-mail daniel.robson@environment.nsw.gov.au should you require any further information.

Yours sincerely



DAN ROBSON
Senior Conservation Planner, Planning (Illawarra)
South East Branch
Conservation and Regional Delivery Division

DE19.12 Shoalhaven DCP 2014 - Proposed Local Character Statements

HPERM Ref: D19/4280

Group: Planning Environment & Development Group
Section: Strategic Planning

Purpose / Summary

Obtain a resolution to amend Shoalhaven Development Control Plan 2014 (Shoalhaven DCP 2014) to include Local Character Statements (LCSs) for all towns and villages to which the NSW Governments Low Rise Medium Density Housing Code (the Code) in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) applies.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Commence the preparation of an amendment to Shoalhaven Development Control Plan (DCP) 2014 to include Local Character Statements for all towns and villages to which the Low Rise Medium Density Housing Code applies.
2. Receive a further report on the draft DCP amendment prior to it proceeding to public exhibition.

Options

1. As recommended.

Implications: This option is preferred as it will result in the preparation and inclusion of LCS into the DCP for all towns and villages to which the Code applies. The LCSs would also help inform character for the purposes of the Code and development applications.

2. Prepare LCSs for all towns and villages to which the Code applies, following finalisation of the Shoalhaven Growth Management Strategy (GMS) process.

Implications: This option is not preferred as the Shoalhaven Growth Management Strategy 2019-2041 (GMS) process will not be finalised until at least September 2019. This means that the LCSs would not be included in Shoalhaven DCP 2014 until at least 2020. During this time, consideration of character may not be adequately addressed during the medium density complying development process.

3. Adopt an alternative recommendation.

Implications: This will depend on the scope and could have implications on the incorporation of LCS's into Shoalhaven DCP 2014.

Background

In April 2018, the Code amendment to Codes SEPP was notified by the NSW Government. The Code enables the consideration of the following medium density development types as complying development:

- One and two storey dual occupancies, manor houses and terraces in Shoalhaven's R1 General Residential, R3 Medium Density Residential and RU5 Villages zones; and
- One and two storey dual occupancies in Shoalhaven's R2 Low Density Residential zone.

Based on current Shoalhaven LEP 2014 provisions, the Code when operational will apply to the R1, R2, R3 and RU5 zoned land in the following towns and villages in Shoalhaven (**Table 1**):

Table 1: Towns and Villages to which the Code applies

<ul style="list-style-type: none"> • Bangalee • Basin View • Bawley Point • Bendalong • Berrara • Berringer Lake • Berry • Bewong • Bomaderry • Burrill Lake • Callala Bay • Callala Beach • Cambewarra • Cambewarra Village • Conjola Park • Cudmirrah • Culburra Beach • Cunjurong Point • Currarong • Depot Beach • Dolphin Point 	<ul style="list-style-type: none"> • Durras North • Erowal Bay • Fishermans Paradise • Greenwell Point • Huskisson • Hyams Beach • Kangaroo Valley • Kings Point • Kioloa • Lake Conjola • Lake Tabourie • Manyana • Meroo Meadow • Milton • Mollymook • Mollymook Beach • Mundamia • Myola • Narrawallee • North Nowra • Nowra 	<ul style="list-style-type: none"> • Nowra Hill • Old Erowal Bay • Orient Point • Sanctuary Point • Shoalhaven Heads • South Nowra • St Georges Basin • Sussex Inlet • Swanhaven • Tapitallee • Tomerong • Ulladulla • Vincentia • Wandandian • West Nowra • Woollamia • Worrigee • Worrowing Heights • Wrights Beach
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In June 2018, Council resolved (MIN18.423) to seek a 12-month deferral from the implementation of the Code which was set to commence on 1 July 2018. The 12-month deferral sought to provide Council with an opportunity to:

- Work towards the preparation and inclusion of LCS's in Shoalhaven DCP 2014 and minimum lot size provisions for certain medium density development in Shoalhaven Local Environmental Plan (LEP) 2014.
- Ensure that the character and context of Shoalhaven's existing towns and villages will be adequately considered during the complying development process, and where appropriate, maintained into the future.

Council's request for a deferral was favourably received and Shoalhaven is now known as a 'deferred area' for the purposes of the Code, until 30 June 2019. Council subsequently resolved (MIN18.698) to seek a further 12-month extension until 30 June 2020. It is noted that Council has not yet received a response in this regard.

It is unlikely that the required amendments to Shoalhaven LEP 2014 can be finalised prior to 1 July 2019; work is continuing on these amendments and the Development & Environment Committee will receive a future separate report in this regard.

Local Character Statements

The [Low Rise Medium Density Design Guide for Complying Development](#) (the Guide) manages matters of character and context in the complying development process through mandatory Design Verification Statements prepared by the designer of the development. The Guide specifies that a DCP can “contain statements that describe local character and will inform the content of the Design Verification Statement and site analysis required by the Design Criteria”.

A Local Character Statement (LCS) is essentially a character statement for an area that outlines the existing or desired built form/ natural character.

Local Character Statements in Shoalhaven DCP 2014

Shoalhaven DCP 2014 currently includes character statements/objectives/criteria (of sorts) for the following areas (or parts of areas):

- Mundamia Urban Release Area.
- Worrigee Urban Release Area.
- Moss Vale Road South Urban Release Area.
- Kangaroo Valley.
- Berry Town Centre and Residential Subdivision Area (i.e. Huntingdale Estate).
- Condie Crescent/Illaroo Road, North Nowra.
- Culburra Beach – The Marina Area.
- Bayswood Vincentia.
- Huskisson Town Centre.
- Sanctuary Point Local Centre.
- St Georges Basin Village Centre.
- Badgee Urban Release Area.
- Sussex Inlet Town Centre.
- Milton Urban Area.
- Ulladulla Town Centre and part periphery.

It is noted that the existing/desired character is not always clear for the above areas which may cause confusion/errors for designers and private certifiers.

As such, further work would be required to develop LCSs for the remaining towns and villages with a R1, R2, R3 and RU5 zoning, and fine tune existing character statements. Some information can be drawn from the Draft Shoalhaven Character Assessment Report (recently exhibited along with the Draft Shoalhaven Growth Management Discussion Paper); however, further work will be required to ensure that the statements are fit for the intended purpose. Should Council resolve to proceed as recommended then it is intended to get the consultants who prepared the draft Shoalhaven Character Assessment Report to assist with the construction of the LCSs given the work they have already undertaken and have access to that is relevant

LCSs in a DCP are not mandatory; however, they would be a useful tool for designers and private certifiers in preparing/assessing Design Verification Statements and would reduce the subjectivity surrounding the identification of character and context.

It would be most appropriate for any LCSs to be located/consolidated in a General Chapter of Shoalhaven DCP 2014 to enhance readability.

Community Engagement

Any amendment to Shoalhaven DCP 2014 would be publicly exhibited for 28 days at the Nowra Administrative Building in accordance with legislative requirements. Documentation would also be made available on Council's website and at the Ulladulla Administrative Buildings.

Policy Implications

LCSs in a DCP are not mandatory; however, they would be a useful tool for designers and private certifiers in preparing/assessing Design Verification Statements and would reduce the subjectivity surrounding the identification of character and context. The LCSs would also be an effective tool in the preparation and assessment of development applications.

As the Department of Planning and Environment has not yet advised Council as to whether the further deferral request has been successful, ideally any amendment should be in place prior to 1 July 2019. However, it is noted that this milestone may not be achievable. This would mean that Shoalhaven would have a policy gap until the DCP amendment was made effective.

Financial Implications

Any amendments to Shoalhaven DCP 2014 would be resourced within the existing Strategic Planning budget, including any external resourcing that may be required to assist deliver the proposed LCSs.

Risk Implications

LCSs would be a useful tool for designers and private certifiers and would reduce the subjectivity in the process.

DE19.13 Review - Planning Provisions - Tourist and Visitor Accommodation

HPERM Ref: D19/41203

Group: Planning Environment & Development Group
Section: Strategic Planning

Purpose / Summary

- Advise of the initial outcomes of the Tourist and Visitor Accommodation Review (the Review).
- Obtain a resolution to prepare an amendment to Chapter G15: Tourist and Visitor Accommodation of Shoalhaven Development Control Plan (DCP) 2014.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Further investigate and consider the possibility of an amendment to Shoalhaven Local Environment Plan 2014 once the outcomes of the NSW Department of Planning and Environment's tourist and visitor accommodation review is released, and any resulting changes to the Standard Instrument LEP are known.
2. Prepare an amendment to Chapter G15: Tourist and Visitor Accommodation of Shoalhaven Development Control Plan (DCP) 2014.
3. Receive a further report on the proposed detail of the draft DCP amendment prior to it proceeding to public exhibition.
4. Advise relevant stakeholders, including CCBs and the Development/Tourism Industry, of this decision and engage with them during the development of the amendment.

Options

1. As recommended.

Implications: This is the preferred option and would enable the detail of Chapter G15: Tourist and Visitor Accommodation of Shoalhaven DCP 2014 to be reviewed whilst awaiting the outcome of the Department of Planning and Environment's (DP&E) review into tourist and visitor accommodation. This would also mean that any changes to Shoalhaven Local Environmental Plan (LEP) 2014 may be deferred for some time. However, if DP&E's review takes too long to emerge, a further report can be brought forward to present options on any amendments to the LEP that Council can pursue

2. Prepare an amendment to both Shoalhaven LEP 2014 and Shoalhaven DCP 2014.

Implications: This is not the preferred option. Whilst it would see the needed amendment to Chapter G15 progress, it would also see an amendment to Shoalhaven LEP 2014 commence and possibly substantially advance prior to DP&E's intent for the Standard Instrument LEP becoming known. DP&E's process may also require or make changes to Shoalhaven LEP 2014. As such there are risks involved in the LEP component of this option.

3. Postpone consideration of any amendments to Shoalhaven LEP 2014 and/or Shoalhaven DCP 2014 until the outcomes of DP&E's review is known.

Implications: This is not the preferred option as the timeframes for DP&E's review are unknown. This means that the much-needed amendments to Chapter G15 would not be progressed in a timely fashion. This option would, however, remove risks surrounding possible changes to the Standard Instrument LEP, and subsequent amendments to Shoalhaven LEP 2014 which may also be required. Depending on the approach ultimately taken by DP&E adjustments may also be needed to the DCP.

4. Adopt an alternative resolution.

Implications: This will depend on the scope and could have implications on the Shoalhaven LEP 2014 and Shoalhaven DCP 2014.

Background

On 20 December 2016, Council resolved (MIN16.979) that:

In considering the strategic planning program for 2017, Council also consider the policy approach in respect to density of tourist cabins in rural and environmentally sensitive locations.

This resolution was considered as part of the development of the Strategic Planning Works Program. The current adopted Works Program for 2018/2019 includes the following priority project:

Review of tourist and visitor provisions on rural and environmental protection zones (LEP/DCP) (MIN16.979)

In addition to the original resolution, the Review has also been influenced by the outcomes of several recent development applications and court cases, that are summarised in the table below:

Application	Summary
<p>"Rockfield Park"</p> <p>RA14/1004</p> <p>801 Kangaroo Valley Rd, Bellawongarah</p>	<ul style="list-style-type: none"> Proposed Eco-tourist Facility and Ancillary Function Centre on land zoned part RU1 Primary Production and part E2 Environmental Conservation. Application determined by the Southern Joint Regional Planning Panel (JRPP) on 12 November 2015 by way of refusal. Determination based on the permissibility of the proposed function centre, characterisation of the development as an 'eco-tourist facility', and potential noise impacts of the development. Applicant appealed the decision in the Land and Environment Court (LEC) - the JRPP's determination was upheld.
<p>"Mount Hay"</p> <p>DA14/2381</p> <p>260 Mount Hay Rd (Priv), Broughton Vale</p>	<ul style="list-style-type: none"> Additions and Alterations to Existing Tourist Cabin Facility on land zoned E3 Environmental Management. Application refused by Council in November 2015. Determination based on inconsistencies with the Shoalhaven LEP 2014 and Shoalhaven DCP 2014, impact on visual amenity, and incompatibility of the development with the public interest. Applicant appealed the decision in the LEC - refusal was overturned and application subsequently approved in May 2016.

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<p>"Nerringilla"</p> <p>DA17/1264</p> <p>77C Nerringilla Rd</p> <p>Bendalong</p>	<ul style="list-style-type: none"> Eco-Tourism facility including eco-lodge, primitive camping, manager's residence and 18 functions per year for up to 60 persons. Application approved by Council in February 2018. Contentious application issues - right of way access, impact on amenity of neighbours, scale of development and compliance with LEP clause 5.13. Third party appeal lodged with LEC which included request for costs order which was upheld, the application has been subsequently been withdrawn prior to LEC hearing the appeal.
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The abovementioned development applications generated a significant amount of community interest, particularly regarding:

- Traffic impacts and road safety.
- Visual and scenic amenity.
- Site suitability.
- Environmental impacts.
- Impacts on the economic viability of existing tourist and visitor accommodation.
- Cumulative impacts caused by future development of a similar nature.

Tourist and Visitor Accommodation - Shoalhaven LEP 2014 (the LEP)

The current LEP contains a range of provisions related to tourist and visitor accommodation. These are supported by provisions in the Shoalhaven DCP 2014 (the DCP).

'Tourist and visitor accommodation' (group term) is defined in the LEP as:

a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,*
- (b) bed and breakfast accommodation,*
- (c) farm stay accommodation,*
- (d) hotel or motel accommodation,*
- (e) serviced apartments,*

but does not include:

- (f) camping grounds, or*
- (g) caravan parks, or*
- (h) eco-tourist facilities.*

It is noted that this term is not exclusive, which means that other tourism related land uses ('innominate uses') not listed may also be considered in zones where tourist and visitor accommodation is permissible with consent. As such there is the potential for a range of innominate uses to emerge, that were not envisaged or that are not adequately addressed by the existing provisions in the LEP or the DCP. This includes innovative emerging tourist uses such as 'glamping'/glass tents, tiny homes, pop up canvas tents, plastic igloos, for example, see **Figure 1** below for some examples.

These types of uses are problematic as they may or may not fit in the Standard Instrument LEP definitions. Additional guidance would be valuable in this regard.



Figure 1: Examples of Innovative Emerging Tourist and Visitor Accommodation

The following table sets out the types of tourist and visitor accommodation that is currently permissible or prohibited in Shoalhaven's existing rural and environmental zones:

Zone	Permissible	Prohibited
Rural		
RU1 Primary Production	<ul style="list-style-type: none"> • Camping grounds • Eco-tourist facilities • Tourist and visitor accommodation group term 	<ul style="list-style-type: none"> • Hotel or motel accommodation • Serviced apartments
RU2 Rural landscape	<ul style="list-style-type: none"> • Camping grounds • Caravan parks • Eco-tourist facilities • Tourist and visitor accommodation group term 	<ul style="list-style-type: none"> • Hotel or motel accommodation • Serviced apartments
RU4 Primary Production Small Lots	<ul style="list-style-type: none"> • Bed and breakfast accommodation • Eco-tourist facilities • Farm stay accommodation 	<ul style="list-style-type: none"> • All other tourist and visitor accommodation

RU5 Village	<ul style="list-style-type: none"> • Caravan parks • Tourist and visitor accommodation group term 	<ul style="list-style-type: none"> • Farm stay accommodation
Environmental		
E2 Environmental conservation	<ul style="list-style-type: none"> • Bed and breakfast accommodation • Eco-tourist facilities 	<ul style="list-style-type: none"> • Hotel or motel accommodation • All other tourist and visitor accommodation
E3 Environmental Management	<ul style="list-style-type: none"> • Camping grounds • Eco-tourist facilities • Tourist and visitor accommodation group term 	<ul style="list-style-type: none"> • Hotel or motel accommodation • Serviced apartments
E4 Environmental Living	<ul style="list-style-type: none"> • Bed and breakfast accommodation • Eco- tourist facilities 	<ul style="list-style-type: none"> • All other tourist and visitor accommodation

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In Shoalhaven's urban zones, tourist and visitor accommodation is permissible at varying levels in the following zones:

- SP3 Tourist.
- R1 General Residential.
- R3 Medium Density Residential.
- B2 Local Centre.
- B3 Commercial Core.
- B4 Mixed Use.

There are also a number of supporting clauses in the LEP relating to the subdivision and scale and location of tourist and visitor accommodation, including eco-tourist development.

Discussion

Generally, the preliminary matters for consideration in the Review (there could be others) can be summarised as follows:

- The appropriateness of the tourist and visitor accommodation group term. Should all specific terms be nominated in Shoalhaven LEP 2014 to avoid confusion and provide more certainty for the community, including tourist cabins?
- Whether local provisions restricting the scale, design and location of tourist cabins, eco-tourist facilities and other relevant land uses would be helpful.
- Whether local provisions relating to amenity and visual impact would be helpful.
- Whether the Standard Instrument LEP model clause 'Rural and nature-based tourist facilities' should be applied in Shoalhaven.
- Appropriateness of eco-tourist facilities in certain rural zones.

