

Development & Environment Committee

Meeting Date: Tuesday, 02 April, 2019
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

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. **Call Over of the Business Paper**
5. **Mayoral Minute**
6. **Deputations and Presentations**
7. **Notices of Motion / Questions on Notice**

Nil
8. **Reports**
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9. 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 March 2019
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

The following members were present:

Clr Joanna Gash - Chairperson
Clr Patricia White
Clr John Wells
Clr John Levett
Clr Nina Digiglio
Clr Annette Alldrick – arrived 5.01pm
Clr Kaye Gartner
Clr Andrew Guile – arrived 5.10pm
Clr Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener – left at 7.44pm
Clr Bob Proudfoot
Clr Russ Pigg - General Manager

Apologies / Leave of Absence

An apology was received from Clr Findley.

Confirmation of the Minutes

RESOLVED (Clr Pakes / Clr Levett) MIN19.107

That the Minutes of the Development & Environment Committee held on Tuesday 05 February 2019 be confirmed.

CARRIED

DEPUTATIONS AND PRESENTATIONS

DE19.9 Draft citywide Shoalhaven Vegetation Vandalism Strategy

Mr Bruce McKenzie, representing Vincentia Matters, addressed the meeting and spoke in favour of the recommendation.

DE19.10 Collingwood Beach Surveillance - Vegetation Vandalism

Mr Bruce McKenzie, representing Vincentia Matters, addressed the meeting to speak in favour of the recommendation.

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

Mr Patrick Mahedy, representing PRM Architects + Town Planners, addressed the meeting and spoke against the recommendation.

Mr Duncan Marshall, representing Callala Bay Community Association, addressed the meeting and spoke in favour of the recommendation.

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

Mr Stuart Coughlan, representing The Berry Forum, addressed the meeting and spoke against the recommendation.

Procedural Motion - Bring Item Forward

RESOLVED (Clr Pakes / Clr Digiglio)

MIN19.108

That the matters of the following items be brought forward for consideration:

- DE19.9 - Draft citywide Shoalhaven Vegetation Vandalism Strategy
- DE19.10 - Collingwood Beach Surveillance - Vegetation Vandalism
- DE19.11 - Proponent Initiated Planning Proposal - Lot 5 DP 1225356, Sealark Road, Callala Bay
- DE19.13 - Review - Planning Provisions - Tourist and Visitor Accommodation

CARRIED

REPORTS

DE19.9 Draft citywide Shoalhaven Vegetation Vandalism Strategy

**HPERM Ref:
D19/29905**

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.

MOTION (Clr Proudfoot / Clr Guile)

That Council:

1. Not place the Draft Vegetation Vandalism Strategy on public exhibition;
2. Receive the report for information.

AMENDMENT (Clr Watson / Clr Wells)

That the matter be referred to a Councillor Workshop.

Clr Gartner raised Point of Order against Clr Guile for imputing motivations to others. The Chair ruled against.

Clr Levett raised a Point of Order against Clr Guile for deliberately offending certain residents. The Chair ruled against.

Clr Watson raised a Point of Order against Clr Digiglio for suggesting that politicians claim to be experts on scientific matters. Clr Digiglio withdrew her comment.

PROCEDURAL MOTION (Clr Wells / Clr Gartner)

That the AMENDMENT be PUT.

FOR: Clr Gash, Clr Wells, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener and Mr Pigg

AGAINST: Clr White, Clr Levett, Clr Guile and Clr Proudfoot

CARRIED

AMENDMENT WAS PUT (RESOLVED) (Clr Watson / Clr Wells)

That the matter be referred to a Councillor Workshop.

FOR: Clr Gash, Clr Wells, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener and Mr Pigg

AGAINST: Clr White, Clr Levett, Clr Guile and Clr Proudfoot

CARRIED

The AMENDMENT became the MOTION and was declared CARRIED

(Clr Watson / Clr Wells)

MIN19.109

That the matter be referred to a Councillor Workshop.

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

AGAINST: Clr Levett

CARRIED

DE19.10 Collingwood Beach Surveillance - Vegetation Vandalism

**HPERM Ref:
D18/396803**

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.

RESOLVED (Clr Pakes / Clr Guile)

MIN19.110

That Council not install surveillance cameras along Collingwood Beach.

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

AGAINST: Clr Levett and Clr Gartner

CARRIED

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

HPERM Ref: D19/32152

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.

RESOLVED (Clr Gash / Clr Guile)

MIN19.111

That Council:

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

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

AGAINST: Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner and Mr Pigg

CARRIED

Procedural Motion - Bring Item Forward

RESOLVED (Clr Watson / Clr Gash) MIN19.112

That the matter of item 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 be brought forward for consideration after item DE19.13.

CARRIED

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

**HPERM Ref:
D19/41203**

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.

RESOLVED (Clr Guile / Clr Gartner) MIN19.113

That Council:

1. Report the scope and content of a Planning Proposal to amend the relevant provisions of the Shoalhaven Local Environmental Plan (LEP) 2014 related to 'tourist and visitor accommodation' back to Council and as part of this carry out initial consultation with relevant stakeholders.
2. Prepare an amendment to Chapter G15: Tourist and Visitor Accommodation of the Shoalhaven Development Control Plan (DCP) 2014 and receive a further report on the proposed amendment prior to it proceeding to public exhibition.
3. Advise relevant stakeholders, including CCBs and the Development/Tourism Industry, of this decision and engage them during the preparation of the Planning Proposal and DCP amendment.
4. Staff, in further reports, consider the submission from the Berry Forum presented in the deputation to this meeting.
5. Convene a Councillor Briefing at an appropriate time.

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

Against: Nil

CARRIED

**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**

**HPERM Ref:
D18/405415**

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.

RESOLVED (Clr Proudfoot / Clr Pakes)

MIN19.114

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.

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

Against: Nil

CARRIED

Note: The meeting adjourned, the time being 7.44pm

Note: The meeting reconvened, the time being 8.06pm

When the following members were present:

Clr Joanna Gash - Chairperson
Clr John Wells
Clr Patricia White
Clr John Levett
Clr Nina Digiglio
Clr Kaye Gartner
Clr Andrew Guile
Clr Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot

Note: Clr Kitchener left the meeting at 7.44pm.

**DE19.12 Shoalhaven DCP 2014 - Proposed Local Character
Statements**

HPERM Ref: D19/4280

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.

RESOLVED (Clr Levett / Clr Wells)

MIN19.115

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.

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

AGAINST: Clr Watson

CARRIED

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

HPERM REF: D18/405415

Item dealt with earlier in the meeting see MIN19.114

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

HPERM Ref: D19/11649

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.

RESOLVED (Clr Wells / Clr Guile)

MIN19.116

That

1. Council defer consideration of the establishment of a design review panel pending an industry forum / information session, the outcome of which will inform a further report to enable Council to determine this matter.
2. The industry forum / information session and subsequent report be held and prepared in a time frame which enables resolution of this matter no later than the April Ordinary meeting of Council.

FOR: Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes and Clr Watson

AGAINST: Clr Gash, Clr Proudfoot and Mr Pigg

CARRIED

DE19.16 Development Application – 132 Forster Drive, Bawley Point – Lot 21 & DP 1217069**HPERM Ref:
D19/43497****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

RESOLVED (Clr Proudfoot / Clr Wells)

MIN19.117

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

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

AGAINST: Nil

CARRIED

DE19.17 Draft Sustainable Energy Policy**HPERM Ref:
D19/58555****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.

RESOLVED (Clr Proudfoot / Clr Alldrick)

MIN19.118

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.

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

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 8.36pm.

Clr Gash
CHAIRPERSON

DE19.18 Update - Planning Proposal - Lot 4 DP83425, Beach Road, Berry

HPERM Ref: D19/40102

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Draft DCP N28 - Beach Road, Berry [↓](#)

Purpose / Summary

Provide an update on this Planning Proposal (PP) and seek direction on obtaining an amended Gateway determination. Given the nature of the site, the report also presents a draft supporting Development Control Plan (DCP) chapter and seeks a resolution to exhibit it concurrently with the PP upon completion of the Gateway requirements.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Amend the Planning Proposal (PP) for Lot 4 DP83425, Beach Road, Berry to:
 - a. Reflect the revised maps provided with the report; and
 - b. List the Aboriginal Scarred Tree identified on the site as an item of Aboriginal Heritage
2. Submit the revised PP to the NSW Department of Planning and Environment for consideration as required by the Gateway determination.
3. Undertake the necessary Government Agency consultation prior to public exhibition as required by the Gateway determination.
4. Prepare a draft site-specific Development Control Plan (DCP) chapter to support the PP.
5. Publicly exhibit the PP and supporting draft DCP chapter, subject to completion of the above matters.
6. Advise the proponent of this resolution.

Options

1. Proceed with the PP and new supporting DCP chapter as recommended.

Implications: This will allow the PP to proceed to exhibition and will also seek to set the subject land for a future subdivision that is responsive to the constraints of the land. This is the recommended option. Note: a specific resolution to prepare the DCP amendment is necessary to ensure it is legally created.

2. Proceed with a PP that is based on provisions in the original request.

Implications: This would see the PP potentially proceeding without provisions to address the constraints of the land. This will create less certainty for the developer and the community and as such is not recommended.

3. Proceed with the PP subject to other amendments.

Implications: Further advice can be provided if other amendments are considered warranted.

4. Defer the consideration of the PP for additional Aboriginal Heritage advice.

Implications: At time of writing this report further advice is pending in relation to Aboriginal heritage. This advice may be received prior to the Committee meeting. If this occurs and the advice alters the recommendation of this report, further information will be provided. If this advice is not received prior to the meeting, the Committee may wish to consider deferring this item.

Background

Subject Land

Council initially received a proponent-initiated PP request for Lot 4 DP 834254 Beach Road, Berry on 3 October 2015.

The request was submitted originally by Michael Brown Planning Strategies on behalf of owner EN Hall. The Proponent is now Allen Price & Scarratts Pty Ltd for Hall.

The subject land is located east of the township of Berry as shown in the figure below:



The request sought to rezone the land from:

- RU1 - Primary Production, and
- E2 - Environmental Conservation

To:

- R5 - Large Lot Residential,
- E1 - National Parks and Nature Reserves,
- E2 – Environmental Conservation, and

DE19.18

- E3 - Environmental Management.

It is proposed that the part of the land within the Coomonderry Swamp would be dedicated to the NSW government and incorporated into the Seven Mile Beach National Park as an outcome of the rezoning. The NSW National Parks and Wildlife Service (NPWS) have reached an agreement in principle with the landowner for a planning agreement to facilitate this transfer.

History

Following lodgement of the PP request Council sought initial community feedback. Council's Development Committee considered a report on this PP on 18 January 2016 and resolved under delegation to:

- a) *Give in principle support for the proposed rezoning of Lot 4 DP 834254, Beach Road, Berry and submit a revised Planning Proposal to the NSW Department of Planning and Environment for Gateway determination, subject to:*
 - i) *Revision of the proposed minimum lot size to ensure the size of future lots is consistent with adjacent subdivisions and can adequately accommodate on site effluent disposal;*
 - ii) *Revision of the proposed zoning to ensure appropriate environmental zoning for the swamp and buffer area and other ecologically significant areas on the subject land including, but not limited to, protection of Coomonderry Swamp/SEPP 14 wetland and ecologically significant areas such as the patch of forest known as "Jim's Forest" and Berry Wildlife Corridor.*
 - iii) *Development to be limited to the north of the ridgeline (i.e. no dwellings south of the ridge) to minimise any potential impact on Coomonderry Swamp, to maintain the integrity of the ridgeline, and to be consistent with the planning outcomes of the adjacent sites*
 - iv) *Resolution of the proposed transfer of land to National Parks and Wildlife Service, and the possible need for a Voluntary Planning Agreement.*
- b) *Advise the proponent and those who submitted comments of this resolution, noting the opportunity for formal comment later in the process; and*
- c) *Receive a further report following the Gateway determination, if necessary.*

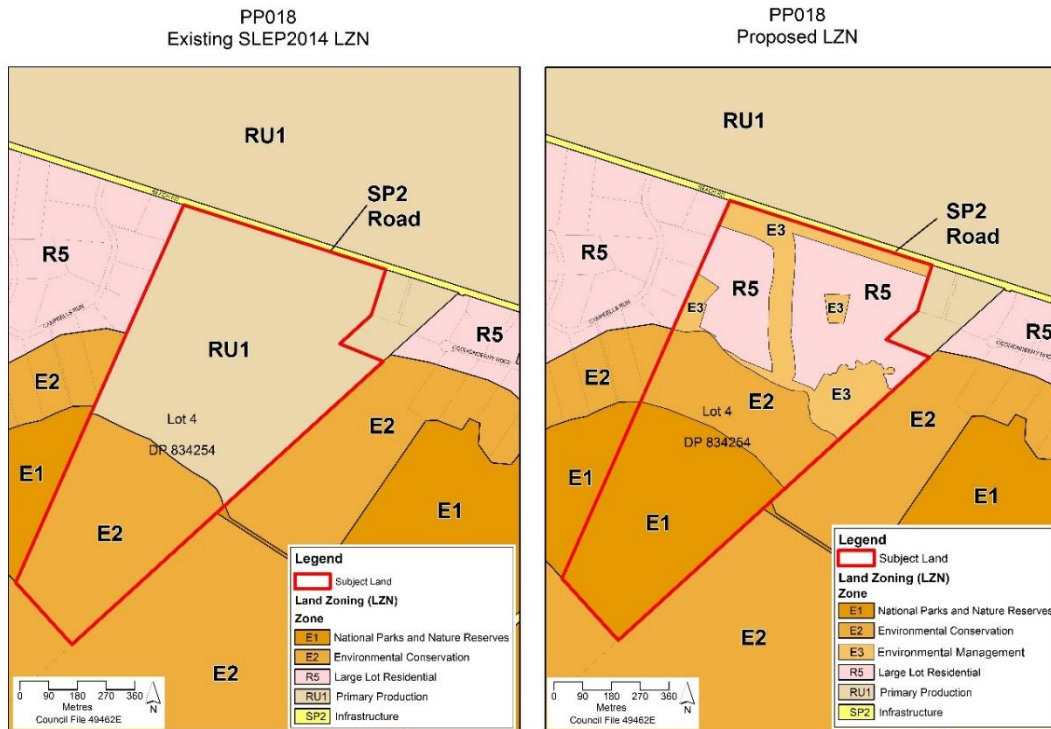
Following this resolution, the proponent opted to pursue a pre-Gateway review of the PP and Council's decision. This review was undertaken by the then Southern Joint Regional Planning Panel (JRPP). The JRPP's advice was provided to the NSW Minister for Planning in November 2016 and it did not contradict the Council resolution.