- Appropriateness of existing subdivision provisions relating to tourist and visitor accommodation. Is there are risk of unplanned dwelling entitlements?

Ultimately, any amendments would need to be consistent with DP&E's current [Practice Note 09-006 Providing for tourism in Standard Instrument local environmental plans](#) and any advice/direction subsequently provided by the NSW Government.

Importantly, a number of the matters identified above for consideration have been identified as potential issues NSW-wide and in response, DP&E released an industry stakeholder survey relating to the Standard Instrument LEP tourist and visitor accommodation provisions in late 2018 (completion date early February 2019). The survey asked specific questions regarding characterisation of tourist uses, whether a definition of 'tourist cabins' would be beneficial, use of model clauses and effectiveness of eco-tourist facility provisions.

The outcome of this survey and DP&E's subsequent response in terms of legislative change is considered a crucial component that must be considered prior to any amendment to the LEP. DP&E may set a new policy direction which may influence how Council responds to tourist and visitor accommodation at the local scale. It is noted that DP&E has not provided a timeframe to present the outcomes of the survey or intended approach to legislative change.

If DP&E do not release a position on this matter within a reasonable timeframe, a further report can be brought forward to present options on any amendments to the LEP that are considered necessary to progress this issue. However, at present it is recommended that Council await the outcomes of the DP&E review.

Tourist and Visitor Accommodation - Shoalhaven DCP 2014 (the DCP)

The current [Chapter G15: Tourist and Visitor Accommodation](#) of the DCP is a product of the consolidation of the following policy documents during the Citywide DCP process:

- DCP No. 63 - Tourist Development in Rural Areas.
- Bed and Breakfast Guidelines.

The current chapter has a significant focus on tourist cabins, which reflects the fact that they are one of the main forms of tourist development proposed by applicants in rural areas.

The DCP provisions have not been reviewed for some time, are largely outdated and do not provide appropriate guidance for applicants and assessing Council officers, especially in relation to the more innovative emerging tourism related land uses.

As such, a complete rewrite of the Chapter is considered appropriate/timely, and should include:

- Provision of a set of generic objectives and controls that apply to all tourist related development, ensuring that these controls address key issues raised in the relevant court cases (e.g. amenity, access, servicing).
- Expansion of the application of the Chapter to include guidelines for more types of tourist development (e.g. terms defined in the SLEP2014 and other tourist uses). Provide specific objectives, controls and guidance as relevant.
- Provision of additional definitions and guidance on all known tourist uses such as tourist cabins, glamping, glass tents etc. to assist applicants in characterising their development.
- Inclusion of relevant guidelines for tourist development in urban areas where appropriate.

Community Engagement

No formal community consultation has been undertaken at this stage; however, any future resulting amendments to Shoalhaven LEP 2014 or Shoalhaven DCP 2014 will be publicly exhibited in accordance with legislative requirements.

It will also be beneficial to undertake early community engagement with stakeholders including the Shoalhaven Tourism Advisory Group (STAG), other tourism industry representatives, relevant CCBs etc. prior to preparation of the actual draft DCP amendment.

Policy Implications

The purpose of this report is to seek a clear direction from Council regarding the review of planning controls for tourist and visitor accommodation. Depending on the approach resolved by Council, this may lead to a future amendment of the LEP and/or DCP.

The report recommends postponing any amendment to Shoalhaven LEP 2014 until the outcomes of DP&E's survey and legislative response is known. This will delay investigations into an LEP amendment somewhat; however, a further report can be brought forward to present options to progress this issue should it not be clarified in a timely manner.

Potential Planning Controls - Character - Cambewarra Escarpment

Council has also resolved (MIN18.944) to proceed with investigations into a possible amendment to the LEP by way of application of the Scenic Preservation Overlay or additional local clause to help protect the character of the Cambewarra Escarpment (and other similar areas).

This is currently being undertaken as a separate project to the subject Review; however, the outcomes of both will ultimately need to align to ensure consistency in Council's planning controls.

Draft Destination Management Plan 2018-2023

This draft Plan was exhibited for community comment in late 2018/early 2019 and is a strategic document that prioritises key tourism focus areas and actions. Any planning review will also need to be cognisant of the outcomes of this related, but separate, piece of work.

Financial Implications

Any amendments to the LEP or DCP will be resourced within the existing Strategic Planning budget, including any external resourcing that may be required to support the project.

Risk Implications

At present, any application lodged with Council for tourist and visitor related development will be assessed on its merits against the relevant existing development controls. As such, there is no immediate risk in maintaining the status quo; however, this approach does not provide any specific direction regarding innovative, emerging or innominate tourist land uses, which could result in highly subjective development applications that may be incompatible with community expectations and existing development in those locations.

DE19.14 DA18/1700- 57 - 61 Tahnee Street, SANCTUARY POINT - Lots 38 / 39 / 40 DP 1243551 - 90 Place Centre Based Care Facility with Associated Car Parking

DA. No: DA18/1700

HPERM Ref: D18/405415

Group: Planning Environment & Development Group
Section: Development Services

Attachments:

1. S4.15 Assessment Report - 57 - 61 Tahnee Street, SANCTUARY POINT - Lots 38, 39 and 40 DP 1243551 - Centre Based Care Facility with Associated Car Parking (under separate cover) ➡
2. Draft Development Consent - 57 - 61 Tahnee Street, SANCTUARY POINT - Lots 38, 39 & 40 DP 1243551 - Centre Based Care Facility with Associated Car Parking (under separate cover) ➡

Description of Development: Construction of a 90 place Centre-Based Child Care Centre with associated Car parking

Owner: Nadine Street Pty Ltd
Applicant: Early Learning

Notification Dates: On 7 August 2018 the application was notified for a period of 14 days. Following the submission of additional information, the development application was renotified for a period of 14 days from 19 October 2018.

No. of Submissions: First Notification Period (7 August 2018)
Twenty-two (22) in objection
One (1) in support

Second Notification Period 19 October 2018
Four (4) in support
One (1) Neither objecting nor supporting

Purpose / Reason for consideration by Council

At the ordinary meeting of Council held on 28 August 2018 Council resolved to “call-in” the DA for determination.

Recommendation (Item to be determined under delegated authority)

That the Development Application for construction of a ninety (90) place centre-based child care centre with associated car parking on the land at 157 - 61 Tahnee Street, Sanctuary Point - Lots 38, 39 & 40 DP 1243551 be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

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Options

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

Implications: This would allow the applicant to proceed with the proposal and seek a construction certificate for development on the subject site.

2. Refuse the application.

Implications: Council would need to determine the grounds on which the application is refused, having regard to section 4.15 considerations.

3. Alternative recommendation.

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

Location Map



Figure 1 - Subject site in the local context.



Figure 2 - subject site in the neighbourhood context.

Background

Proposed Development

Council is in receipt of a development application for development described as the “construction of a Centre-based child care facility with associated car parking”.

The Statement of Environmental Effects prepared by Haskew de Chalain dated July 2018 (D18/266074) describes the centre-based child care facility as follows:

“Centre-based Child Care Facility

The proposed Centre-based Child Care Facility will require the consolidation of lots to form the development site. The proposal is a single storey development with a low-profile skillion roof form with the height and bulk lessened by the benching of the rear of the site which sets the built form lower appreciably when viewed from the east, west and southern elevations....

The proposed building has been designed to accommodate 90 children in total with 31 car parking spaces to service the Child care facility. The proposed child care breakdown is:

- 30 children aged 0-2 years;
- 20 children aged 2-3 years;
- 40 children aged 3-5 years;
- 19 staff (at full capacity);”

Gross Floor Area	766.40sqm
Floor Space Ratio	0.246:1
Car parking	31 car parking spaces, (including 1 disabled car space)
Staffing:	19 staff when at capacity

Hours of Operation:

Daily Monday to Friday operating from 7am to 6pm, 51 weeks per year. The centre will close on public holidays and for one week at Christmas, closing Christmas Eve or the equivalent closest business day prior and reopening the next business day after New Year's Day.

A site plan, floor plan and elevations of the proposed development are provided in **Figures 3 – 5** below:

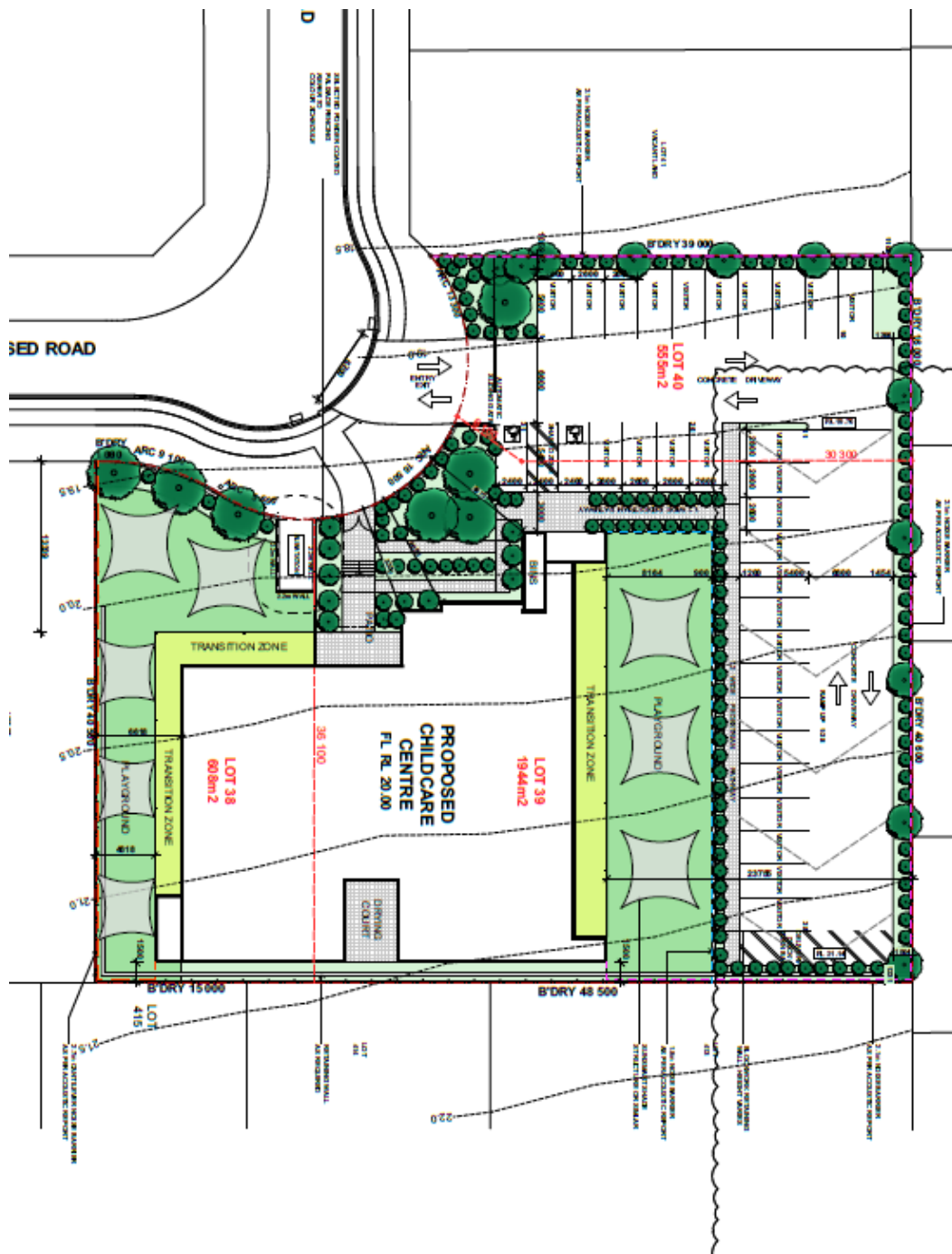


Figure 3 - Site plan of proposed development.

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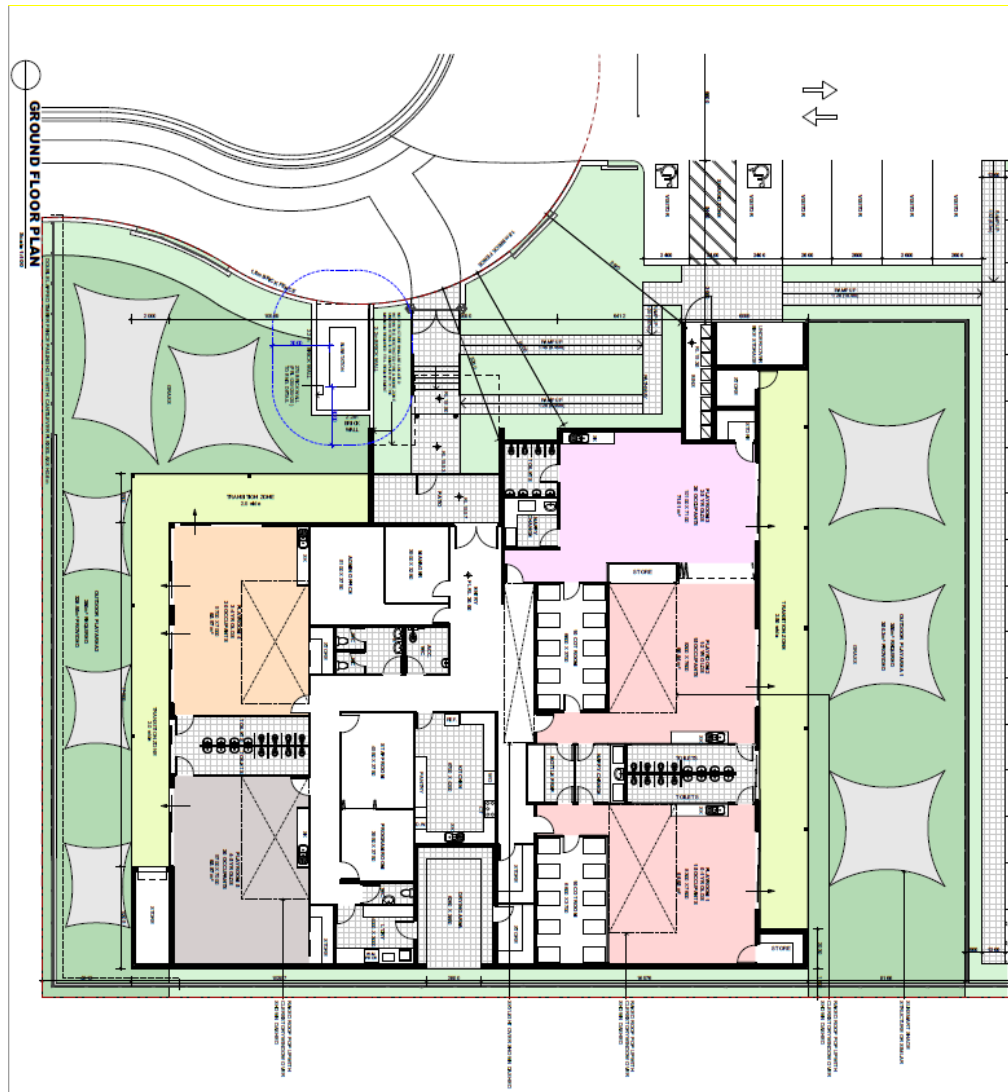


Figure 4 - Floor Plan of proposed development.

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Figure 5 - Elevations of proposed development.

Subject Land and Surrounding land

The subject site is located on the southern side Tahnee Street in the residential area of Sanctuary Point. The site is located 130m east of the intersection with Nadine Street. The site consists of three (3) residential lots legally identified as Lots 38, 39 and 40 in DP: 1243551 and are identified as 57–61 Tahnee Street, Sanctuary Point. The site has a combined frontage of 46m to Tahnee Street and a combined land area of 3,108m².

The site enjoys direct access to Tahnee Street. The site slopes gradually from the rear of the site to the Tahnee Street frontage.

The site is cleared of vegetation and ground cover. The site is not mapped as containing any critically endangered ecological communities (CEEC) or endangered ecological communities.

The adjoining lots (No. 55 and 63) on Tahnee Street have not been developed at the time of assessment of the development application. Adjoining development to the south and east is characterised as detached residential dwelling houses. This form of residential accommodation is typical of development in the broader Sanctuary Point area with the majority of lots being developed for low density single and two storey dwelling houses.

The site is mapped as being wholly bushfire prone land in accordance with the endorsed Bush Fire Prone Land Maps.

History

Prior to Lodgement

On 3 August 2005, the Department of Infrastructure, Planning and Natural Resources (DIPNR) granted Development Consent No. 485-12-2002 for a 40-lot subdivision, including:

- 39 residential lots;

- one drainage basin / open space lot;
- creation of roads; and
- vegetation clearing.

On 30 September 2016, the applicant lodged a Section 75W modification application seeking approval for the following amendments:

- increase the number of residential lots (from 39 to 51 lots) and associated amendments to lot dimensions;
- delete an on-site detention (OSD) basin and a drainage / open space reserve;
- deletion of front building setbacks;
- amendment of road layout, design and road reserve width; and
- remove the requirement to stage the development.