Work recommenced on the PP in March 2017 and it was submitted for a Gateway determination in April 2017. The Gateway determination was subsequently received in June 2017 and it required a range of information to be updated or prepared prior to public exhibition.

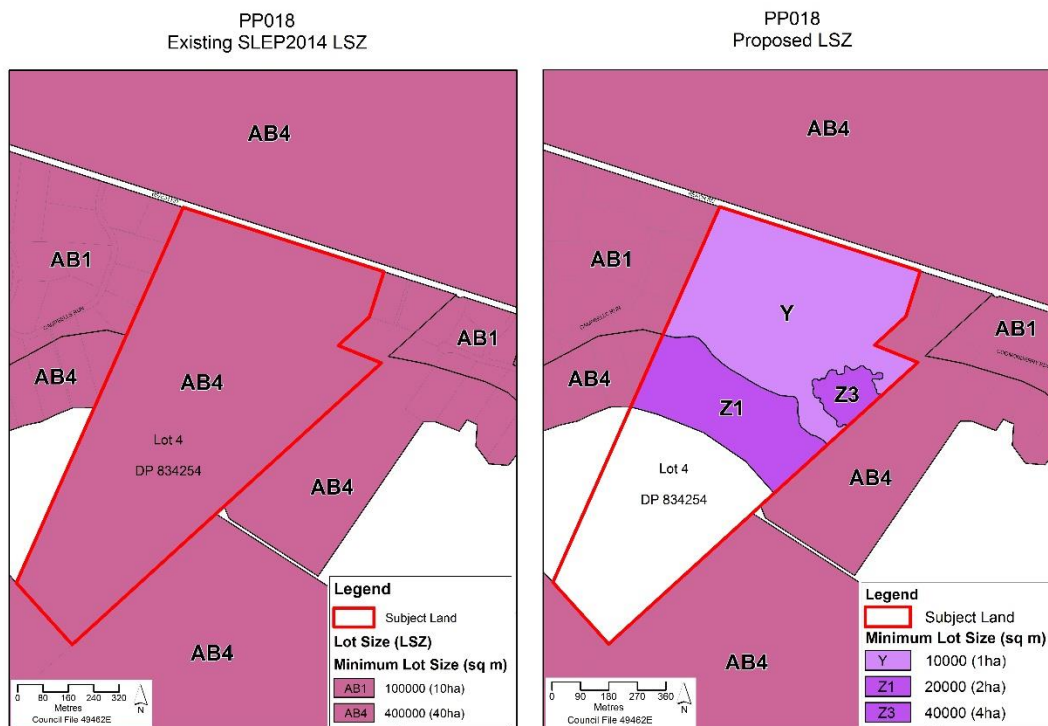
Accordingly, Council staff proceeded to address the conditions of the Gateway determination, working with the proponent, to prepare the PP for public exhibition.

LEP Maps

The PP has been revised in accordance with the Council resolution and the various specialist studies that have now been prepared or updated. For comparison, the current LEP maps and the proposed LEP maps for inclusion in the PP are provided below:



Current and Proposed Zoning



I:\Planning\Graphics\Projects\City\Planning\Proposals\PP018_BeachRd_Berry\VariousLots_SLEP2014LSZ& ProposedLSZ.mxd

Current and Proposed Minimum Lot Size

The proposed LEP mapping changes are outlined in the table below, along with an explanation for each change.

DE19.18

Change	Explanation
Apply E1 – National Parks and Nature Reserves Zone to part of the subject land.	The proponent and NPWS have reached an agreement on the land to be dedicated as an extension of Seven Mile Beach National Park. This land is proposed to be zoned E1.
Apply E2 – Environmental Conservation Zone to land between the ridge line and the E1 zone.	This land drains to Coomonderry Swamp and warrants a higher level of environmental protection than the land on the northern side of the ridge line. This is consistent with the zoning approach on adjoining land.
Apply E3 – Environmental Management Zone to the constrained land that will be retained in private ownership.	Land affected by one or more of the following constraints is proposed to be zoned E3: <ul style="list-style-type: none"> - Land with poor soil for wastewater management - Areas close to a watercourse - Areas close to a bore or natural spring - Areas with significant native vegetation including “Jim’s Forest” - Areas of Aboriginal Archaeological Potential The proposed DCP chapter (draft attached) that will support the PP will provide additional guidance to ensure eventual development responds to these values.
Apply R5 – Large Lot Residential Zone to part of the subject land.	The remainder of the land is relatively unconstrained and is suitable for a large lot residential zoning.
Apply no minimum lot size to part of the subject land to be zoned E1.	The part to be zoned E1 National Parks and Nature Reserves does not require a ‘minimum lot size’ in the LEP and so none is proposed.
Apply a 4 ha minimum lot size to part of the subject land known as “Jim’s Forest”.	The NSW Office of Environment & Heritage (OEH) in consultation has requested that the PP prevent the subdivision of “Jim’s Forest” into more than one lot. To achieve this, a 5 ha minimum lot size is proposed for this part of the land.
Apply a 1 ha minimum lot size to land north of the ridge line, excluding “Jim’s Forest”.	This will enable development that is generally consistent with the existing rural residential developments on either side of the site.
Apply a 2 ha minimum lot size to land between the ridge line and the E1 zone.	A larger lot size on the southern side of the ridge is necessary to ensure the subdivision responds to the site constraints and environmental values, and to ensure that the resulting lots that extend onto the southern side of the ridge have an appropriate width and a development area outside of the catchment of the Coomonderry Swamp catchment.

DE19.18

Aboriginal Heritage

The Aboriginal Cultural Heritage Assessment of the land made two significant finds.

Firstly, an area of Aboriginal Archaeological Potential was found along the ridge that separates the catchments of Coomonderry Swamp to the south and Foys Swamp to the north. The extent of the Aboriginal Archaeological Potential area that is north of the ridge is

proposed to be zoned E3 with appropriate provisions being incorporated into the DCP to ensure that this is properly investigated prior to any actual development being undertaken.

Secondly, an Aboriginal Scarred Tree was found within the part of the subject land identified for development. The assessment report recommended that this tree be listed in the LEP as a heritage item because of its heritage significance. The location of the tree is shown in the figure below:



I:\Planning\Graphics\Projects\City\PlanningProposals\PP018\Lot 4 DP834254_AerialPhoto.mxd

The tree was however subsequently struck by lightning while this PP was under assessment and the scars were significantly damaged. At the time of writing this report a further report was pending to help determine whether the remains of the tree still warrant heritage listing. If this revised report is received prior to the Committee Meeting, further advice will be provided for consideration at the meeting.

Development Control Plan (DCP) Chapter

As outlined earlier in this report, the site is subject to several important environmental and Aboriginal cultural heritage values that need to be recognised and managed in future development. Thus, in addition to the LEP provisions, it is also proposed to have a supporting DCP Chapter that helps identify and protect these values. This will ensure they are given appropriate consideration at the subsequent development application stage. The draft proposed chapter is attached to this report (see **Attachment 1**).

To comply with legislative requirements in this regard It is also recommended that the Committee resolve to prepare and exhibit the DCP chapter. The exhibition will occur alongside the PP.

DE19.18

Gateway Determination Conditions

The Gateway determination requires Council to include a range of information in the PP prior to community consultation to address potential impacts of the proposal. The determination also requires the NSW Department of Planning & Environment to consider the revised proposal prior to community consultation. As such, should Council resolve to proceed as recommended, then the required engagement with DP&E will occur prior to the formal community consultation.

Community Engagement

Initial community feedback was sought in November 2015, when the proponent's original PP request was first submitted to Council. No further community engagement has been undertaken since the first Council resolution on this matter.

It is considered that this PP is sufficiently advanced to be able to be publicly exhibited subject to confirmation from the DP&E that the conditions of the Gateway determination have been met. Assuming this is the case, it is recommended that Council place this PP and the supporting draft DCP chapter on formal exhibition once the required Government agency feedback is received.

Financial Implications

This PP is being funded by the proponent on a 100% cost recovery basis in accordance with Council's adopted Planning Proposal Guidelines and associated Fees and Charges.

Shoalhaven Development Control Plan 2014

Draft Chapter N28: Berry – Beach Road

Draft Chapter N28: Berry – Beach Road

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Amendment history

Version Number	Date Adopted by Council	Commencement Date	Amendment Type
1			Draft
2			

This Chapter applies to land off Beach Road, Berry as shown in **Figure 1** below.

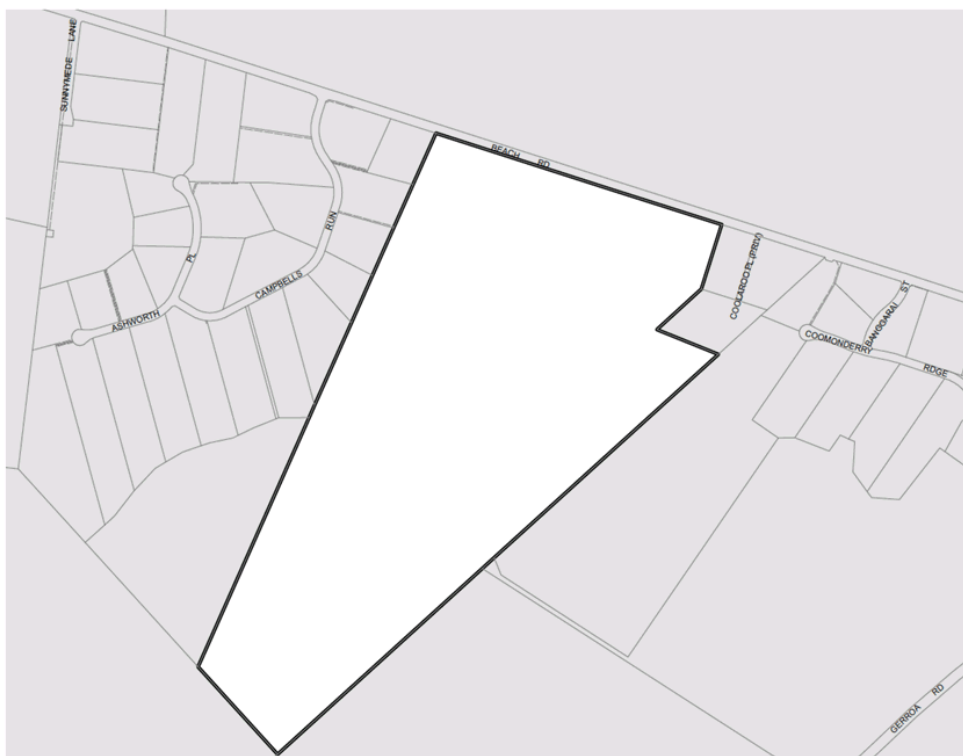


Figure 1: Subject Land Map

During the process of preparing and assessing this planning proposal, Aboriginal cultural heritage values and environmental constraints were identified. Any development of the land needs to be responsive to these values and constraints to ensure the protection of significant native vegetation, water quality and Aboriginal cultural heritage.

Shoalhaven Development Control Plan 2014

Draft Chapter N28: Berry – Beach Road

The most appropriate way to recognise these constraints was to zone the constrained land with an environmental zoning and to provide site specific **Development Control Plan** provisions.

4 Objectives

The objectives are to:

- i. Protect surface water and groundwater from environmental harm.
- ii. Protect significant **native vegetation** from environmental harm.
- iii. Protect the Aboriginal cultural heritage values of the land.

5 Controls

Performance Criteria	Acceptable Solutions
P1 Onsite effluent application areas are located to prevent contamination of surface water and groundwater.	A1.1 All effluent application areas are located outside of the exclusion area shown in Figure 2 .
P2 Buildings are located to: <ul style="list-style-type: none"> Prevent contamination of surface water and groundwater. Ensure that bushfire asset protection zones can be accommodated without the need to remove significant native vegetation. 	A2.1 All buildings are located outside of the exclusion area shown in Figure 3 .
P3 Areas that are likely to have Aboriginal objects are appropriately assessed and managed.	A3.1 Development on land within the investigation area shown in Figure 4 only occurs after: <ul style="list-style-type: none"> Satisfactory completion of an Aboriginal Cultural Heritage Assessment; and If necessary, the issue of an Aboriginal Heritage Impact Permit.

Shoalhaven Development Control Plan 2014

Draft Chapter N28: Berry – Beach Road

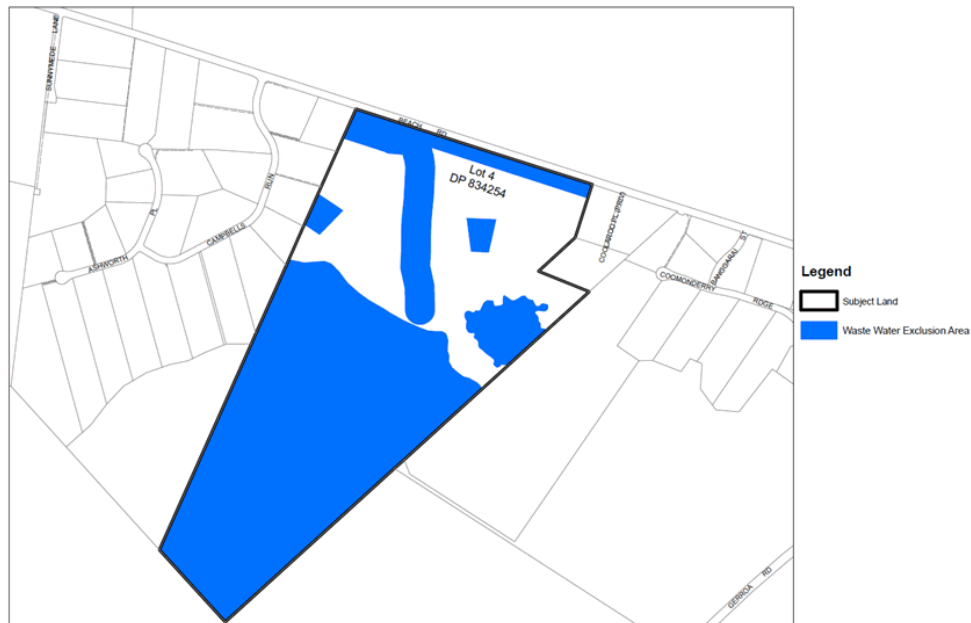


Figure 2: Waste Water Exclusion Map



Figure 3: Building Exclusion Map

Shoalhaven Development Control Plan 2014

Draft Chapter N28: Berry – Beach Road



Figure 4: Aboriginal Heritage Investigation Area Map

6 Advisory Information

6.1 Other legislation you may need to check

Council Policies & Guidelines	<ul style="list-style-type: none"> • Nil
External Policies & Guidelines	<ul style="list-style-type: none"> • On-site Sewage Management for Single Households, Environmental and Health Protection Guidelines, 1998 • Planning for Bushfire Protection, 2018 • The Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW, 2010
Legislation	<ul style="list-style-type: none"> • Shoalhaven Local Environmental Plan 2014