As part of the consultation process Council provided two detailed submissions. Issues raised in relation to the road and access are summarised as:

- The road reserve widths should be increased to 18m and the new proposed road be classified as a Local Road not an Access Street under SDCP2014.
- The creation of two large lots (consolidation of battle-axe lots) creates the expectation that medium density housing development can be accommodated on those sites, so those large lots should be further subdivided.

On 26 April 2017, DIPNR determined the modification by way of approval. While Council's concerns were considered in the assessment the application was determined as applied for with the road reserve at 16m and the large corner lots remaining.

Post Lodgement

On 28 June 2018, the development application was lodged with Council.

On 6 July 2018, Council requested additional information from the applicant. During the assessment Council requested the submission of additional information on five (5) occasions.

On 7 August 2018, the development application was notified for a period of 14 days in accordance with Council's Community Consultation Policy. A total of twenty-three (23) submissions were received.

On 28 August 2018, at the Ordinary Meeting of Council, the development application was called up for determination in accordance with Minute Number MIN18.662. Furthermore, Councillor Proudfoot presented a petition containing 22 signatures which states as follows:

To the City of Shoalhaven, we the undersigned formally petition the City of Shoalhaven Council to address the following:

The Traffic And Parking Impact Statement produced for the proposed developer of Lot 38-40 in Subdivision Of Lot 5 DP 788159 Nadine Street Sanctuary Point (Proposed Early Learning Centre) states that the entire development, including 44 residential homes and the Early Learning Centre would generate an AADT of 488 vehicle trips, and that in accordance with the Council's DSP 2014, Chapter G11 would be acceptable on the 6M wide roads within the new development.

In assessing the proposed increase in traffic on the existing portions of Nadine and Tahnee Streets between Links Avenue and Anson Street, taking into account the existing 42 residential homes and applying the figure published in RMS GUIDE TDT2013/04a of 7.4 daily vehicle movements per home in a regional area, an approximate AADT of $(43 \times 7.4) + 488 = 800$ is reached, after adding the existing

through traffic, a figure in excess of 900 vehicle movements per day would be the likely result.

This level of traffic is not acceptable on an Access Street with a width of 6M but the existing section of Tahnee Street measures 4.4M drain to drain for most of its length putting it in the Laneways category on the Council's DCP and should therefore be subject to less than 15 vehicle movements per day.

Early Learning Centres are an essential component of modern communities and must be allowed to exist but the proposed dangerous level of traffic particularly on a 4.4M wide laneway must be reduced. A possible remedy would be to make this section of Tahnee Street into a one-way precinct from Anson Street to Nadine Street and the counter flow to return to Anson Street via Kean Avenue.

As home owners and residents within the existing portion of Tahnee Street the above proposal would cause us and our families some inconvenience, but this would be preferable over the current dangerous proposal.

On 31 August 2018, the assessing officer completed a site visit of the property.

On 16 October 2018, the applicant submitted amended architectural plans and traffic plan to address concerns related to traffic flows within the surrounding road network. The amended plan proposes the closing of a portion of Tahnee Street at the northern extent of Nadine Street and construction of a cul-de-sac head to make a portion of Tahnee Street a no through road. The loop road of Tahnee Street providing access to the development is proposed to be turned into a one-way street. Refer to **Figure 6** for further details.

On 19 October 2018, the amended development application was re-notified to previous submitters and surrounding residence in accordance with the Council's Community Consultation Policy. A total of five (5) submissions were received to the re-notification of the application.

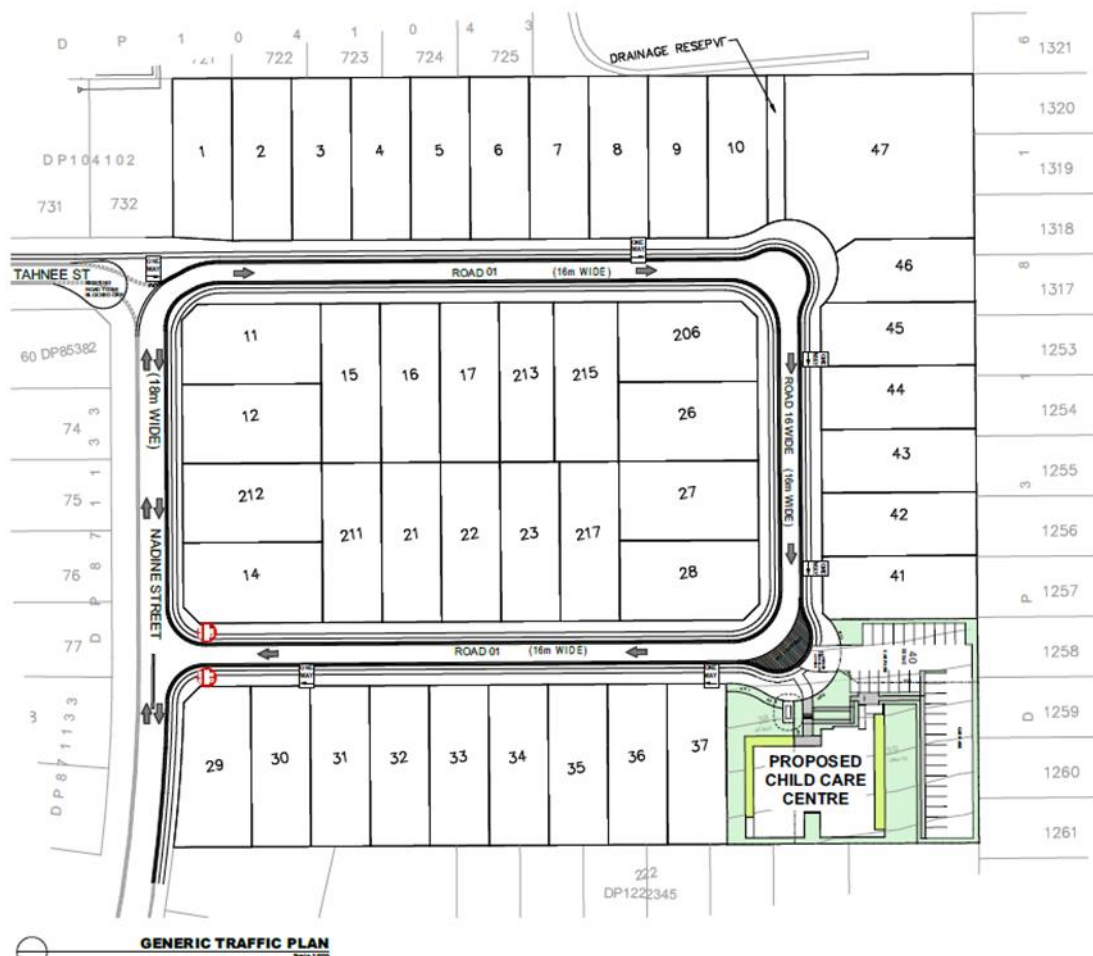


Figure 6 - General traffic plan proposed to implement a one-way operation to Tahnee Street and partial closure of Tahnee Street and construction of a cul-de-sac head to make the portion of Tahnee Street between Anson and Nadine Street a no through road.

Issues

Traffic impacts and Local Street Network Capacity

The proposed development has the potential to impact on local traffic conditions, with the local street network being identified as a potential impediment to the proposed development due in part to the width of the road pavement. In particular the road pavement width of Tahnee Street.

The proposed development is supported by a *Traffic and Parking Impact Assessment* prepared by Thompson Stanbury dated 21 March 2018 (D18/219175) and subsequent letter of response to Council's additional information request (D18/363486). The critical traffic, car parking and local street network information is provided below:

Development and Car Parking Data

The child care centre is to be designed to cater up to 90 children, consisting of the following age groups:

- 0-2 years - 30 children
- 2-3 years - 20 children
- 3-5 years - 40 children

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The National Quality Framework (NQF) sets out the minimum educator to child ratio requirements for children's education and care services. The child care centre requires a minimum of 16 staff to meet the supervision requirements.

Shoalhaven Development Control Plan 2014 (DCP 2014) Chapter G21: Car Parking and Traffic sets out the requirements for car parking for new child care centres based upon the number of child care places proposed as follows:

1 space for every 3 children.

The proposed child care centre is required to provide a total of 30 parking spaces, with 31 spaces proposed which is compliant with Council's parking requirement under Chapter G21 of SDCP 2014.

Local Road Design

Local roads are designed in accordance with Chapter G11: Subdivision of Land, Engineering Design Specifications and AUSTROADS.

The classification of streets is provided in **Table 1** below provides the design requirements for different types of Council roads as per Chapter 11: Subdivision of Land SDCP 2014.

Table 1 - Classification of Streets.

	Speed km/h ¹	AADT ²	Carriageway Widths ³
Access Street (Minor)⁴ Access streets generally are streets where the residential environment is dominant, traffic is subservient, speed and volume are low and pedestrian and cycle movements are facilitated.	30	<500	6.0 min
Laneways	15	<15	3.5 to 5.0 ⁵
Local Street The collector streets collect traffic from Access Streets and connects to a major road.	40	<2000	7.0 to 9.0 max
Collector Street	50	<3000	7.0 to 9.0 ⁶
Local Distributor Road	60	3000 to 6000	7.0 to 9.0

Tahnee Street, between Anson Street and Nadine Street, has been constructed with a carriageway width of 4.36m. Due to the width of Tahnee Street it is most appropriately classified as a "Laneway" under SDCP 2014.

The newly constructed frontage road (Nadine Street) has a carriageway width of 5.06m.

The following traffic generation rates are relevant to the proposed development and the undeveloped lots along Tahnee Street:

Low Density Residential Dwellings in Regional Areas

Daily Vehicle Trips = 7.4 trips per dwelling

Child Care/Early Learning Centre (Long Day Care)

Morning Period Peak Hour Trips = 0.8 trips per child

Afternoon Period Peak Hour Trips = 0.3 trips per child

Evening Period Peak Hour Trips = 0.7 trips per child

The development is proposed across three (3) of the 47 lots registered lots with DP 788159, the remaining 44 lots are zoned for R1 General Residential land use.

Based on the above land uses (excluding possible land uses which may generate higher average daily traffic volumes) the subdivision is forecast to generate an average daily traffic volumes (AADT) of 488 vehicle trips.

The level of traffic generation means that the carriageway width of Tahnee Street providing road access to the development should be 6.0m wide, which is defined as an "Access Street (Minor)" under SDCP 2014.

The carriageway width Tahnee Street is not consistent with **Table 1** above in that it does not meet the required 6.0m Access Street standard for the anticipated AADT of 488 vehicle trips.

To address the local street network concerns the applicant has proposed to change the local road network to reduce the potential impacts (refer to **Figure 6**). They include:

- close off a portion of Tahnee Street and construct a cul-de-sac to restrict traffic from Anson Street through Tahnee Street; and
- restrict all traffic movements within the Tahnee Street loop road to a single way (clockwise).

Council's Traffic and Transport Unit have reviewed the proposed development and the submitted *Traffic and Parking Impact Assessment* prepared by TSA. They advise that the proposed one-way movement, cul-de-sac, footpath and parking controls are a plausible solution to addressing the traffic impacts of the proposed child care centre. They have raised no significant concerns regarding the development and the impact on the local road network subject to the following:

- It is recommended that an internal pick up drop off area be implemented and that it be indicated via signage and/or line marking. An operational management plan related specifically to the car park management.
- No stopping signage within Tahnee Street (around the turning head) and Nadine Street (near the site in question) is recommended to ensure that:
 - In Nadine Street: Due to high AM and PM peaks in traffic (relative to the surrounding development) there will minimal bottlenecking and sight distance issues at the childcare facility.
 - In Tahnee Street: Due to the residential nature of Tahnee Street, there is a risk of residential parking in the turning head. Regulatory measures will help to ensure that motorists do not cause the turning head to become redundant.
- The construction of a footpath to the intersection of Tahnee and Nadine Street to provide a connection with the adjoining residential subdivision due to the likely pedestrian generation resulting from the facility.
- Plans detailing lane widths, proposed signage locations and line marking (including dimensions), swept paths with clearance offsets to proposed landscaping measures (detailed in the referral for the cul-de-sac head) within Tahnee Street, Nadine Street and the site's internal parking (including grade compliance with the disabled parking space) are to be submitted to Council's Traffic Unit for Shoalhaven Traffic Committee consideration. These plans are to include:

- No Stopping Zones along the frontage of the proposed childcare site and as appropriate in the proposed cul-de-sac head.
- Directional pavement markings in compliance with Australian standards
- Appropriate longitudinal line marking on both Nadine Street and Tahnee Street, in accordance with relevant standards
- Pedestrian linkage between the internal path and external path within Nadine Street (inside and outside of the loop)– depending on the current engineering plans for Nadine Street

Educational Establishments and Child Care Facilities

As part of the assessment of a development application for a centre-based child care centre, Council must consider all relevant provisions of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education and Child Care SEPP). Before determining a development application for a centre-based child care facility, Council must take into consideration any applicable provisions of the *Child Care Planning Guideline* prepared by the Department of Planning and Environment.

Section 3.1 of the *Child Care Planning Guideline* addresses matters associated with the site selection and location of Centre-based child care facilities which must be considered in the assessment of the development application, including the following considerations and objectives:

3.1 Site Selection and location

Objective: To ensure that appropriate zone considerations are assessed when selecting a site.

C1 For proposed developments in or adjacent to a residential zone, consider:

- the acoustic and privacy impacts of the proposed development on the residential properties
- the setbacks and siting of buildings within the residential context
- traffic and parking impacts of the proposal on residential amenity

Comment

The proposed development is within an existing residential zone with existing residential development to the south and east. It is likely that land to the north and west along Tahnee Street will be developed for residential purposes in the near future.

The development application is supported by an *Acoustic Assessment*, prepared by Koikas Acoustics Pty Ltd, dated 16 April 2018. The *Acoustic Assessment* has taken into consideration the impact of the development from children playing in the play areas, mechanical plant and car parking noise sources. The report has been considered by Council Environmental Health Officer (refer to the referral comments) and found to be satisfactory subject to the imposition of the recommendations and operating conditions/restrictions outlined in Section 9.0 of the assessment.

There are no numerical controls regarding setbacks of the proposed development. However, setbacks to the front, side and rear boundaries are compliant with the setback controls of Chapter G12 Dwelling Houses, Rural Worker's Dwellings, Additions and Ancillary Structures of SDCP 2014.

A *Traffic and Parking Impact Statement*, prepared by TSA dated 21 March 2018, accompanies this application in support of the proposal. The proposed off-street parking provision suitably accords with Council's relevant DCP requirements and is accordingly considered to be satisfactory.

Objective: To ensure that the site selected for a proposed child care facility is suitable for the use.

C2 When selecting a site, ensure that:

- the location and surrounding uses are compatible with the proposed development or use
- the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards
- there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed
- the characteristics of the site are suitable for the scale and type of development proposed having regard to:
 - size of street frontage, lot configuration, dimensions and overall size
 - number of shared boundaries with residential properties
 - the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas
- where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use
- there are suitable drop off and pick up areas, and off and on street parking
- the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use
- it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises.

Comment

The location and surrounding uses are compatible with the proposed development.

The site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards. The site is mapped as bushfire prone land.

The NSW RFS has considered the information submitted. General Terms of Approval, under Division 4.8 of the EP&A Act, and a Bush Fire Safety Authority, under Section 100B of the 'Rural Fires Act 1997', have been issued without any specific conditions.

There are no potential environmental contaminants on the land, in the building or the general proximity, and there is no hazardous materials remediation needed.

The characteristics of the site are suitable for the scale and type of development proposed having regard to:

- size of street frontage, lot configuration, dimensions and overall size
- number of shared boundaries with residential properties. The proposal has a total of ten (10) properties with a shared property boundary to the subject site. This is considered to be satisfactory due to the size of the site (consolidation of three (3) existing lots and its located at the corner of Tahnee Street.
- the development will not have adverse environmental impacts on the surrounding area. There are no sensitive environmental or cultural areas in the vicinity of the development.

There are suitable drop off and pick up areas, and off-street parking.

The access street (Tahnee Street), subject to recommended alterations, is appropriate and safe for the proposed use.

It is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises.

Objective: To ensure that sites for child care facilities are appropriately located.

C3 A child care facility should be located:

- near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship
- near or within employment areas, town centres, business centres, shops
- with access to public transport including rail, buses, ferries
- in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.

Comment:

The proposed development is located in close proximity to Sanctuary Point Public School, which is located ~900m south-east of the site.

The Sanctuary Point local shopping and commercial area is located 900m to the south-east of the site and St Georges Basin Commercial area is located 2km to the north-west of the site. Both Locations provided basic shopping and retail services. Further to north-east is the Vincentia Marketplace, which is located some 4km from the subject site.

The site is located within the recently approved Tahnee Street subdivision and the site is located within the existing low density residential context of Sanctuary Point and St Georges Basin. Buses are currently available along Park Drive.

The site is considered to benefit from satisfactory pedestrian connectivity to the local community, businesses, shops, services and the like. A connecting footpath is proposed to be constructed from the site to the corner of Nadine Street, to provide connectivity back to the local road network.

Objective: To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.