DE19.19 Draft Planning Proposal - Review of Subdivision Provisions - Shoalhaven LEP 2014

HPERM Ref: D19/59990

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Review of Subdivision Provisions Planning Proposal (PP027) (under separate cover)

Purpose / Summary

Obtain endorsement to submit the Review of Subdivision Provisions Planning Proposal (PP027) to the NSW Department of Planning and Environment (DP&E) for a Gateway determination.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the Review of Subdivision Provisions Planning Proposal (PP027) (Attachment 1) and submit it to the NSW Department of Planning and Environment for a Gateway determination.
2. Following receipt of the Gateway determination, exhibit PP027 as per legislative and Gateway determination requirements.
3. Receive a further report following the conclusion of the public exhibition period.
4. Advise key stakeholders of this decision, including relevant Community Consultative Bodies and Development Industry representatives.

Options

1. As recommended.

Implications: This is the preferred option as it will enable Council to respond to the changing nature of medium density development and subdivision through an amendment to Shoalhaven LEP 2014. The amendment will also involve rezoning 718 lots that are currently zoned R2 Low Density Residential to R5 Large Lot Residential to adequately reflect the prevailing large lot character of the land. Further, medium density development in the localities of Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach and Durras North which are subject to flooding, bushfire, isolation and servicing constraints, will also be better managed via the development assessment process following their proposed exclusion from Low Rise Medium Density Housing Code (the Code) in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could postpone the amendments to Shoalhaven LEP 2014. In this regard it is noted that this matter has already been the subject of two (2) Councillor briefing workshops and a forum with Development Industry representatives.

3. Not adopt the recommendation.

Implications: This could stop or postpone the implementation of amendments to Shoalhaven LEP 2014. This option is not preferred as the relevant subdivision provisions in Shoalhaven LEP 2014 may not be amended and 718 large residential lots across Shoalhaven will retain a R2 Low Density Residential zone which does not adequately reflect the prevailing large lot character of the land. Further, medium density development in the localities of Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach and Durras North may be considered under the complying development process, which raises concerns in relation to flooding, bushfire, isolation and servicing constraints.

Background

Shoalhaven LEP 2014 includes a number of provisions relating to the subdivision of land which address the three main titling systems; Torrens, strata and community.

Following the commencement of Shoalhaven LEP 2014 in April 2014, there has been some concern that the current Torrens minimum lot size provisions are too large for certain approvable medium density development in urban zoned areas. In response, strata and community subdivision has increased in popularity as there are limited lot size restrictions for these titling options. Under Shoalhaven's current LEP provisions, relevant existing residential development in an R1, R2, B4 or SP3 zone can be strata or community subdivided with resulting lots being less than that prescribed by the relevant minimum lot size map.

Shoalhaven LEP 2014 also enables the Torrens subdivision of medium density development in relevant circumstances via a number of principal development standards in the plan as outlined in **Table 1**.

Table 1: Medium density Torrens subdivision provisions in Shoalhaven LEP 2014

Shoalhaven LEP 2014 Clause	Minimum lot size for subdivision						
4.1 Minimum subdivision lot size	Torrens only. As per the associated lot size maps. Subdivision can occur prior to development.						
4.1A Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing	<p>Enables Torrens lots smaller than prescribed by clause 4.1. Subdivision can only occur after development has been carried out.</p> <p>Dual occupancy:</p> <table border="1"> <thead> <tr> <th>Area identified on the lot size map</th><th>Minimum area</th></tr> </thead> <tbody> <tr> <td>Area 1: Bomaderry, North Nowra, Nowra, West Nowra, Worrigea, South Nowra, St Georges Basin, Sanctuary Point, Huskisson, Vincentia, Sussex Inlet, Mollymook Beach, Mollymook, Ulladulla.</td><td>350m²</td></tr> <tr> <td>Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.</td><td>400m²</td></tr> </tbody> </table> <p>Multi dwelling housing:</p> <ul style="list-style-type: none"> R1 zone – 350m². 	Area identified on the lot size map	Minimum area	Area 1: Bomaderry, North Nowra, Nowra, West Nowra, Worrigea, South Nowra, St Georges Basin, Sanctuary Point, Huskisson, Vincentia, Sussex Inlet, Mollymook Beach, Mollymook, Ulladulla.	350m ²	Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.	400m ²
Area identified on the lot size map	Minimum area						
Area 1: Bomaderry, North Nowra, Nowra, West Nowra, Worrigea, South Nowra, St Georges Basin, Sanctuary Point, Huskisson, Vincentia, Sussex Inlet, Mollymook Beach, Mollymook, Ulladulla.	350m ²						
Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.	400m ²						
4.1C Exceptions to minimum subdivision lot sizes for certain residential development	<p>Enables Torrens lots smaller than prescribed by clause 4.1. Single application in the R1 zone that considers both:</p> <ul style="list-style-type: none"> Subdivision of land into 3 or more lots; and 						

- Erection of dwelling house, attached dwelling or semi-detached dwelling on each lot resulting from the subdivision where each lot is greater than 350m².

Generally, it is unusual for medium density development to be Torrens subdivided at present under clause 4.1 of Shoalhaven LEP 2014. Torrens subdivision will usually occur under clause 4.1A or 4.1C depending on the land use type. Importantly, a subdivision of this nature occurs either after the development has been carried out, or where the subdivision and actual development is considered in a single application.

In June 2016, Council staff undertook a review to consider, in part, the appropriateness of Torrens, community and strata title subdivision of dual occupancy development. The review essentially concluded that the actual subdivision and its form does not change the appearance of development as it usually occurs later. However, consideration should be given to the timely inclusion of revised design controls in Shoalhaven Development Control Plan (DCP) 2014 to improve the standard of the finished development. As such, Council has recently adopted [Chapter G13](#) of Shoalhaven DCP 2014 which provides revised design provisions for medium density development (including dual occupancy development).

Inevitably most medium density development will be subdivided at some point and it would be unreasonable to not allow this, particularly given that the physical development exists in most cases. If there are limited restrictions for strata and community title subdivision, the inequity of not allowing Torrens subdivision is questioned. There appears to be little point in permitting medium density development in urban areas and not allowing its possible subsequent subdivision under the Torrens system, provided the relevant outcomes are met. As such, the draft planning proposal (PP) seeks to lift the restriction on the subdivision of medium density development via the Torrens system.

In response to removing Torrens restrictions for lawful medium density development, it is also considered prudent to set a minimum lot size prior to the erection of a medium density development to assist the outcome in this regard.

Thus, on 17 July 2017, Council's Development Committee resolved (MIN17.611) to prepare a PP to amend Shoalhaven LEP 2014 to facilitate this.

In setting minimum lot sizes, the appropriateness of an R2 Low Density Residential zoning for certain large lot residential land in Shoalhaven was questioned. The PP therefore proposes to also rezone certain R2 land to R5 Large Lot Residential. The exclusion of certain residential land from the Code was also explored and six villages are proposed for exclusion.

The intent and content of the PP has been refined following two Councillor workshops (15 October 2018 and 10 December 2018) and a Forum with key Development Industry representatives on 5 November 2018.