C4 A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:

- proximity to:
 - heavy or hazardous industry, waste transfer depots or landfill sites
 - LPG tanks or service stations
 - water cooling and water warming systems
 - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses
 - extractive industries, intensive agriculture, agricultural spraying activities
- any other identified environmental hazard or risk relevant to the site and/ or existing buildings within the site.

The subject site is residentially zoned and not in close proximity to an existing land use or zoning that would or could potentially generate offensive odours or noise. The site is not located proximate to any of the following:

- heavy or hazardous industry, waste transfer depots or landfill sites
- LPG tanks or service stations
- water cooling and water warming systems
- odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses

Noise and Amenity Impacts on surrounding properties

Noise Impacts

The application is supported by the following reports which seek to address potential noise impacts associated with the development:

- *Acoustic Assessment* report prepared by Koikas Acoustics Pty Ltd, Ref. No. 378R20180416, dated 16 April 2018 (D18/219102); and
- *Operational Plan of Management for a Centre-Based Child Care at Sanctuary Point* (D18/219147).

The development proposes both mechanical and operational management to address the potential noise impacts associated with the operation of the development and vehicular noise impacts. To achieve for the majority of the time compliance with the nominated noise criteria to surrounding residential premises, the following operating restrictions and requirements are to apply to the outdoor play areas:

1. Acoustic attenuation measures in the form of cantilevered noise barriers are proposed to be erected to assist with the minimisation of acoustic impacts from the outdoor playground areas. A combination of 2.7m cantilever, 2.1m and 1.8m noise barriers are proposed to the extent of outdoor play areas as identified in **Figure 7 and 8** below. The noise barriers are proposed to be constructed as follows:
 - a. Double lapped 15mm thick timber fence palings offset so that there are no air gaps. This equates to a total barrier thickness of 30 mm; or
 - b. 15mm compressed fibre cement panels with no air gaps at the joins; or
 - c. 6mm compressed fibre cement panels either side of a 50mm steel frame with fibreglass insulation batts (18kg/m³) to the cavity; and
 - d. The cantilever section of the noise barriers (for outdoor play area 2) can be built with the same building materials or with solid 15mm thick plexiglass with no air gaps at the junctions.

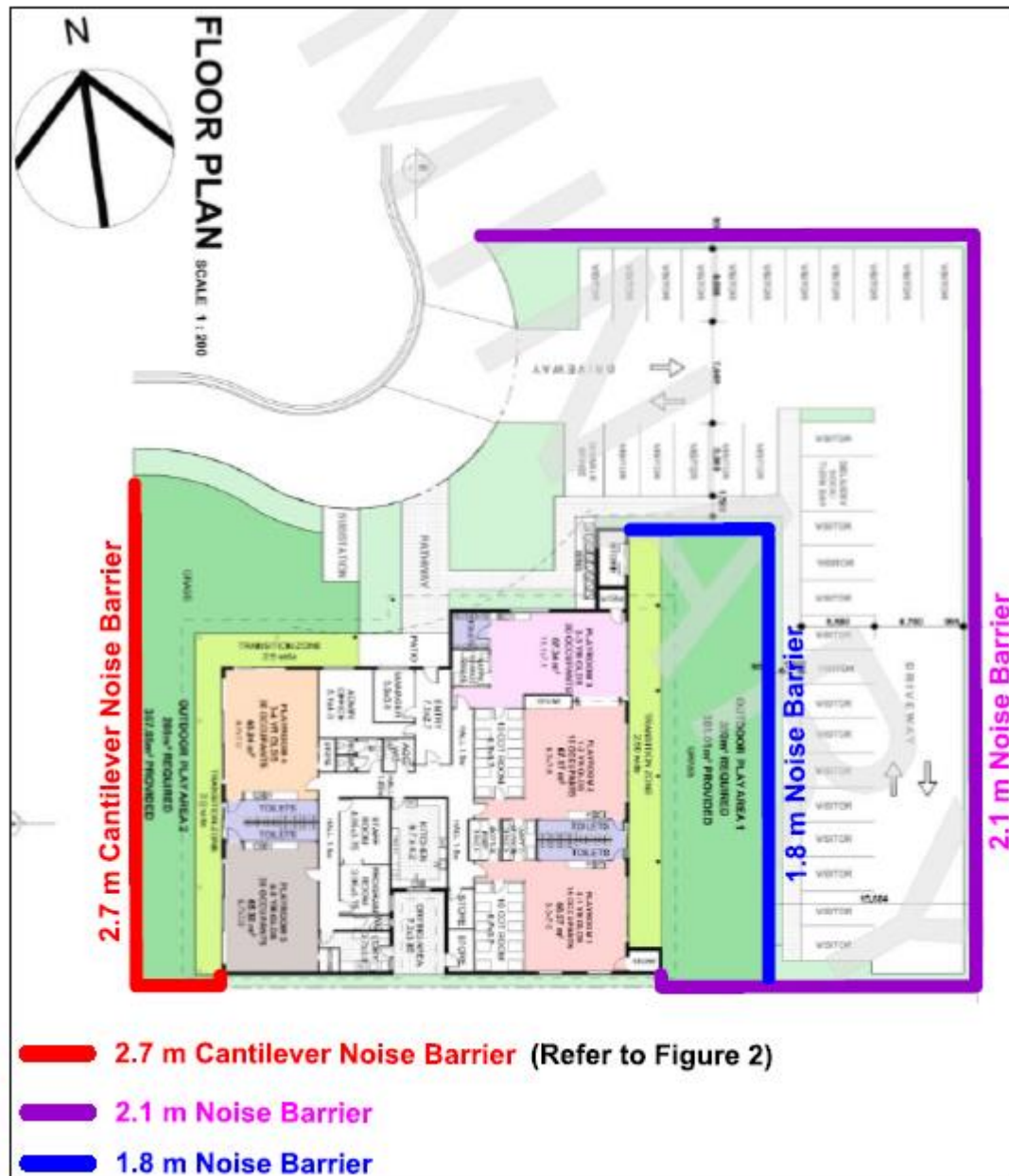


Figure 7 - Extent and design of acoustic barrier fencing. Image extracted from the applicant's noise assessment.

2. Operational noise controls are proposed within the *Acoustic Assessment* to address the potential noise impacts associated with the operation of the child care centre, plant and vehicular movements as follows:
 - a. First Two hours
 - No more than 20 children at a time are to occupy the outdoor play area 1 for free play, and
 - No more than 20 children at a time are to occupy the outdoor play area 2 for free play.
 - b. Remaining Hours
 - Up to 90 children can occupy the outdoor areas provided that only educational activities (controlled activities such as storytelling or other

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activities where only few children or staff are talking at 'normal' vocal effort) are being carried out.

- No more than 5 children at a time are to occupy the outdoor play area 1 and 2 for free play.
3. The operational Management Plan has proposed additional measures for use of the outdoor play area, educators and management to control noise propagation and impacts on adjoining residential premises. Such measures are to be included as conditions of development consent.
 4. The building is proposed to be sited and constructed at a finished level which will be lower than the existing ground level to the rear of the site (Refer to **Figure 9**). A retaining wall of varying height is proposed up to 2.1m in height to the rear of the site to enable the building to be appropriately benched on the site. The lowering of the building and the play areas provides additional acoustic attenuation.
 5. The following additional conditions are recommended to address potential noise impacts associated with the development:

- a. All recommendations contained in the approved acoustic assessment report prepared by (Koikas Acoustics Pty Ltd, Ref. No. 378R20180416, dated 16 April 2018 (D18/219102) shall be adopted, implemented, and adhered to.

The Principal Certifying Authority (PCA) shall obtain a certificate from an appropriately qualified acoustic consultant, stating that the recommendations outlined in the above stated report have been completed and that relevant noise criteria have been satisfied prior to the issue of any Occupational Certificate.

Any changes made to the proposal that would alter the outcome will require a further assessment and a copy of this further report shall be provided to the PCA for approval and all recommendations of the report shall be adopted, implemented and available upon request of the Council.

- b. Following occupation of the child care centre should complaints of a noise nuisance be received and substantiated by an authorised officer, an acoustic assessment shall be conducted by a qualified acoustic consultant and the resulting report shall be provided to Council for assessment. Should the recommendations in the report be accepted, the owner/occupier shall then implement all recommendations contained in the assessment report within a timeframe agreed to by Council.
- c. The use of the premises shall comply with the requirements of the Environmental Pollution Authority's Industrial Noise Policy 2000 and shall not give rise to the transmission of offensive noise as defined in the *Protection of the Environment Operation Act 1997 (NSW)*.

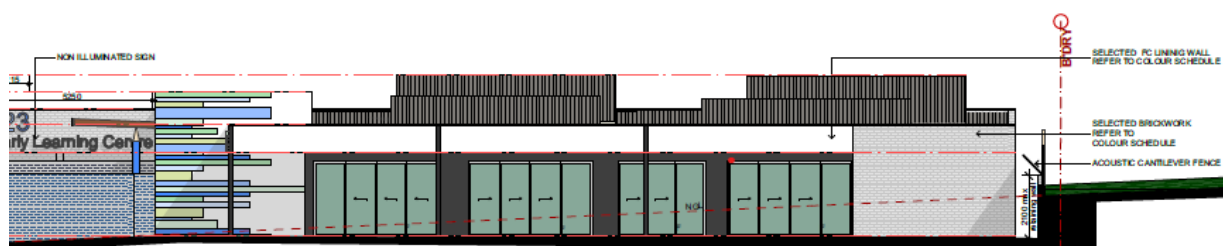


Figure 8 - Extract of the western elevation of the proposed development which highlights the extent of proposed cut to the rear of the site. A 2.1m retaining wall is proposed to the rear boundary of the site. With an acoustic cantilever barrier wall and boundary fence proposed.

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The *Acoustic Report* has been considered by Council's Environmental Health Officers to be satisfactory. The development is capable of providing a suitable noise attenuation and will not significantly impact on adjoining land uses subject to the implementation of the recommendations of the Acoustic Report and the Operational Management Plan for the site.

Privacy and Overlooking

Privacy and overlooking concerns associated with the proposed development are not considered to be significant or well founded. Benching of the building on the site to lower the finished floor level of the centre relative to the existing natural ground level and the use of acoustic barrier fencing to the property common property boundaries will remove the potential for overlooking and privacy concerns associated with the development.

Suitability of the Site for the Proposed Development

The suitability of the site for the proposed development is a key consideration under Section 4.15(1)(c) of the EP&A Act. Furthermore, the *Child Care Planning Guideline* provides additional guidance to ensure that the neighbourhood is a good "fit" for the proposal.

The s4.15 Assessment Report provided under Attachment 1 has provided an assessment of the suitability of the proposed development for the subject site in accordance with the EP&A Act and the *Child Care Planning Guideline*.

Submissions Objecting to the Proposed Development

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications. Submissions were received by Council objecting to the proposal. The concerns raised are outlined below:

On 7 August 2018, the development application was notified for a period of 14 days. A total of twenty-five (25) submissions were received during the notification period or shortly thereafter.

On 19 October 2018, the application was re-notified for a period of 14 days, following the submission of additional information by the applicant in relation to the proposal to:

- close off a portion of Tahnee Street and construct a cul-de-sac to restrict traffic from Anson Street through Tahnee Street; and
- restrict all traffic movements within the Tahnee Street loop road to a single way (clockwise).

A total of five (5) submissions were received following the re-notification of the development application.

In accordance with Section 4.15(d) of the EP&A Act and clause 3.4.10 of Council's *Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies*, Council is required take into consideration any submissions made in accordance with the EP&A Act or the *Environmental Planning and Assessment Regulation 2000*.

Some submissions received by Council raised a single issue relating to a specific part of the development. Other submissions raised a number of issues and relate to a number of perceived deficiencies with the development and the resulting impacts on the built, social and natural environment. Such submissions have been broken into the relevant heads of objection and addressed in the Section 4.15 Assessment Report that accompanies this Council Report (Attachment 1).

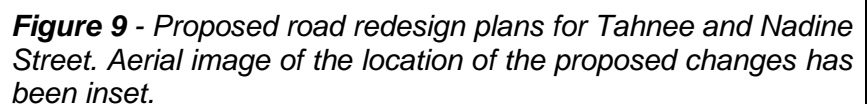
The substantive issues raised in objection to the proposal are outlined below:

Issue raised in Submission	Comment
<p><u>Noise Impacts</u> - Noise and sleep disturbance is likely to significantly impact upon adjoining land owners within the vicinity of the proposed development due to the development being a long day care centre.</p>	<p>The applicant proposes to operate in accordance with the following hours of operation:</p> <p><i>“Open daily Monday to Friday operating from 7am to 6pm, 51 weeks per year.</i></p> <p><i>The centre will close on public holidays and for one week at Christmas, closing Christmas Eve or the equivalent closest business day prior and reopening the next business day after New Year’s Day.”</i></p> <p>The application is supported by an ‘<i>Acoustic Assessment</i>’ report prepared by Koikas Acoustics Pty Ltd, Ref. No. 378R20180416, dated 16 April 2018.</p> <p>The <i>Acoustic Assessment</i> recommends acoustic attenuation measures in the form of cantilevered noise barriers, to be erected to assist with the minimisation of acoustic impacts from the outdoor playground areas.</p> <p>The building is proposed to be sited and constructed at a finished level which will be lower than the existing ground level to the rear of the site. A retaining wall of varying height is proposed up to 2.7m in height to the rear of the site to enable the building to be appropriately benched on the site. The lowering of the building and the play areas provides additional acoustic attenuation.</p> <p>Operational noise controls are proposed within the <i>Acoustic Assessment</i> to address the potential noise impacts associated with the operation of the child care centre, plant and vehicular movements as follows:</p> <p><u>First Two hours</u></p> <ul style="list-style-type: none"> • No more than 15 children are to occupy the outdoor play area 1 for free play, and • No more than 20 children are to occupy the outdoor play area 2 for free play. <p><u>Remaining Hours</u></p> <ul style="list-style-type: none"> • Up to 90 children can occupy the outdoor areas provided that educational activities (controlled activities such as storytelling or other activities where only few children or staff are talking at 'normal' vocal effort) are being carried out. • No more than 5 children are to occupy the outdoor play area 1 and 2 for free play. <p>The Acoustic Report has been considered by Council’s Environmental Health Officers to be satisfactory. The development is capable of providing a suitable noise attenuation and will not significantly impact on adjoining land uses subject to the implementation of the recommendations of the Acoustic Report and the Operational Management Plan for the site.</p>

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<p><u>Traffic Impacts and suitability of local street network</u> - The development will result in significant and undesirable traffic impacts on the local street network. Furthermore, the local street design (particularly the width of roads) is inappropriate for the expected increase in traffic.</p>	<p>It is acknowledged that the proposed development will result in an increase in daily traffic volumes.</p> <p>In response to the potential impacts on the local road network the applicant has proposed to close off a portion of Tahnee Street and construct a cul-de-sac to restrict traffic from Anson Street through Tahnee Street (refer to Figure 10); and restrict all traffic movements within the Tahnee Street loop road to a single way (clockwise).</p> <p>Despite the historical deficiency in the width of the carriageway width of Tahnee Street, Council's Traffic and Transport Unit have reviewed the proposed development and the submitted Traffic and Parking Impact Assessment prepared by TSA. They have advised that the proposed alterations to the road network are suitable to address the traffic concerns for the proposed child care centre.</p> <p>Access to the child care centre will be from the principal entry lobby which is located on the northern street front elevation of the building. Vehicles will access the site via a formalised driveway entering adjacent the northern street boundary (lot 40) into the parking and drop off area.</p> <p>It is noted that on page 15 of the Traffic and Parking Impact Statement prepared by TSA dated 21 March 2018, that: <i>In the morning peak hour period, therefore, the child care centre could be expected to generate approximately 72 peak hour vehicle trips, comprising 36 ingress movements to the site and 36 egress movements associated with child drop off.</i></p> <p>The applicant does not propose to allow for drop-offs to occur on the street surrounding the site. All drop-offs are to occur on-site within the designated parking area.</p> <p>To ensure that pedestrians are not forced to walk on the carriageway within Tahnee Street to access the child care centre, it recommended that a shared pathway of 1.5m in width be constructed from the pedestrian access to the site to the southern corner of Tahnee and Nadine Street. This will reduce potential conflict between cars and pedestrians.</p>
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The planning principle regarding general amenity impacts has been established by Senior Commissioner Moore of the Land and Environment Court in the case of [Davies v Penrith City Council \[2013\] NSWLEC 1141](#). The following questions are relevant to the assessment of impacts on neighbouring properties:

- In response to the above questions it is considered that the proposed development will not have an unreasonable or unsatisfactory amenity impact (subject to appropriate conditions) on neighbouring properties. This conclusion is reached for the following reasons:

- 1) Adjoining property access to sunlight, views and privacy will not be significantly impacted. The 2.7m fence is located on the eastern side of 61 Tahnee St and a portion of the