Planning Proposal (PP027)

The draft PP (**Attachment 1**) intends to amend Shoalhaven LEP 2014 as outlined in **Table 2** below. The table contains a summary of each proposed change and related commentary. The draft PP contains further detail.

Table 2: Explanation of PP027 Provisions – Shoalhaven LEP 2014

Intended outcome	Commentary
Instrument	
Include a new sub clause in clause 4.1 to clarify that for the purpose of calculating the area of a battle-axe lot, an access handle is excluded	There is a need to clarify in the LEP that although the Lot Size Map specifies a minimum lot size for subdivision, the calculation of lot size for battle axe lots is to exclude the access handle.

from the calculation.	<p>The exclusion of access handles from the calculation of lot size ensures that lots have sufficient area to accommodate future development including requirements for setbacks, private open space, car parking etc. Battle-axe lots also do not benefit from the public open space (such as the nature strip) that lots fronting onto a road benefit from.</p> <p>Various Standard Instrument LEPs across NSW contain a similar subclause.</p>												
<p>Replace existing clause 4.1A with a minimum lot size for the parent lot prior to the erection of a dual occupancy, manor house, multi dwelling housing, multi dwelling housing (terraces) or residential flat building.</p> <p>New clause 4.1A also seeks to lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development.</p>	<p>Following the review, the focus has changed from a minimum lot size for the resulting subdivision to a minimum lot size approach for the erection of medium density development.</p> <p>A minimum lot size for the ‘parent lot’ is proposed, as follows:</p> <table><tr><th>Column 1</th><th>Column 2</th><th>Column 3</th></tr><tr><td>Dual occupancy (attached)</td><td>Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village</td><td>500 square metres</td></tr><tr><td>Dual occupancy (detached)</td><td>Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village</td><td>700 square metres</td></tr><tr><td>Multi dwelling housing Multi dwelling housing (terraces) Manor house Residential flat building</td><td>Zone R1 General Residential; Zone R3 Medium Density Residential; Zone RU5 Village</td><td>900 square metres</td></tr></table> <p>The proposed clause 4.1A is similar to the NSW Government’s Standard Instrument model provision 4.1B Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings.</p> <p>The clause will also enable Council to respond to the Code, specifically clauses 3B.8, 3B.21 and 3B.33, by setting a minimum lot size which can be applied to medium density complying development.</p> <p>The proposed clause will also act to lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development (excluding residential flat buildings).</p> <p><i>Note: The table does not include a minimum lot size for a dual occupancy (attached or detached) in the R3 zone to avoid conflict with current clause 4.1B. The purpose of clause 4.1B is to retain larger sites where</i></p>	Column 1	Column 2	Column 3	Dual occupancy (attached)	Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village	500 square metres	Dual occupancy (detached)	Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village	700 square metres	Multi dwelling housing Multi dwelling housing (terraces) Manor house Residential flat building	Zone R1 General Residential; Zone R3 Medium Density Residential; Zone RU5 Village	900 square metres
Column 1	Column 2	Column 3											
Dual occupancy (attached)	Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village	500 square metres											
Dual occupancy (detached)	Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village	700 square metres											
Multi dwelling housing Multi dwelling housing (terraces) Manor house Residential flat building	Zone R1 General Residential; Zone R3 Medium Density Residential; Zone RU5 Village	900 square metres											

DE19.19

	<i>possible/relevant for higher density development and as such, existing clause 4.1B prescribes a <u>maximum</u> lot size for a dual occupancy development in the R3 zone.</i>
Amend clause 4.1C relating to dwellings, attached dwellings and semi-detached dwellings to reduce the minimum lot size for resulting lots to 300m ² .	<p>Clause 4.1C of Shoalhaven LEP 2014 enables the Torrens subdivision of dwellings, attached dwellings and semi-detached dwellings to a minimum lot size of 350m², where there is a single application for both construction and subdivision (i.e. integrated development with 3 or more lots) in the R1 General Residential zone. This numerical standard is considered to be overly onerous in the R1 zone as it limits the ability to achieve the clause objective “to encourage housing diversity”.</p> <p>A reduction in the minimum lot size of resulting lots to 300m² would be more consistent with the Codes SEPP Subdivision Code, as well as a number of other comparable and surrounding council Standard Instrument LEPs (e.g. Eurobodalla, Goulburn-Mulwaree, Maitland).</p>
Include term ‘battle-axe’ in the Dictionary.	The proposed amendment to Clause 4.1 introduces the term “battle-axe lot” into Shoalhaven LEP 2014 for the first time. As such, it is considered important to define this term. A number of other Councils’ Standard Instrument LEP’s contain a similar definition.
Mapping	
Amend all relevant Lot Size Maps to remove the clause 4.1A layer.	The deletion of the clause 4.1A layer supports the deletion of existing clause 4.1A.
Rezone certain R2 Low Density Residential land in the following locations to R5 Large Lot Residential: Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worrowing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie.	<p>In setting the minimum lot sizes in this regard, the appropriateness of an R2 Low Density Residential zoning for certain large lot residential land in Shoalhaven was questioned.</p> <p>The subject land in question was predominantly zoned for rural residential or low density residential under the previous Shoalhaven LEP 1985. These lots were characterised as having a limited range of permissible land uses and relatively large lot sizes. Through the draft Shoalhaven LEP 2009 process, the land was initially proposed to be zoned R5 Large Lot residential.</p> <p>All the land was however ultimately zoned R2 through the finalisation of SLEP 2014 predominantly due to Council’s concerns regarding the ability for landowners to clear their land. The Native Vegetation Act 2003 (NV Act) placed a number of restrictions on R5 land that were considered onerous. As a result of the recent Biodiversity Reforms, the NV Act has been repealed and there are generally fewer restrictions for clearing trees/vegetation on R5 land, than there are on R2 land. Refer to the “Risk Implications” section of this Report for further commentary.</p> <p>It is also noted that an R5 zoning would trigger clause 4.2D of SLEP 2014 which requires a lot to have a dwelling entitlement prior to the erection of a dwelling house or dual occupancy (4.2D(3)). This clause also considers replacement dwellings (4.2D(5)). It is intended that all lots would retain a dwelling entitlement in this regard.</p>

	<p>As the land continues to depict low density large lot characteristics, it is an appropriate time to reconsider the zoning of this land to maintain this character into the future.</p> <p>The proposed mapping can be viewed at Section 5 (Part 4) of the draft PP at Attachment 1.</p>
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The draft PP (**Attachment 1**) also intends to amend the Codes SEPP as outlined in **Table 3** below.

Table 3: Explanation of PP027 Provisions – The Codes SEPP

Intended outcome	Commentary
<p>Exclude certain land in the following locations from the Code via Schedule 5 ('Complying Local Exclusion' mapping):</p> <ul style="list-style-type: none"> Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North. 	<p>It is considered that the Code is appropriate for application in the majority of Shoalhaven's 49 towns and villages; however, there are six locations subject to significant constraints, including flooding, bushfire, isolation and servicing constraints, that would benefit from an exclusion to the Code.</p> <p>This means that complying development for medium density forms of development could not be considered under the Code; however, medium density development may still be considered via the development applications stream.</p> <p>Detailed justification in support of the exclusion areas can be viewed at Section 3.2 of the draft PP at Attachment 1; and the proposed mapping can be viewed at Section 5 (Part 4).</p>

Conclusion

The PP will enable the existing provisions in Shoalhaven LEP 2014 to be refined and brought in line with industry expectations, whilst responding to recent amendments to NSW Government medium density policy.