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	<p>northern side of 42 Corella Cres and is cantilevered towards the child care centre at 2.1m in height. The impact on sunlight access will be marginally more than a 1.8m high fence as the cantilever is at 45° to allow sunlight. Noise generated by the development can be appropriately managed through the implementation of the recommendations of the <i>Noise Assessment and Operational Management Plan</i>.</p> <ol style="list-style-type: none"> 2) The proposed development is considered to be reasonable for the subject site subject to the imposition of appropriate conditions. 3) The adjoining properties (not residents) are not considered to be particularly vulnerable or unique in relation to the potential impacts of the development and would not result in the loss of reasonable development potential to avoid the impact. 4) The potential amenity impacts associated with the development do not arise as a result of poor design. A reduction in the development footprint or child care places would be unlikely to result in a tangible reduction in the potential for amenity impacts associated with the development. A redesign of the development is not considered to be necessary in the circumstances. 5) The proposed development is a permissible use in the R1 General Residential zone. The development is consistent with the relevant provisions of SLEP 2014 and SDCP 2014. <p>The development is consistent with all relevant State environmental planning policies which relate to the subject site.</p> <p>The development has been assessed against the objectives and development guidance provided by the <i>Child Care Planning Guideline</i> and the National Regulations for Child Care Centre. The development appropriately responds to the Guideline and the Regulations through an appropriate design that reflects the low density residential character of the locality.</p> <p>There are no additional amenity impacts generated through non-compliance with relevant planning controls or guidelines.</p>
<p><u>Impacts on house prices</u> - The proposal will seriously impact upon the house values of adjoining properties. Concerns have been raised that Council have been negligent in not notifying potential purchasers of new blocks adjoining the subject site. One purchaser has identified that they purchased their block on 15 June and no notification took place until August.</p>	<p>It is noted that a possibly adverse impact on property values is not a relevant planning consideration that Council can take into consideration in the assessment of a development application.</p> <p>In relation to the notification of the Development Application, it is noted that the application was notified to adjoining landowners on 7 August 2018 in accordance with Council's Community Consultation Policy following the submission of all outstanding information identified in Council's initial request for additional information dated 6 July 2018 (D18/228849).</p> <p>Council has consistently taken the approach the notification of development application is to occur following the submission of sufficient information to allow all necessary information to be included in the notification and available on Council's DA Tracking website. This removes the potential need for the</p>

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	<p>application to be notified on multiple occasions as the applicant submits outstanding information to Council and which may be relevant to notified residents in their consideration of a development application.</p> <p>The application was available to be viewed on DA tracking upon lodgement of the proposal on 28 June 2018.</p>
Suitability of the site for the proposed development	<p>In response to the submissions received, Council has considered the applicant's site analysis and relevant constraints of the site and adjoining development. It is considered that the subject site is suitable for the subject site in accordance with Section 4.15(1)(c) of the EP&A Act and the <i>Child Care Planning Guidelines</i> for the following reasons:</p> <ul style="list-style-type: none"> ○ The proposal is permitted with development consent within the zone. ○ The proposal is consistent with the objectives of the zone. ○ The proposal is consistent with the context of the area. ○ There will be no significant adverse environmental impacts resulting from the development. ○ There are no known physical impediments to facilitate the development. ○ The proposal is consistent with the objectives and considerations under the <i>child Care Planning Guideline</i>. <p>The Section 4.15 Assessment Report that accompanies this Council Report (Attachment 1) has addressed the substantive issues raised in the submissions in further detail (including those received after the closing date for submissions</p>

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Planning Assessment

The DA has been assessed under s4.15 of the EP&A Act, with all necessary heads of consideration reviewed. Please refer to Attachment 1.

Policy Implications

There are no specific policy implications that arise from this matter.

Community Engagement.

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 250m radius of the site and Community Consultative Bodies. The development application was notified on two (2) separate occasions for a period of fourteen (14) days, on 7 August 2018 and again on 19 October 2018

A total of twenty-eight (28) submissions were received by Council following the conclusion of the notification period and prior to the finalisation of this report.

Financial Implications:

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

Legal Implications

Pursuant to Section 8.2 of the EP&A Act a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. Alternatively, an applicant for development consent who is dissatisfied with the determination of the application by the Council may appeal to the Court against the determination pursuant to Section 8.7 of the EP&A Act.

Summary and Conclusions

The proposed development has been assessed in accordance with Section 4.15 of the EP&A Act and is recommended for approval.

- The proposal is consistent with the all relevant environmental planning instruments and the Shoalhaven Development Control 2014;
- The traffic issues associated with the development are capable of being ameliorated through the proposed traffic flow and road design changes along Tahnee Street;
- The development is compatible with the surrounding development and provides a positive contribution to the landscape character of the area and streetscape;
- Potential amenity impacts associated with the development are capable of being appropriately ameliorated without significant impacts on surrounding development;
- The height, bulk and scale of the proposed buildings is satisfactory and consistent with the low scale residential development in the locality;
- The site is suitable for the proposed development; and
- The proposed development is in the public interest.

The car parking provided on site and traffic movements associated with the ongoing operation of the site are satisfactory and meet Council's and relevant Australian Standards.

DE19.15 Outcome - Industry Consultation - Design Review Panel Establishment

HPERM Ref: D19/11649

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Report - Design Review Panel Establishment and NSW State Design Review Panel Pilot Program Nomination - Development Committee 14 August 2018 [↓](#)
2. Industry Consultation - Survey Results [↓](#)

Purpose / Summary

Report the results of the industry consultation regarding the potential establishment of a design review panel in Shoalhaven.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the expansion of the Wollongong Design Review Panel for use by other Councils in the Illawarra-Shoalhaven region, including Shoalhaven,
2. Trial the referral of certain development applications to the Wollongong Design Review Panel for advice.
3. Receive a 12 month review report on the operation and use of this approach.
4. Thank those who provided feedback and advise them of Council's resolution on this matter.

Options

1. Adopt the recommendation.

Implications: This will enable Council to trial the use of an established Design Review Panel potentially in conjunction with other Councils in the Illawarra-Shoalhaven Region. This could result in the formalisation of a regional Design Review Panel. Such a panel would eliminate the need for expensive and reactive design referrals in the development application (DA) process, provide greater certainty and efficiency for developers, increase the design expertise among Council staff, and lead to better outcomes for the community.

2. Adopt an alternative recommendation.

Implications: Dependent on the nature of the alternative recommendation.

3. Not adopt the recommendation.

Implications: No further action will be taken, and current processes will remain. Council will still be required to carry out design reviews for relevant development applications.

Background

On 14 August 2018, Council considered a report regarding the establishment of a design review panel for Shoalhaven, and the option to trial the existing Wollongong Design Review Panel in the short term. A copy of the report is provided in **Attachment 1**.

Council resolved, in part, to “*Defer consideration of using the Wollongong Design Review Panel for industry consultation*” (MIN18.611).

In accordance with the resolution, the industry consultation was carried out from 29 November 2018 until 11 January 2019. This report provides the results of this consultation.

Industry Consultation

The consultation consisted of a letter and survey being sent to thirty-four (34) local developers, consultants and industry organisations. In response, seven (7) completed surveys were received – this represents a 21% response rate. The consultation package provided information on the background to investigating a Design Review Panel (DRP) for Shoalhaven and online survey to capture their familiarity and experience with design review panels, concerns and overall comments on the proposal.

A full copy of the industry consultation results is provided in **Attachment 2**.

Summary of Survey Responses

The following is a summary of the survey questions, responses and associated comments where provided.

Q. How would you describe your understanding of a Design Review Panel under SEPP 65?

ANSWER CHOICES	RESPONSES	
Excellent, I know a lot about Design Review Panels	28.6%	2
I have a fairly good understanding of Design Review Panels	57.1%	4
I have heard of a Design Review Panel but know little about them	14.3%	1
I have heard of a Design Review Panel but don't know anything about them	0%	0
I have never heard of a Design Review Panel	0%	0
TOTAL	100%	7

Q. Do you have any experience with Design Review Panels?

ANSWER CHOICES	RESPONSES	
Yes	57.1%	4
No	42.9%	3
TOTAL	100%	7

Q. Do you think there could be benefits to having a Design Review Panel for Shoalhaven?

ANSWER CHOICES	RESPONSES	
Yes	85.7%	6
No	14.3%	1
TOTAL	100%	7

Comments:

- “Issues are raised by appropriately experienced professionals prior to the submission of the DA, which will make the DA process less confrontational. A DRP will also supersede the pre-lodgement meeting process which is not satisfactory for significant projects.”
- “Improvements to the quality of development in the Shoalhaven.”
- “Given my experience working within this DRP process I believe the panels are able to provide a benefit to the Council officers, the applicants, as well as providing an independent view and assessment for consideration by Councillors. The DRP process allows for an independent opinion regarding design quality and more often than not provides a better design outcome for the community and the applicant.”
- “Potentially better design outcomes for larger developments. It will help elected Councillors get a better sense of design merit when making decisions.”

DE19.15

Q. Do you have any concerns about a Design Review Panel for Shoalhaven?

ANSWER CHOICES	RESPONSES	
Yes	71.4%	5
No	28.6%	2
TOTAL	100%	7

A summary of specific concerns mentioned in the survey responses is provided below, along with a Council staff comment.

Reference is also made to a paper by Moore *et al.* (2015), ‘[Improving Design Outcomes in the Built Environment through Design Review Panels and Design Guidelines](#)’ which presents evidence from 22 building industry stakeholders from across Australia on the role, benefits and limitations of design review panels.

- *Inconsistent design expectations due to subjective nature of architecture.*

Staff comment: It is acknowledged that architecture can be subjective; however, overall design expectations are already set by the nine (9) ‘Design quality principles’ of SEPP No.65 (context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction, and aesthetics).

The benefit of having a design review panel is that they would engage early with potential developers to clarify design expectations before the DA is lodged. Wider

industry research has also shown that design review panels have been “praised for their ability to allow subjective site-specific context to be applied to design guideline requirements to ensure more considered and improved outcomes were achieved” (Moore, *et al.*, 2015).

Council is already currently getting individual design reviews undertaken for relevant developments (e.g. Residential apartments) as part of the assessment process. The current process has the potential to throw up issues later in the process once the assessment is underway and that require adjustments to designs.

- *Added layer of control to the DA process.*

Staff comment: The introduction of a design review process for certain developments would add another layer of control (or step) to the DA process; however, this extra consideration is far outweighed by the positive benefits of good design which will ensure buildings make a positive contribution to a neighbourhood and provide homes that make a positive contribution to people’s general health and wellbeing.

- *Delays to DA determinations, e.g. if panel members fail to make decisions and seek constant modifications.*

Staff comment: The role of panel members is advisory only, as they do not have decision-making functions. The general method of operation involves the panel giving clear comment/advice on a development concept, such advice is quite specific in regard to development outcomes, it is not an iterative process. Their advice has legal weight; however, the final decision is ultimately made by Council.

- *Panel members may not have appropriate expertise and experience.*

Staff comment: Skills and experience would be a requisite for panel members. However, in the first instance, it is recommended that Council trial using the Wollongong Design Review Panel, which has already been successfully operating for many years and has significant expertise and experience. Further commentary on this has been provided in past Council reports (see **Attachment 1**).

- *Added cost and panel members may not understand local development feasibility.*

Staff comment: There are added costs with achieving good design through a design review process. As explained in previous reports, these costs are already being borne by Council when an urban design consultant is required to review DAs with significant architecture and urban design implications. A design review panel would result in fewer modifications to the design throughout the DA process, thereby saving money for the applicant. Wider industry research has also shown that there is “limited cost impact, either to their businesses or to consumers from having to meet such design requirements” (Moore, *et al.*, 2015).

Good design has financial and social value. On the other hand, poor design imposes costs on their future occupiers, their neighbours and the wider community.

Q. I am interested in attending a forum/information session about a Design Review Panel for Shoalhaven in the future.

ANSWER CHOICES	RESPONSES	
Yes	100%	7
No	0%	0
TOTAL	100%	7

An information session will be held should Council resolve to proceed to trial the use of the Wollongong design review panel.

Other comments left by survey respondents can be viewed in **Attachment 2**.

Community Engagement

As outlined in the August 2018 report, there are no formal requirements for community consultation in trialling the use of the Wollongong Design Review Panel. This report, however, provides feedback from Development Industry Representatives on the possible use of a panel.

Policy Implications

Engagement of design review panel members will be in accordance with Council's procurement policies and procedures.

Financial Implications

A trial of the Wollongong Design Review Panel is likely to be more cost efficient and better value for the level of experience/qualifications as opposed to establishing a new panel for Shoalhaven given the inconsistency in number of applications that would require review.

DE18.55 Design Review Panel Establishment and NSW State Design Review Panel Pilot Program Nomination

HPERM Ref: D18/233892

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. List of Shortlisted Applicants for the NSW State Design Review Panel

Purpose / Summary

To report back regarding MIN17.1042 which sought to consider the Terms of Reference and proposed budget and fee structure for a possible Design Review Panel for Shoalhaven, and to also seek direction for Council's nomination for the pilot NSW State Design Review Panel (SDRP).

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the expansion of the Wollongong Design Review Panel for use by other councils in the Illawarra-Shoalhaven region, including Shoalhaven.
2. Trial the referral of certain development applications to the Wollongong Design Review Panel for advice.
3. Nominate a local panel member for the pilot NSW State Design Review Panel from the shortlisted applicants provided by the Government Architect NSW or a panel member with the required expertise and strong local knowledge and advise Government Architect NSW of Council's nomination.

Options

1. Adopt the recommendation

Implications: This will enable Council to trial the use of an established Design Review Panel in conjunction with other councils in the Illawarra-Shoalhaven Region, which could result in the formalisation of a regional Design Review Panel. Such a panel would eliminate the need for expensive and reactive design referrals in the development application (DA) process, provide greater certainty and efficiency for developers, increase the design expertise among Council staff, and lead to better outcomes for the community.

It will also enable Council to select a suitably qualified and experienced person to be Council's nominated panel member for the pilot State Design Review Panel.

2. Adopt an alternative recommendation.

Implications: Dependent on the nature of the alternative recommendation.

3. Not adopt the recommendation.

Implications: No further action will be taken, and current processes will remain.

Background

Council's Development Committee at its meeting on 11 December 2017 considered a report on the Establishment of a Design Review Panel for Shoalhaven and resolved as follows (MIN17.1042):

That Council:

1. *Supports in principle the establishment of a Design Review Panel for Shoalhaven subject to receiving the report outlined in number 5.*
2. *Explore the possibility of establishing a joint Design Review Panel for the Illawarra-Shoalhaven region.*
3. *Apply the Design Review Panel to all development citywide that is covered under State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development and development in the Nowra and Ulladulla CBD's that is at least 3 or more storeys in height.*
4. *Endorse the nine (9) Design Quality Principles defined in Attachment 1 for the consideration of development referred to the Design Review Panel.*
5. *Receive a subsequent report on the Terms of Reference and proposed budget and fee structure for the Design Review Panel.*

This report provides an update on the interest of other councils in establishing a joint Design Review Panel and further discussion on the budget and fees for a Design Review Panel.

The report also seeks direction for Council's nomination for the pilot NSW State Design Review Panel.

Possible Joint Regional Design Review Panel – Interest from Illawarra Councils

Following the above resolution, Council wrote to the councils of Wollongong, Shellharbour and Kiama as well as the Illawarra-Shoalhaven Joint Organisation (ISJO) seeking their interest in establishing a joint Design Review Panel for the region.

The matter was considered by the region's Planning Directors in February and April 2018, where it was agreed that the possibility of utilising Wollongong City Council's Design Review Panel, which has been established for several years, be explored.

Consultation led by Wollongong City Council with their existing panel members showed they are generally very interested in expanding their role and function to assist other areas in the region. As experts in the fields of architecture, landscape architecture or urban design, existing panel members can vouch for the success of such panels in both Wollongong and across NSW and see the benefit this could bring other councils in the region which may not have the demand or capacity to warrant establishing their own panel.

Following the agreement by the region's Planning Directors to explore the possibility of expanding the Wollongong Design Review Panel, Shellharbour City Council commenced a trial of referring certain DA's to the Wollongong panel, with meetings held in Shellharbour. This trial has so far proved very successful in providing independent, impartial and expert design advice to assist council in their approval process. In the longer term, the benefits of design review include, but are not limited to, improved design standards across the built environment, and increased design expertise among Council assessment staff.

Based on the success of this approach so far, it is recommended that Council endorse the use of the Wollongong Design Review Panel, for a trial period, to enable the referral of certain DA's from Shoalhaven City Council. Based on part 3 of the 11 December 2017 resolution, this includes all development citywide that falls under State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development and development in the Nowra and Ulladulla CBD's that is at least three (3) or more storeys in height.

Since the panel is an existing panel, a draft Terms of Reference has not been prepared at this stage, as the Wollongong Panel operates under the terms of Part 5 of the Apartment Design Guide under State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.

Should the trial be successful, Illawarra-Shoalhaven councils may seek to formalise the panel as a 'regional' panel and prepare a separate Terms of Reference at that stage.

Financial Implications

Continuing the trial expansion of the Wollongong Design Review Panel is likely to be more cost efficient for Council as opposed to establishing a complete new panel for Shoalhaven. The experience of other councils is that design review panels can be expensive to run, with fees paid by applicants generally only just covering the cost of paying the panel members. It therefore makes sound financial sense that the option of expanding the Wollongong panel be explored further by Shoalhaven trialling the referral of DA's to the Panel.

The cost of the design review service is borne by the developer at a maximum fee of \$3,000 per meeting. This fee is set by the Environmental Planning and Assessment Regulation 2000 and is included in Council's schedule of fees and charges. This fee is not used to cover Council's costs but is directed towards the payment of a minimum of three independent, expert panel members with expertise in architecture, landscape architecture or urban design. Panel members have varying rates based on their profile and level of expertise, however based on Shellharbour's trial of the panel, payment of the chair and panel members would be as follows:

No of Items on Agenda	Chair	Panel Member
1–2	\$1,760	\$1,430
3	\$2,640	\$2,145

It is noted that, without a Panel, Council already requires the engagement of independent urban design advice for certain Development Applications with significant architecture and urban design implications. Based on recent examples, these referrals can cost Council anywhere between \$3,432 (e.g. DA16/2070 – 7 Beach Street, Huskisson) and \$6,050 (e.g. RA17/1002 – Corner Kinghorne & Kalandar Streets and Gould Avenue, Nowra).

By utilising a design review panel, applicants can receive early design input and advice from experts in the field in accordance with the Design Quality Principles of SEPP 65. As these types of development become more prevalent, feedback from other councils is that it is an expectation of the industry and community that such applications will go through a rigorous design review process. Design review panels save time and money for the proponent as they are more likely to reach an acceptable design outcome in the pre-lodgement stage, leading to faster approval times. Council will also be able to utilise the established panel rather than needing to engage consultants to review the design aspects of certain DA's.

NSW State Design Review Panel (SDRP) Pilot Program – Local Council Nomination

The NSW State Design Review Panel Pilot Program has also been set up the NSW Government Architect's Office (GA NSW) to provide design advice in the early stages of certain state significant projects.

This may include, but is not limited to:

- any project referred to GA NSW by the Minister or his delegate
- projects on Government owned land that includes public use of that land and/or may impact on the public domain, including Green Corridors

- projects declared state significant development in the *State Environmental Planning Policy (State and Regional Development) 2011*
 - certain land uses (for example tourism, health or education uses, or commercial / residential premises within a rail corridor)
 - other types of state significant development where the project is adjacent to or impacts on sensitive areas.
- selected projects declared state significant infrastructure in the *State Environmental Planning Policy (State and Regional Development) 2011*.

Should any of the above projects occur in the Shoalhaven Local Government Area and be referred to the SDRP, a panel of up to four independent panel members and a Chair will review and provide advice on the project. One of these panel members can be Council's nominee.

Council's nominee is not a representative of Council views within the panel but are nominated for their strong knowledge of the local area and for their independent expertise. The requirements for Council's nomination are that the person must:

- Be independent, qualified and (where relevant) Australian registered practitioners, or retired practitioners, in architecture, urban design, landscape architecture, and/or other relevant discipline with equivalent experience.
- Have demonstrated strong working knowledge of the relevant LGA (either through experience on local design review panel or as consultant to Council), particularly in respect of large projects including education or health related projects, industrial and infrastructure projects, heritage, strategic design, master planning, open space and green infrastructure, as well as high density and mixed-use development, and that;
- Council's nominee will be reviewed and approved by GA NSW, appointed directly by GA NSW for a 24-month period, remunerated on the same basis as the existing SDRP members, and held to the NSW SDRP Terms of Reference, and in particular the principles of good design review.

GA NSW suggests that councils select their representative panel member from those shortlisted through the open tender process for the SDRP, provided as **Attachment 1**. However, few of these are believed to have strong knowledge of the local area. From the shortlist, three panel members have been engaged by Council on previous projects:

	Panel Member Name	Service Provider Name	Previous Council project experience	Other panel experience
1	Gabrielle Morrish	GM Urban Design	Huskisson Mixed Use Zones development controls	NSW SDRP Panel Member NW Rail / Light Rail / Ryde / Parramatta
2	Jonathan Knapp	SJB Architects	Huskisson Master Plan	Randwick Council / Eastern Beaches DRP
3	Kylie Legge	Place Partners	Facilitated place management training for Council staff	North Sydney Council

Gabrielle Morrish is the only NSW SDRP member listed that Council staff can recommend given Gabrielle's design work for Shoalhaven City Council on the Huskisson Mixed Use zones development controls. Jonathon Knapp and Kylie Legge are included in the shortlist of applicants and are also considered to be suitable panel members for their previous work with Shoalhaven City Council.

Council may seek to nominate another representative, for consideration by GA NSW. There are other suitably qualified consultants that Council staff consider to be more suitable for the role of panel member due to their increased knowledge of the local area, such as Di Griffiths from Studio GL for her recent body of work in Nowra CBD.

In response to this invitation, there are potentially three options Council could take:

1. Nominate a panel member from the list of shortlisted applicants in **Attachment 1**, who have been shortlisted through an open tender process by GA NSW.
2. Nominate an alternative panel member who meets the requirements outlined above.
3. Not nominate a panel member at this stage and that the matter be dealt with when the need arises, which is difficult to predict.

Community Engagement

There are no requirements for community consultation in trialling the use of the Wollongong Design Review Panel. However, the region's Planning Directors have discussed the matter and agree that this is a logical way forward given the inconsistent workload in this regard.

Policy Implications

Engagement of design review panel members will be in accordance with Council's procurement policies and procedures.

Industry Consultation - Potential Design Review Panel for Shoalhaven

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, November 29, 2018 10:38:20 AM
Last Modified: Thursday, November 29, 2018 10:48:49 AM
Time Spent: 00:10:29
IP Address: 59.167.135.5

Page 1

Q1 Please provide your name and organisation details

Name	Matt Philpott
Organisation	Allen, Price and Scarratts
City/Town	NOWRA
Email Address	mattphilpott@allenprice.com.au

Q2 How would you describe your understanding of a Design Review Panel under SEPP 65?

I have a fairly good understanding of Design Review Panels

Q3 Do you have any experience with Design Review Panels?

Yes,
What experience do you have?:
Mainly in Kiama for various Medium Density Developments

Q4 Do you think there could be benefits to having a Design Review Panel for Shoalhaven?

Yes,
What benefits can you think of?:
Potentially better design outcomes for larger developments.
It will help elected Councillors get a better sense of design merit when making decisions.

DE19.15 - Attachment 2

Industry Consultation - Potential Design Review Panel for Shoalhaven

Q5 Do you have any concerns about a Design Review Panel for Shoalhaven?

Yes,
What concerns do you have?:
Architecture is very subjective and can therefore be very controversial. Some may love a particular design where others may hate it. This is the beauty/beast of architecture to some degree. Additional costs? Additional time in the DA process? When if the process and how would the DRP be engaged? What weight would the DRP's opinion on any DA have? Which development types would the DRP be engaged to review? Dual occ's and Medium Density or only the larger apartment buildings? What would the charter/terms of engagement be?

Q6 I am interested in attending a forum/information session about a Design Review Panel for Shoalhaven in the future.

Yes

Q7 Do you have any other comments?

I think this can be a great way forward for the Shoalhaven to lift design standards. I have a few concerns about the cost and time delays the DRP may cause and how they will be engaged with but I would be very happy to assist SCC further by attending an information session to discuss the ebenefts and concerns further.

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, November 29, 2018 2:26:38 PM
Last Modified: Friday, November 30, 2018 8:55:05 AM
Time Spent: 18:28:27
IP Address: 58.162.211.210

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Q1 Please provide your name and organisation details

Name	Mark Hitchcock
Organisation	BHI Architects
City/Town	Kiama / Rosebery
Email Address	mark@bhia.com.au

Q2 How would you describe your understanding of a Design Review Panel under SEPP 65?

Excellent, I know a lot about Design Review Panels

Industry Consultation - Potential Design Review Panel for Shoalhaven

Q3 Do you have any experience with Design Review Panels?

Yes,
What experience do you have?:
As a director of BHI Architects with offices in Sydney and Kiama, I have had the opportunity to participate in numerous design review panels within the Sydney and Wollongong LGA's, as an applicant presenting projects to DRP's. And in recent years as a consultant architect to Kiama Council participating in Pre- Lodgement meetings, preparation of design reports to assist council assessment of projects and representation in JRPP and L&E matters on behalf of council

Q4 Do you think there could be benefits to having a Design Review Panel for Shoalhaven?

Yes,
What benefits can you think of?:
Given my experience working within this DRP process I believe the panels are able to provide a benefit to the council officers, the applicants, as well as providing an independent view and assessment for consideration by councillors. The DRP process allows for an independent opinion regarding design quality and more often than not provides a better design outcome for the community and the applicant.

Q5 Do you have any concerns about a Design Review Panel for Shoalhaven?

No,
What concerns do you have?:
I can only see benefits for Shoalhaven in implementation of the DRP, however consideration needs to be given as to when the review by DRP would be triggered.

Q6 I am interested in attending a forum/information session about a Design Review Panel for Shoalhaven in the future.

Yes

Q7 Do you have any other comments?

As an architect working across the Illawarra and Shoalhaven for the past 30 years I would commend the proposal of a DRP and also express my interest in participation on the panel

Industry Consultation - Potential Design Review Panel for Shoalhaven

#3

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, December 03, 2018 11:47:40 AM
Last Modified: Monday, December 03, 2018 11:55:39 AM
Time Spent: 00:07:59
IP Address: 61.14.108.166

Page 1

Q1 Please provide your name and organisation details

Name	Michelle Guido
Organisation	Property Council
City/Town	Wollongong
Email Address	mguido@propertycouncil.com.au

Q2 How would you describe your understanding of a Design Review Panel under SEPP 65?	I have a fairly good understanding of Design Review Panels
---	--

Q3 Do you have any experience with Design Review Panels?	No
---	----

Q4 Do you think there could be benefits to having a Design Review Panel for Shoalhaven?	Yes
--	-----

Q5 Do you have any concerns about a Design Review Panel for Shoalhaven?	No
--	----

Q6 I am interested in attending a forum/information session about a Design Review Panel for Shoalhaven in the future.	Yes
--	-----

Q7 Do you have any other comments?

I understand the panel has already been quite useful and successful in Wollongong and believe it would be great to have a panel for the Shoalhaven, in order to gain independent design advice on significant projects.

The Panel is able to provide a consistent, state-wide approach to reviewing and raising design quality of significant projects and ensuring good design to benefit the community and region.

Industry Consultation - Potential Design Review Panel for Shoalhaven

#4

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, December 07, 2018 1:13:06 PM
Last Modified: Friday, December 07, 2018 1:21:32 PM
Time Spent: 00:08:26
IP Address: 59.167.140.245

Page 1

Q1 Please provide your name and organisation details

Name	Stephen Richardson
Organisation	Cowman Stoddart
City/Town	Nowra
Email Address	steve@cowmanstoddart.com.au

Q2 How would you describe your understanding of a Design Review Panel under SEPP 65?	I have a fairly good understanding of Design Review Panels
---	--

Q3 Do you have any experience with Design Review Panels?	No
---	----

Q4 Do you think there could be benefits to having a Design Review Panel for Shoalhaven?	Yes
--	-----

Q5 Do you have any concerns about a Design Review Panel for Shoalhaven?	<p>Yes,</p> <p>What concerns do you have?:</p> <p>The potential for application processing to be further delayed by panels not making decisions but seeking constant modifications. Consideration needs to be given to the type of developments that are dealt with by panels. There needs to be clear guidelines as to the types of developments that are referred to panels. Panels should not be seen as a means of deferring decisions by council staff. The benefit of panel decision will of course be dependent upon the expertise and experience of the panel members. Consideration needs to be given to ensure that the method by which applications are referred to panels does not unnecessarily delay determinations of applications.</p>
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Industry Consultation - Potential Design Review Panel for Shoalhaven

Q6 I am interested in attending a forum/information session about a Design Review Panel for Shoalhaven in the future. **Yes**

Q7 Do you have any other comments? **Respondent skipped this question**

#5

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, January 02, 2019 4:56:39 PM
Last Modified: Wednesday, January 02, 2019 5:00:07 PM
Time Spent: 00:03:28
IP Address: 59.167.140.245

Page 1

Q1 Please provide your name and organisation details

Name **Stuart Dixon**
Organisation **Cowman Stoddart Pty Ltd**
City/Town **Nowra**
Email Address **stuart@cowmanstoddart.com.au**

Q2 How would you describe your understanding of a Design Review Panel under SEPP 65? **I have heard of a Design Review Panel but know little about them**

Q3 Do you have any experience with Design Review Panels? **No**

Q4 Do you think there could be benefits to having a Design Review Panel for Shoalhaven? **Yes,**
What benefits can you think of?:
Improvements to the quality of development in the Shoalhaven

Q5 Do you have any concerns about a Design Review Panel for Shoalhaven? **Yes,**
What concerns do you have?:
Increased cost and complexity of development applications as it will likely add another layer of control.

Industry Consultation - Potential Design Review Panel for Shoalhaven

Q6 I am interested in attending a forum/information session about a Design Review Panel for Shoalhaven in the future. **Yes**

Q7 Do you have any other comments? **Respondent skipped this question**

#6

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, January 05, 2019 8:43:29 PM
Last Modified: Saturday, January 05, 2019 8:53:20 PM
Time Spent: 00:09:51
IP Address: 103.101.171.14

Page 1

Q1 Please provide your name and organisation details

Name Steven Bayer
Organisation Edmiston Jones
City/Town Nowra
Email Address stevenbayer@aej.com.au

Q2 How would you describe your understanding of a Design Review Panel under SEPP 65? **I have a fairly good understanding of Design Review Panels**

Q3 Do you have any experience with Design Review Panels? **Yes,**
What experience do you have?:
Significant Wollongong mixed use project was subject to a DRP process before submission of a DA. Recent Seniors Living development in the Shoalhaven was referred to a consultant urban designer after submission of the DA.

Q4 Do you think there could be benefits to having a Design Review Panel for Shoalhaven? **Yes,**
What benefits can you think of?:
Issues are raised by appropriately experienced professionals prior to the submission of the DA, which will make the DA process less confrontational. A DRP will also supercede the pre lodgement meeting process which is not satisfactory for significant projects.

Industry Consultation - Potential Design Review Panel for Shoalhaven

Q5 Do you have any concerns about a Design Review Panel for Shoalhaven?

Yes,
What concerns do you have?:
Appropriately qualified and experienced professionals must be used, who understand Shoalhaven (and other legislative requirements), and who can ask the right questions/provide appropriate feedback. Professionals from within the Shoalhaven must not be used to assess Shoalhaven projects.

Q6 I am interested in attending a forum/information session about a Design Review Panel for Shoalhaven in the future.

Yes

Q7 Do you have any other comments?

Consistency in interpretation of Shoalhaven and other legislative requirements is critical.
Timeframes for responses from the Applicant and DRP must be clearly understood and adhered to.
Requirements for submission to the DRP must be clearly documented, understood and be applied consistently.

#7

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, January 07, 2019 10:14:03 AM
Last Modified: Monday, January 07, 2019 10:25:03 AM
Time Spent: 00:11:00
IP Address: 124.168.58.228

Page 1

Q1 Please provide your name and organisation details

Name	Keiran Thomas
Organisation	Urban Development Institute of Australia
City/Town	Wollongong
Email Address	kthomas@udiansw.com.au

Q2 How would you describe your understanding of a Design Review Panel under SEPP 65?

Excellent, I know a lot about Design Review Panels

Industry Consultation - Potential Design Review Panel for Shoalhaven

Q3 Do you have any experience with Design Review Panels?

Yes,
What experience do you have?:
I am a qualified planner and have both assessed and lodged DAs with DRPs.

Q4 Do you think there could be benefits to having a Design Review Panel for Shoalhaven?

No

Q5 Do you have any concerns about a Design Review Panel for Shoalhaven?

Yes,
What concerns do you have?:
Inconsistent design expectations. Another layer in the assessment process, further delaying DA determinations.
Panel members from Sydney not understanding local development feasibility.

Q6 I am interested in attending a forum/information session about a Design Review Panel for Shoalhaven in the future.

Yes

Q7 Do you have any other comments?

Respondent skipped this question

DE19.16 Development Application – 132 Forster Drive, Bawley Point – Lot 21 & DP 1217069

DA. No: DA18/1212/4

HPERM Ref: D19/43497

Group: Planning Environment & Development Group
Section: Ulladulla Service Centre

Description of Development: Show Jumping Arena

Owner: Capital Property Corporation Pty Ltd
Applicant: Capital Property Corporation Pty Ltd

Notification Dates: 7 November to 8 December 2017

No. of Submissions: 1 in objection
43 in support

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 the Shoalhaven Local Environmental Plan 2014 (SLEP 2014). The variation relates to building height (lighting facilities for proposed Show Jump Arena) and is greater than 10%, thus requiring Council approval. The height limit established by SLEP is 11 metres with the application requesting a 19m height.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Confirm that it supports the proposed variation, under clause 4.6 of Shoalhaven Local Environment Plan 2014, to the 11m maximum building height to allow for the lighting facilities to a maximum 19.0m in height,
2. Refer the application back to staff for determination

Options

1. Resolve to support the proposed variation to the development standard for height from 11m to 19m for lighting facilities to the show jump arena application and refer the application back to staff to determine under delegated authority.