The recommendation will enable the PP to be submitted to DP&E for a Gateway determination.

Community Engagement

Preliminary Consultation

On 5 November 2018, Council staff held a Forum with key Development Industry representatives to gauge industry opinion regarding the scope of this PP. Of the 87 representatives invited, 13 attended (15%); with Councillors Digiglio, Watson and Gash also in attendance.

Following the Forum, a copy of the presentation was sent to all industry attendees providing further opportunity to consider the content and provide feedback. Three submissions were received as a result.

The matters raised in the Forum and subsequent submissions were discussed at the 10 December 2018 Councillor briefing, and have in part informed the intent and content of the PP.

Public Exhibition

Subject to a favourable Gateway determination, the PP would be formally exhibited for comment in accordance with Council's Community Engagement Policy to 'inform' and 'consult', and the relevant legislative requirements. The documentation would be exhibited at the Nowra Administrative Building for a period of at least 28 days. Documentation would also be available on Council's website and at the Ulladulla Administrative Building.

The Gateway determination would also potentially specify any government agencies with whom Council must consult.

Community Consultative Bodies (CCBs) and Development Industry representatives would also be advised of the future formal exhibition arrangements. This will give the Development Industry (and others) a further opportunity to provide input in this regard before the matter is finalised.

Policy Implications

The proposed new clause 4.1A represents a change in how medium density development and subdivision is considered in Shoalhaven. It is noted that the approach of setting a minimum lot size prior to medium density development is well documented throughout NSW and was generally supported by the Development Industry representatives who attended the 5 November 2018 Forum.

Financial Implications

Based on the recommended approach, there are no immediate financial implications for Council as this matter is being resourced within the existing Strategic Planning budget.

Risk Implications

Rezoning – Biodiversity

Approximately 45 (6%) of the 718 lots proposed to be rezoned to R5 are constrained by the NSW Office of Environment & Heritage's (OEH) [Biodiversity Values Map](#). Unlike R2 land, any R5 land identified as having Biodiversity Values may need to apply the Biodiversity Assessment Method (BAM) to assess the associated impacts. This will determine whether a proponent would be required to enter the Biodiversity Offsets Scheme (BOS) or not. Application of the BAM must be completed by an "accredited person" under the *NSW Biodiversity Conservation Act* and entry into the BOS may involve a cost and delay in processing for applicants, with any credits generated having to be "retired" prior to a development commencing. It is noted that a BAM assessment is not required if the development is located beyond the Biodiversity Values area identified on the Biodiversity Values Map. This is an important qualification and for this reason, the majority of the 45 lots should be relatively unaffected. A limited number of lots at Bangalee, Worroving Heights and St Georges Basin are more heavily constrained by Biodiversity Values; however, it is likely that these lots would be captured by the other threshold levels (e.g. area clearing threshold and 'test of significance') which would result in the same outcome (i.e. application of the BAM and offsetting required). Note: A landowner may request that OEH review the Biodiversity Value layer of their land with sufficient justification.

Recently land in stage 1A of the Tallimba Road, Bangalee subdivision has been certified under clause 34A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017. This means that land in this location now has an exemption from the *Biodiversity Conservation Act 2016* and future development will be assessed under the former planning provisions (i.e. NV Act and *Threatened Species Conservation Act 1995*). As such, this land will not be adversely impacted by the proposed rezoning.

Excluding certain land from the Code

There are six locations across Shoalhaven (Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North) that are subject to significant constraints, including flooding, bushfire, isolation and servicing constraints. The PP seeks to exclude these locations from the Code via Schedule 5 ('Complying Local Exclusion' mapping) which will enable associated risks to be more closely managed via the development assessment process.

DE19.20 Sustainability Program Update

HPERM Ref: D19/58433

Group: Planning Environment & Development Group
Section: Environmental Services

Attachments: 1. Sustainability Advantage - Management Diagnostic - Sustainability Workshop - Action Plan Report SCC Feb 19 - FINAL - 12 March 2019 [↓](#)

Purpose / Summary

To provide an update to Council regarding the Sustainability Advantage Program and the outcome of the NSW Office of Environment & Heritage (OEH) Management Diagnostic (Sustainability Workshop).

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the recommendations outlined in the report – Attachment 1.
2. Endorse the development of a Sustainability Policy for Council.
3. Endorse the development of a Sustainability Action Plan for Council.
4. Authorise the General Manager (Director Planning, Environment & Development) to establish a reference Group consisting of interested Councillors and appropriate staff to advance 1, 2 and 3 above, and that at least quarterly progress reports are provided to Council.

Options

1. Adopt the recommendations in the report

Implications: Adopting key recommendations made in the report would improve integration, coordination and the effectiveness of sustainability across the organisation. It will allow Council to endorse a reference Group composed of Councillors, senior management and key members of staff to further develop a Sustainability Policy that is consistent with the organisation's core values and community's needs. The development and implementation of a Sustainability Action Plan will then follow, with a long-term focus on being economically conservative, improving the local environment and supporting development within the Shoalhaven community.

2. Adopt an alternative recommendation

Implications: This would have varied implication(s) depending on the nature of the alternative recommendation.

Background

The Sustainability Advantage Program is coordinated through the NSW Office of Environment & Heritage (OEH) and is assisting Local Governments, non-government organisations (NGOs) and businesses across New South Wales to achieve increased competitiveness and improved bottom lines through resource efficiency, staff engagement and sustainable business planning.

‘Sustainability Advantage’ has been running for over a decade, and now has participation from over 500 organisations (including Councils), providing a broad support network for organisations to strategically plan and work effectively to achieve sustainable resource management and improved environmental outcomes. OEH report that participants are saving a combined \$95 million a year through the program:

<https://www.environment.nsw.gov.au/sustainabilityadvantage/>

Shoalhaven City Council has been an active member in Sustainability Advantage over the last 12 months, joining the program in March 2018. A Strategic Review of Council’s Sustainability Program was provided to Council in November 2018 – providing broad analysis of Council’s approach to sustainability and subsequent recommendations to improve the focus of sustainability across the organisation.

Council resolved on 18 December 2018 (MIN18.953) to hold a Management Diagnostic (Sustainability Workshop) facilitated by a Senior Project Officer from the NSW Office of Environment & Heritage. The intention of the Workshop was to identify key issues, actions and priorities for the organisation surrounding its understanding and approach to sustainability.

Sustainability not only includes environmental sustainability but includes but is not limited to health, wellbeing, and economic growth, and therefore relates to services and business across the organisation and how we can deliver this in a more efficient, effective, socially, environmentally and economically responsible manner.

Progress on Actions

Management Diagnostic (Sustainability Workshop)

The NSW Office of Environment & Heritage facilitated a Management Diagnostic (Sustainability Workshop) on 4 February 2019 held at the Shoalhaven City Council Administration Building. The Workshop was attended by more than a dozen senior management level staff (attendee list provided in Attachment 1: Sustainability Advantage Management Diagnostic Action Plan Report 2019).

The purpose of the Sustainability Workshop was to share information and gain insight into Council’s understanding of and approach to local and regional sustainability, and to measure the level of focus given to sustainability throughout the organisation.

The Workshop was designed to look at sustainability across six key areas of Council:

- Leadership & Management Systems
- Customer Needs
- Procurement
- Operations
- Human Resources
- Risk & Compliance

The Management Diagnostic was conducted similarly to a SWOT analysis, to identify strengths and weaknesses, opportunities and threats, and the positive and negative factors relating to matters of local and regional sustainability across the organisation.