Implications: This would enable the application to be finalised and conditions of consent determined.

2. Resolve not to support the proposed variation to the development standard and refer the application back to staff to negotiate with the applicant to redesign the proposal to better match the 11m height standard.
3. Adopt an alternative recommendation and provide direction to staff.

DE19.16

Location Map



Subject Site of proposed Show Jump Arena DA18/1212

DE19.16

Background

Proposed Development

The proposal involves preliminary earthworks and construction of a show jumping arena, with covered spectator seating and lighting comprising:

- an open show jumping arena (at RL 30.00m AHD), sufficient in size to accommodate 4 competition dressage arenas with approximate dimensions of 124m x 70m;
- a smaller warm up arena (also at RL 30.00m AHD), at the south-western end of the proposed show jumping arena and with approximate dimensions of 50m x 35m;
- covered tiered seating for spectators on the western-side of the main arena (approximately 1,000 persons);
- an event equipment store located under the tiered seating;
- an associated lower circulation concourse (at RL 35.25m AHD) with amenities and food kiosks for events;
- an upper circulation and arrival concourse (at RL 38.70m AHD), adjacent to Arena Drive; and
- associated lighting, rainwater tanks, horse paths, landscaping and related works.

Warm Up Arena Lighting

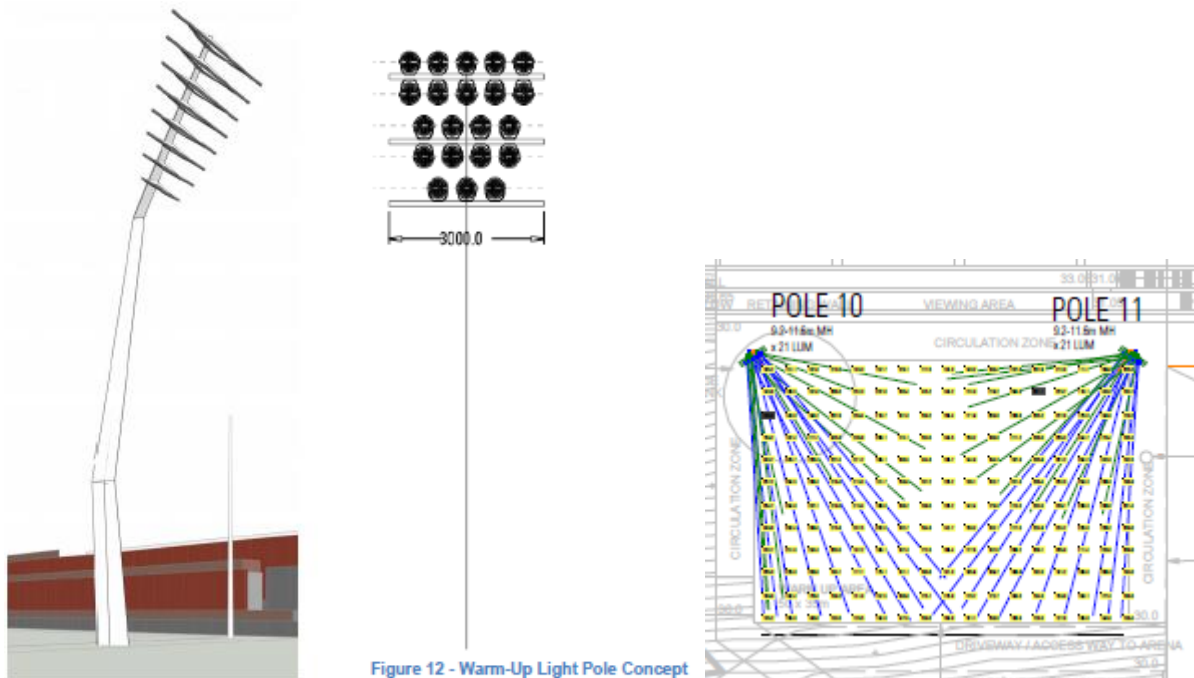


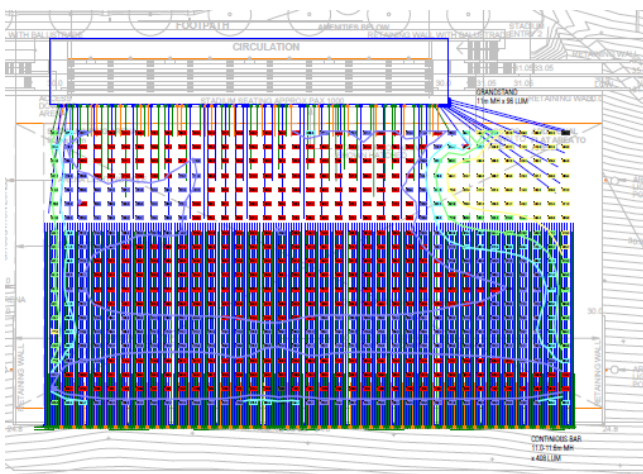
Figure 12 - Warm-Up Light Pole Concept

Two free standing light poles are proposed to support LED lights for the warm up arena at approximately 11.6m in height above the arena surface which is around 8.5m above existing ground level.

Show Jump Arena Lighting

The lighting concept proposes to use a continuous light bar with two rows of lights mounted at 11m and 11.6m in height supported by 8 structural steel poles on the east side of the show jumping arena which is around 19.0m above existing ground level.

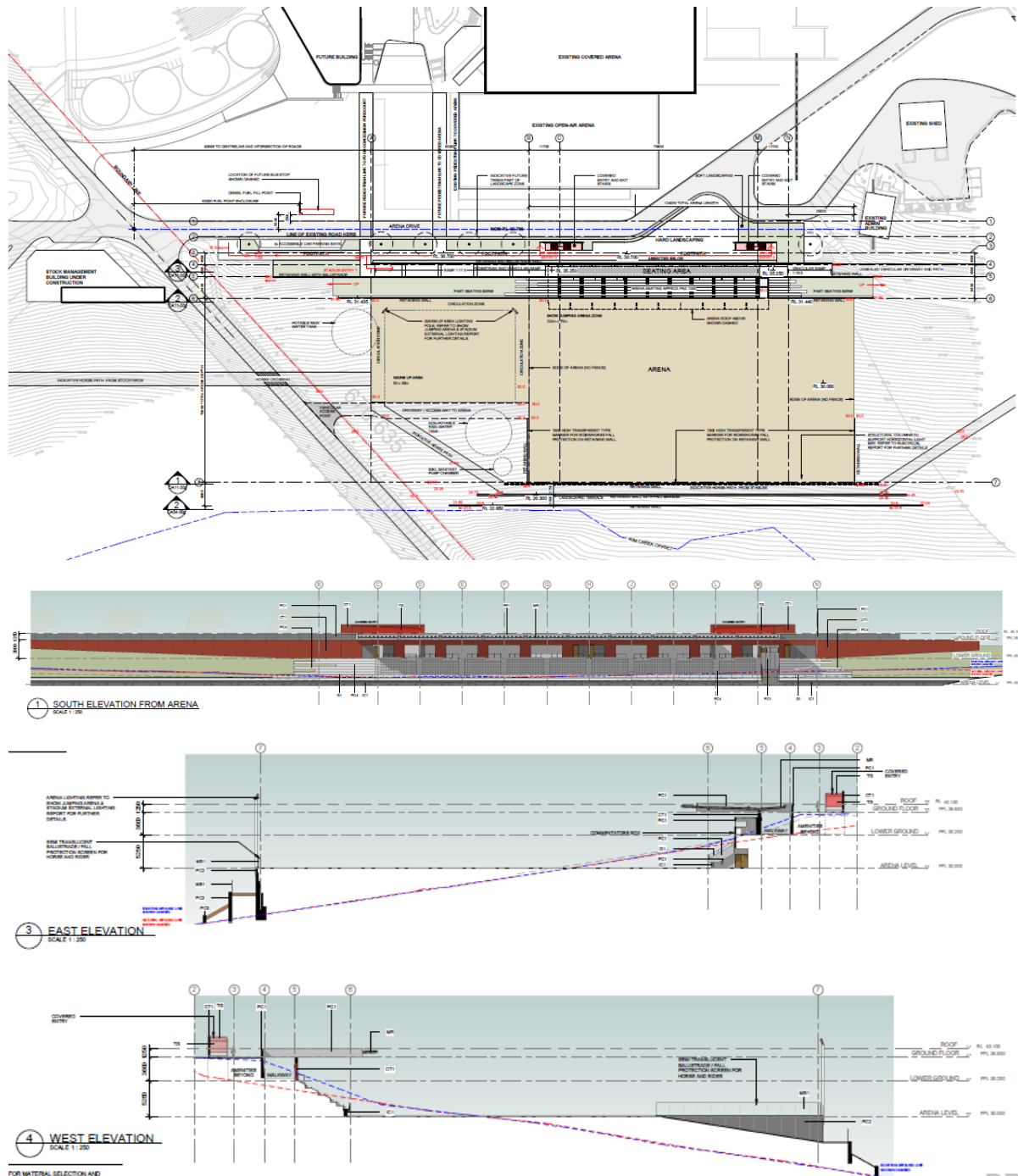
Additional lighting is proposed to be mounted directly to the roof structure over the covered seating on opposing side. Illumination for both arenas is proposed to be of projector type LED lights with a symmetrical distribution and narrow light distribution beam that minimises light spill and unwanted glare to the targeted area and surrounds.



The show jumping arena is proposed to be used on a regular basis for horse training as part of the existing Willinga Park breeding and training activities and for multi-discipline uses such as casual riding, dressage, show jumping, eventing, western disciplines and equine

demonstration events monthly which will attract competitors, judges and spectators, and on some occasions, TV broadcast personnel and equipment.

Proposed hours of operation for public events are between 7:00 am and 10:00 pm.



DE19.16

Subject Land

The site is part of a large land holding known as Willinga Park and is being established as an Equine Centre of Excellence, comprising facilities for the breeding and training of Australian stock horses, including a stable complex, indoor and outdoor arenas for dressage, polocrosse and camp drafting, ancillary education centre, food and drink facilities, primitive camp ground, tourist cabins, stockyards, horse paddocks and car parking areas.

The development site for the current application is located to the east of Arena Drive (an internal road), and also to the south east of the existing covered dressage arena at the western end of Forster Drive, Bawley Point on Lot 21 DP 1217069. The site is surrounded by grazing lands and forested slopes with the nearest non associated dwellings to the east at No's 103 and 122 Forster Drive, located approximately 600m from the proposed show jumping arena.

Site & Context

The development site is immediately surrounded by RU2 zoned rural land with E2 zoned land around the headwaters of Lake Willinga to the north. Surrounding land uses are predominantly agriculture and rural residential. Willinga Park contains a number of larger buildings and monolithic feature walls, landscaping and sculptures that form gateways into the different areas of the development that are appropriate to the scale of the site and have provide a high quality built environment.

Issues

Clause 4.3 Height of Buildings

The site is within an area where the Height Building Maps under cl.4.3 of SLEP 2014 does not map a specific maximum building height, therefore, the default height of 11.0m applies. This application seeks to vary this development standard. A variation of 72.7% (19.0m) is sought for lighting structures above the 11.0m height plane.

Clause 4.6 Exceptions to Development Standards

The NSW planning system provides flexibility in planning controls by providing the ability for Council to vary development standards in certain circumstances. In this regard, the concurrence of the Secretary of the Department of Planning and Environment (DP&E) can be assumed as provided in DP&E publication – Varying development standards: A Guide – August 2011 (the Guide) Planning Circular PS 18-003 (21 February 2018). Clause 4.6 enables a development standard to be varied, provided the applicant has submitted a written request that adequately justifies the exception from the development standard by demonstrating that:

- 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 a 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 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.

Applicant's Submission

The applicant provided Council with a justification for the variation of the development standards:

The proposal is consistent with the objectives of the height standard for the following reasons:

DE19.16

- the height of the support poles and associated light bar to be positioned along the south-eastern side of the show jumping arena (i.e. a maximum of approximately 19.0m), notwithstanding the requested variation to the height standard, is appropriate for the conditions of the site and its context;
- the proposed support poles and light bar are essential to the proper organisation of events to be held at the show jumping arena;
- the support poles and light bar will have no overshadowing, view loss, privacy or other impacts on any other property;
- the proposed support poles and light bar will have no adverse scenic impacts as shown on Figure 4C of the SEE, the nearest Scenic Protection Area identified in SLEP 2014 is adjacent to the south eastern boundary of the site which is well-removed (by around 800m) from the part of the site to which the DA relates; and
- the proposed support poles and light bar will have no adverse heritage or other amenity impacts.

Is compliance with the height standard unreasonable or unnecessary in the circumstances of the case?

Yes, for the reasons set out above. There is an absence of significant impacts associated with the non-compliance and the objectives of the standard are satisfied notwithstanding the non-compliance.

Are there sufficient environmental planning grounds to justify contravening the height standard?

Yes. For the reasons set out above.

Has this written request adequately addressed the matters required to be demonstrated by sub-clause 4.6(3)?

Yes.

Is the development in the public interest because it is consistent with the objectives of the height standard and the objectives for development within the zone in which the development is proposed to be carried out?

Yes. The proposal is consistent with the objectives of the height standard for the reasons set out above and is consistent with the objectives for development in the "RU2 Rural Landscape" zone.

Public interest

The proposed lighting structures are considered to be in the public interest as they are consistent with the objectives of the standard and the zone in which the development is proposed to be carried out. As explained above a strict application of the height control is not considered necessary due to the site's isolation and the need to elevate the LED lights to minimise light spill and glare.

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 required matters. After reviewing the applicant's submission it is considered that the variation is reasonable and acceptable for the following reasons:

- the show jump arena and associated facilities are located with a large setback (>600m) to the nearest potential non associated residential receiver

- the (19m) high lighting structures are located downslope of the covered seating area which effectively reduces their visibility
- The building height variation does not generate overshadowing impacts on the surrounding properties.
- The proposal is consistent with the desired future character of Willinga Park.
- The proposal is considered to be 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.

When dealing with a variation to a development standard under cl 4.6, the Council must also consider the following five part test (as outlined in the Guide) to determine if the variation is acceptable:

1. The objectives of the standard are achieved notwithstanding noncompliance with the standard.

The objective of the Height of Buildings clause are:

- 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.

The proposal is consistent with bulk and scale of the existing development and the desired future character of the locality. The proposed height of the development is appropriate to the context and is compatible with the prevailing pattern of buildings, feature gates and landscaping in the locality.

The proposal positively responds and satisfactorily addresses the particular characteristics of the site and its broader context. The proposal is of a height and scale that is sympathetic to its immediate context.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary – The underlying objectives of the standard are not relevant to the proposed height variations as the lighting structures will not be visible to any other premises outside the site and the structures are remote from any other property.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable – Not relevant to the proposal.
4. The development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable – Not relevant to the proposal.
5. The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone. – Not relevant to the proposal.

Planning Assessment

The application will be fully assessed under s79C of the Environmental Planning and Assessment Act 1979 following determination of the variation to development standards.

Consultation and Community Engagement:

Forty four (44) public submissions were received in relation to Council's notification of the development, of which one (1) was in objection to the development. Forty three (43) were in support of the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a Number (500)m buffer of the site. The application was also notified in the *Milton Ulladulla Times* newspaper for a 4 week period.

There were no specific issues raised in relation to the construction of the show jump arena or the design for lighting. A number of issues relating to the operation of events will be addressed separately under DA18/1237 – Events.

Summary and Conclusion

The proposed works are located more than 300m away from nearest neighbouring property and more than 600m away from the nearest neighbouring dwelling not affiliated with the applicant.

The lighting system has been carefully designed using energy efficient projector type LED lights with a symmetrical distribution and narrow light distribution beam that will minimise light spill and unwanted glare to the targeted area and surrounding land.

The proposal is considered to be 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.

DE19.17 Draft Sustainable Energy Policy

HPERM Ref: D19/58555

Group: Shoalhaven Water Group

Attachments: 1. DRAFT - Sustainable Energy Policy [↓](#)

Purpose / Summary

In November 2018, Council resolved to formulate a draft Sustainable Energy Policy for consideration. Council also resolved in December to provide an analysis of Council's current electricity usage, such report to include usage by function (water, sewer, leisure centres, street lighting), measures already taken to reduce electricity consumption and potential avenues to further reduce consumption including predictive cost estimates/ROI of those measures. This report provides information on the Council's current electricity use and a draft Sustainable Energy Policy for consideration.

Recommendation (Item to be determined under delegated authority)

That the draft Sustainable Energy Policy (attached) be placed on public exhibition for 28 days and a further report be provided to Council on the results of that exhibition.

Options

1. Place the policy on exhibition for public comment and report back to Council (recommended).

Implications: This will allow the community to comment on Council's proposed direction.

2. Adopt the policy without exhibition.

Implications: This would not allow the community to formally comment on Council's proposed direction.

3. Modify the draft policy.

Implications: Council can change any of the aspects of the draft policy or request further details on any aspect.

Background

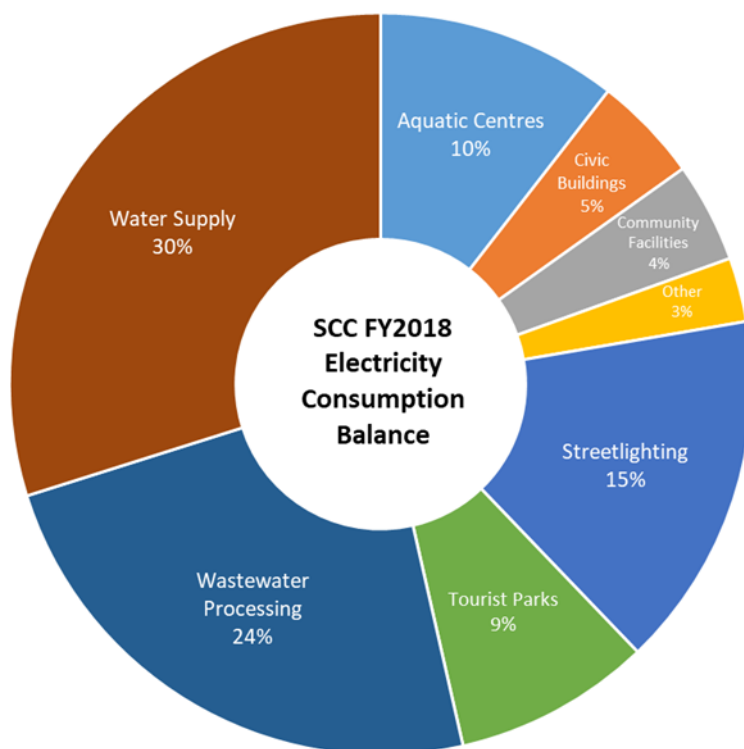
Energy, in the form of electricity, gas and vehicle fuel, is an essential resource for the effective operation of Shoalhaven Council. Most of Council's current energy is derived from fossil fuels. From an economical and environmental perspective, it is critical that Council address its future energy needs and commence a transition towards improved energy efficiency and use of more renewable energy.

In 2017/18, just over half of Shoalhaven Council's electricity was consumed by Shoalhaven Water's water (30%) and sewerage (24%) operations (Fig 1). In terms of the overall cost, wastewater processing (~\$1.4M) is more costly than water supply (\$950K), with water supply pumps typically operating during Off Peak periods when electricity pricing is cheaper (Fig 2).

The next largest consumer of electricity (around 15%) is attributed to the streetlighting across the Shoalhaven LGA. Although the majority of Shoalhaven's streetlights are operated by Endeavour Energy, Council pays for the power that the lights consume (around \$800K/yr, Fig 2). Council's Aquatic Centres and Holiday Haven tourist parks then follow in terms of around 9% each in electricity consumption, with civic buildings and community facilities making up 5% and 4% of electricity consumption, respectively.

Despite having 180 kW of installed solar panels on Council assets, this renewable energy represents less than 1% of Council's electricity needs.

Figure 1



DE19.17

Figure 2

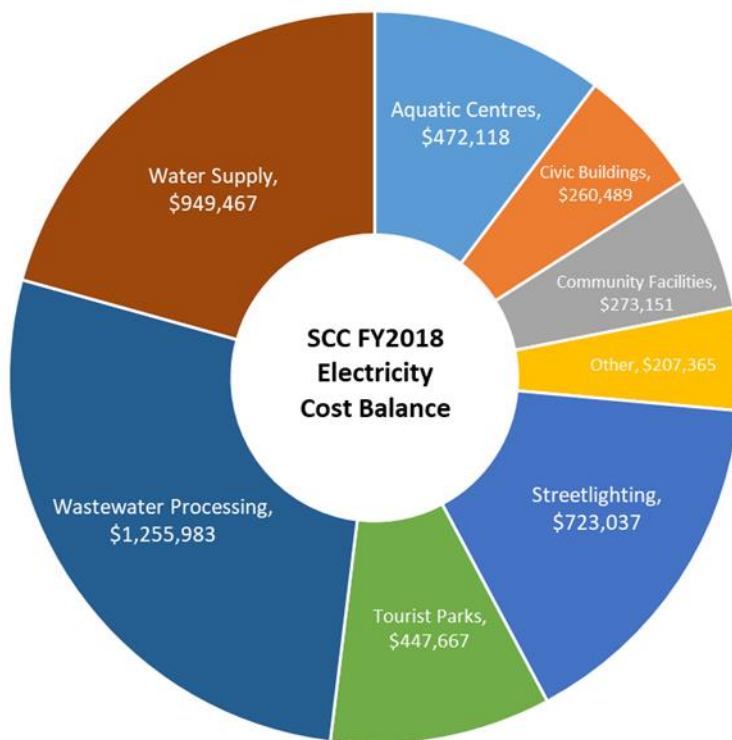
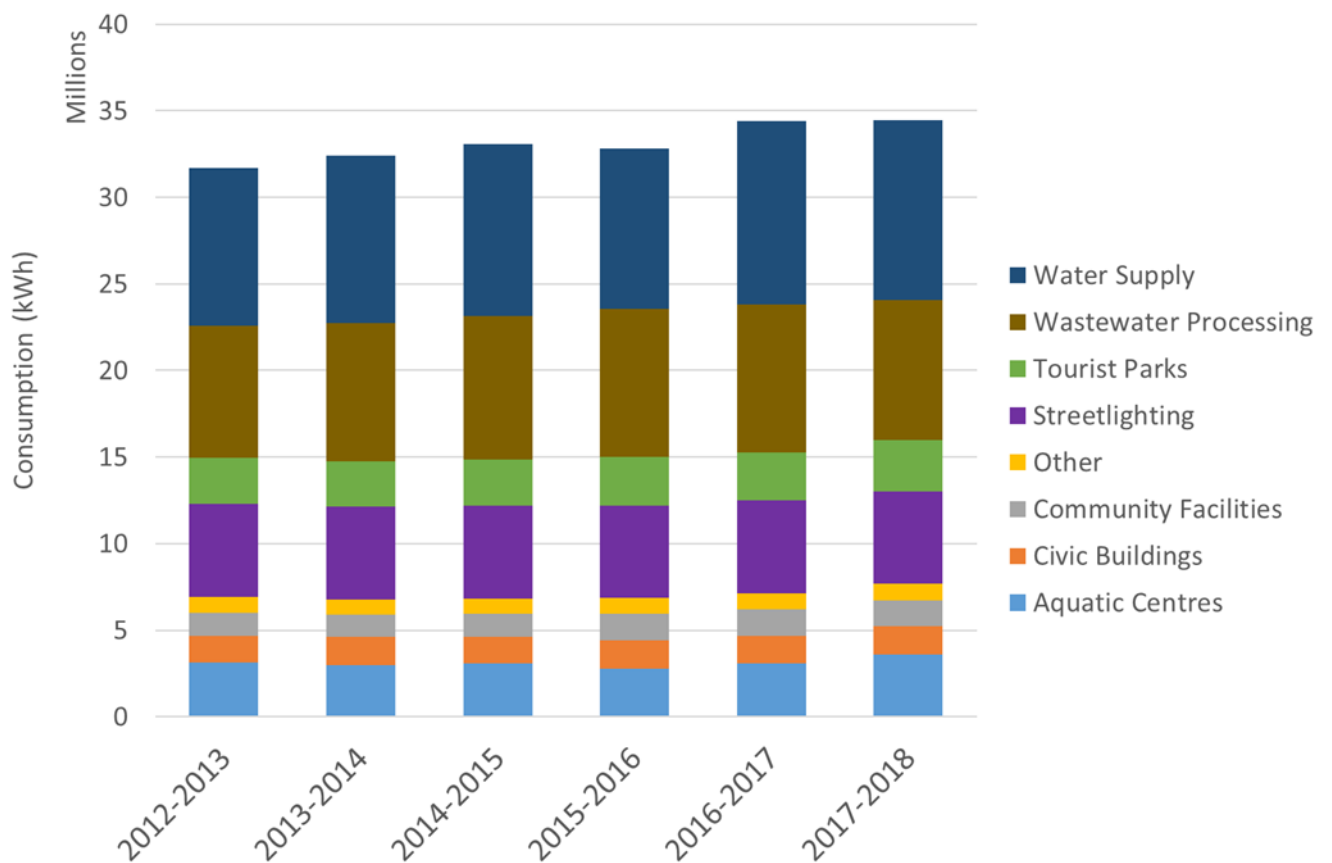


Figure 3 below shows an increasing trend in Council's overall electricity consumption over the last five years.



DE19.17

Current Initiatives

There have been a small number of energy savings actions implemented by Shoalhaven Council over the past few years. These have mainly been single building upgrades to more energy efficient LED lighting as funds are available, rather than larger capital funded and programmed actions to significantly reduce Council's spend on the purchase of grid power. There are a number of significant energy projects proposed for which business cases have been prepared, e.g. streetlighting LED upgrade, Callala WWTW Solar Farm. However, these have not yet been commenced as the business cases show significant payback periods. From 2020 onwards, Council may experience substantial price rises in its electricity charges and these payback periods will become much more favourable. Table 1 identifies the recently completed, in-progress and planned energy savings initiatives at Shoalhaven Council.

Table 1: Energy efficiency initiatives completed, in progress and proposed at Shoalhaven Council.

Site	Initiative	Capital Cost	kWh/pa Saving	Cost Savings pa	Payback in Years	Status
Sussex Inlet Aquatic Centre	LED Lighting Installation	\$6,551	11,581	\$2,895	2	Completed
Nowra School of Arts	LED Lighting Upgrade	\$8,086	27,750	\$6,937	1	Completed
Shoalhaven LGA	LED Streetlighting Upgrade	\$2,151,993	~2,000,000	\$273,113	8	Future option
Callala WWTW	5MW Solar Farm	~\$8,000,000	~8,000,000	~\$700,000	11	Future option
Berry WWTW	Solar PV Install	~\$35,000	33,000	~\$5,000	6.5	RFQ in progress
Bamarang WTW	Solar PV Install	~\$30,000	33,000	~\$5,000	5.5	RFQ in progress
Shoalhaven Entertainment Centre	Installation of 50kW solar PV system	~\$55,000	69,000	~\$7,100	8	RFQ commencing
Nowra Library	Installation of 20kW solar PV system	~\$22,500	28,000	~\$2,600	9	RFQ commencing
Shoalhaven Arts Centre	Installation of 25kW solar PV system	~\$27,500	35,000	~\$6,100	6	RFQ commencing

Proposal

A draft sustainable energy policy has been formulated through an internal working team comprising representatives of Council's four groups. Initiatives from some other Council areas have also been investigated with a number of local Councils have adopted energy and climate targets including:

- Eurobodalla Shire Council – 80% emissions reduction by 2030; source 100% of Council's electricity from renewables by 2030.
- Sydney City Council – 50% of electricity to be renewable by 2030; 70% reduction in emissions by 2030; net zero emissions by 2050.
- Byron Shire Council – net zero emissions by 2025; source 100% of energy needs with renewables by 2027
- Port Macquarie Council – source 100% of electricity needs by 2027
- Tweed Shire Council – source 25% of Council's electricity self-generated by solar by 2022 and 50% incorporating storage by 2025

The draft Policy outlines the principles to improve Council's energy efficiency, generate renewable energy and thereby mitigate greenhouse gas emissions. The Policy has been prepared to be consistent with current National and State energy policies and emissions targets. The targets included in the Policy are considered to be aspirational in the longer term, with achievable interim targets to help drive change in the shorter term.

Shoalhaven Council has pledged under the national Cities Power Partnership to 'set city-level renewable energy targets, emissions reduction targets and sustainable energy policies to provide a common goal and shared expectation for residents and businesses'.

Financial Implications

Some of the targets for the transition to more renewable energy sources and LED streetlighting may involve some additional Council expenditure above the 'Business as Usual' scenario. These will need to be supported with prepared business cases and, where opportunities prove to be economically feasible, accounted for in future budgets. Many energy efficiency initiatives result in short (<5 years) payback periods after which the projects will result in cost savings.



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

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

Email: council@shoalhaven.nsw.gov.au

Website: www.shoalhaven.nsw.gov.au

For more information contact the Shoalhaven Water Group

Shoalhaven City Council - Sustainable Energy Policy

Policy Number: POL18/44 • **Adopted:** [Click here to enter date] • **Minute Number:** [Click here to enter Minute number] • **File:** 56964E • **Produced By:** Shoalhaven Water Group • **Review Date:**

1. PURPOSE

Shoalhaven City Council ('Council') aims to ensure access to affordable, reliable, sustainable and modern energy (consistent with the United Nation's Sustainable Development Goals), for both its operations and that of the wider Shoalhaven community. The increased use of renewable energy and improved energy efficiency is crucial to creating more sustainable communities, employment opportunities and resilience to climate change.

2. STATEMENT

Shoalhaven City Council is committed to operating sustainable assets, facilities and fleet vehicles across the Shoalhaven Local Government Area. The operation of these facilities and fleet transport can consume large amounts of energy at a high cost and generate harmful greenhouse gas emissions. Council will actively work towards reducing fossil-fuelled energy consumption for assets and transport under its control to reduce greenhouse gas emissions and climate change impacts. Where opportunities are economically feasible, Council will invest in renewable energy generation projects to ensure clean energy for the future. This extends to Council encouraging the Shoalhaven community's transition away from fossil fuels to more renewable energy generation for households, businesses and industry.

3. PROVISIONS

3.1. Vision

Shoalhaven City Council's vision is to operate its energy consuming assets and fleet transport in a sustainable manner with minimal effect on the natural environment. This will then serve as a model of best practice for the wider Shoalhaven community to reduce energy bills, minimise greenhouse gas emissions and increase uptake of renewable energy.

3.2. Objectives and Targets

To achieve this Vision, and in partnership with stakeholders and the community, Shoalhaven City Council will:

- Aim to achieve net-zero greenhouse gas emissions by 2050 (consistent with the United Nations Paris Agreement ratified by the Commonwealth Government and the NSW

Shoalhaven City Council – Sustainable Energy Policy

Government's agreed targets). Interim targets to reduce emissions are 25% by 2025 and 50% by 2030, compared to 2015 levels.

- Continually improve management practices to strive towards improved energy efficiency across the organisation.
- Seek opportunities to source or generate electricity supply from renewable energy sources, with an interim target of 25% renewables by 2023 and eventually 50% from renewable sources by 2030.
- Promote relevant initiatives to the community and businesses to increase the uptake of installed rooftop solar panels across the Shoalhaven LGA towards a target of 33% of dwellings by 2025.
- Upgrade all street lighting to energy saving LEDs by 2025.

4. IMPLEMENTATION

Shoalhaven City Council will support this Policy by:

- Preparing and implementing a Sustainable Energy Strategy to identify priority actions for improved energy efficiency, sustainable fleet transport, corporate and community greenhouse gas emissions reduction and renewable energy generation.
- Resourcing its implementation by means of sufficient annual budget allocations for the procurement of sustainable energy, energy efficiency and fleet transport initiatives.
- Establishing an internal Revolving Energy Fund (REFund) as a mechanism to generate funds from energy efficiency project savings to support future energy and renewable energy initiatives.
- Measuring, monitoring, benchmarking and reporting on energy consumption to identify issues, tracking towards agreed targets and informing this Policy and the Sustainable Energy Strategy.

5. REVIEW

The Sustainable Energy Policy and associated Sustainable Energy Strategy will be reviewed every 4 years and particularly where new legislation, guidelines and/or management information dictates.

6. APPLICATION OF ECOLOGICALLY SUSTAINABLE DEVELOPMENT PRINCIPLES

This Policy will play a key role in the application of ecologically sustainable development (ESD) principles as it aims to reduce reliance on fossil-fuelled grid power, increase renewable energy generation and reduce greenhouse gas emissions.

Specifically, this Policy supports the following ESD principles:

- The precautionary principle – where there is the threat of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Shoalhaven City Council – Sustainable Energy Policy

- Intergenerational equity – the current generation should make sure that the health, diversity and productivity of the environment continues for the benefit of future generations.
- Conservation of biological diversity and ecological integrity – conserving the diversity of flora and fauna and the health and sustainability of ecosystems.

DRAFT

LOCAL GOVERNMENT AMENDMENT (GOVERNANCE & PLANNING) ACT 2016

Chapter 3, Section 8A Guiding principles for councils

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Chapter 3, Section 8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services

Chapter 3, 8C Integrated planning and reporting principles that apply to councils

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils:

- (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) Councils should identify strategic goals to meet those needs and aspirations.
- (c) Councils should develop activities, and prioritise actions, to work towards the strategic goals.
- (d) Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) Councils should regularly review and evaluate progress towards achieving strategic goals.
- (f) Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) Councils should collaborate with others to maximise achievement of strategic goals.
- (h) Councils should manage risks to the local community or area or to the council effectively and proactively.
- (i) Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.