A question and answer session directed at senior management of Council included healthy discussion and provided substantial information and insight into the organisation’s understanding of and approach to sustainability. Examples of some of the questions included in the Management Diagnostic are shown listed below:

BUSINESS SYSTEM	EXAMPLE QUESTION	LEVEL
Leadership and management systems	'We have a written policy or statement that describes what sustainability means for our business'	2
Operations	'Data is collected and reported on regularly to measure our performance against our targets.'	3
Customer Needs	'We have a good understanding of what our customers and community want from us as a sustainable business.'	2
Human Resources	'Staff have a good understanding of how they can support our sustainability priorities and goals.'	2
Procurement and Logistics	'We give preference to suppliers that provide environmentally sustainable alternatives.'	3
Risk & Compliance	'We have a range of policies, procedures and programs in place to ensure we comply with all relevant environmental regulatory requirements.'	2

The diagnostic design allows an organisation to progress through a series of questions and statements in each target area of Council and allows participants (by way of a 'yes', 'no' or 'maybe' as a response). These responses, and subsequent discussions, reflected the extent to which sustainability is integrated into Council's key functions and processes. As shown in Attachment 1, Council's performance in the diagnostic is reflected in the results.

Results & Key Findings

The results of the management diagnostic workshop identified a number of strengths:

- Council has implemented a number of innovative sustainability projects across the organisation such as the REMS scheme and the proposed state-of-the-art resource recovery facility
- Ongoing examples of productivity improvements
- Strong sustainability engagement with the local community

Some of the key findings from the workshop include:

- On a scale of 1 to 5, where 1 is the lowest score and 5 is the highest, Council scored between 1 and 3 across all six key areas ('low to average').
- Although Council's performance in the diagnostic was 'low to average' and indicates room for improvement in almost all areas, the overall score was an accurate reflection of Council's understanding of and approach to sustainability – this allows for areas needing improvement to be highlighted and addressed.
- Compared to other regional Councils in NSW, Shoalhaven City Council's progress on sustainability is largely reactive. This creates an opportunity for Council to take a strategic and proactive approach by setting meaningful sustainability objectives that are bound by achievable targets resulting in substantial improvements across the organisation.
- Renewed commitment to local and regional sustainability from senior management is required.
- The organisation does not have a definition of sustainability. This prevents effective planning and delivery of coordinated sustainability initiatives.
- Council has demonstrated that it does have the capacity to develop effective local and regional sustainable initiatives through, for example, the Waste Management

Service's Proposed Resource Recovery Facility (using a mechanical heat treatment process), the implementation of Shoalhaven Water's REMS Scheme and the Disability Inclusion Action Plan.

- Council has demonstrated the ability to develop and implement effective local and regional sustainable procurement policies and procedures. There may also be room for improvement through amending this policy to allow Council to better support local businesses.
- Communication of Council's sustainability priorities and initiatives ought to be communicated more effectively to new staff and contractors. Sustainability training for key staff could be beneficial in spreading sustainability throughout the organisation. Recognition of staff who actively support and develop sustainability initiatives through a rewards program would increase staff engagement and encourage sustainability through the organisation.
- Ongoing, and perhaps increased support from Council and senior management for community-led sustainability programs would maintain, and potentially increase, the level of community engagement.
- Broad targets were set for energy and water quite some time ago; the need to update these targets is long overdue.
- Energy and water data on specific Council-owned facilities (Pools, Visitor Centre, Shoalhaven Water Assets) is provided to Council on a quarterly basis through Planet Footprint. However, the analysis of data and Council's overall energy performance has not been conducted – this point was raised (and agreed upon) by senior management at the Workshop who described this as a 'missed opportunity' for Shoalhaven Water's Energy Management team who are currently contracted short-term to analyse and improve Council's overall water and energy performance off the back of having full access to such data.
- The need to conduct regular audits of water, energy and waste is essential to identify areas for improvement and quantify the cost and material savings of said improvements – this was also described as a missed opportunity by senior management.
- Council staff value the need for additional resources to implement effective local and regional sustainability initiatives through the development of a strong business case quantifying cost and material savings.
- The most effective approach to developing and achieving sustainability goals and targets must be made from a local/regional perspective. This should be done by assessing the needs of the local region, the local environment and the local community. This would ensure goals and targets are directly related to local and regional needs.
- Council could investigate the use of the United Nations' Sustainable Development Goals as part of a regional project with the Illawarra Shoalhaven Joint Organisation (ISJO), for example, to determine if they are relevant or applicable to our region or our community.
- Effectively, the best approach to creating local/regional sustainable goals and/or targets, would be to use an internal reference group comprised of Councillors, Senior Management and key staff to work together and plan, develop and implement relevant, applicable and achievable targets and goals that best serve the local community, the local environment, and our Council.

These findings provide a summary of areas where Council is doing well, and highlights opportunities. A coordinated approach by a cross-section of key staff, management and

Councillors would be required to adequately address sustainability matters for Council and the community.

Recommendations

The key findings from the Management Diagnostic Summary Report are consistent with those contained within the Strategic Review provided to Council in November 2018. The key recommendations highlight the need for a management-led, management-supported local sustainability policy and local sustainability action plan that covers all aspects of the organisation, the community and the environment.

There is a strong emphasis on the need for 'sustainability' to be defined (what it means to our Council), a Policy and Action Plan to be developed from a local/regional point of view and implemented on a local level. Additionally, the development and implementation of a sustainability policy and action plan/strategy is fast becoming the industry standard in the local government sector, with many Councils becoming increasingly aware of the value sustainability can have in their communities.

The key recommendations include:

- Definition of Sustainability (to reflect local sustainable development priorities)
- Sustainability Policy (Link to Core Values and CSP)
- Sustainability Action Plan (Link to Community Strategic Plan)

The need for Council to have a clear and defined understanding of sustainability, a policy to support that understanding, and an effective plan that will assist in the delivery of 'smart' objectives, achievable outcomes with substance on a local level is required to achieve the following:

- Increased environmental performance
- Increased economic savings
- Increased eligibility for grant funding (e.g. *Increasing Resilience to Climate Change; Building Better Regions Fund; Environmental Trust; Coastal & Estuary Grants etc.*)
- Increase the organisation's ability to demonstrate resilience, adaptability and strength
- Reduction of waste generation
- Efficient and effective resource use
- Protection, restoration and improvement of natural assets
- The opportunity to demonstrate corporate leadership to our community
- The opportunity to become a regional leader in sustainability

The outcome of the management diagnostic and subsequent summary report have identified key areas of Council business and operations that are doing well in terms of sustainability, in addition to identifying priority areas that require improvement. These recommendations provide direction in achieving such improvement.

The Workshop has prioritised the need for management action to be one of the key drivers in moving sustainability through the organisation. The need for these actions to be developed and implemented from the 'top-down' is essential if Council is to achieve effective and positive sustainability outcomes for Council, the local community and the environment.

The development and adoption of a corporate Sustainability Policy which would cover the three pillars of social, economic and environmental performance is therefore a key recommendation. The development and implementation of a Sustainability Action Plan would

include action on priority areas with measurable key performance indicators (KPIs) and achievable sustainability targets.

This report recommends that Council proceed to endorse a reference Group composed of Councillors, senior management and key members of staff to further develop a Sustainability Policy that is consistent with the organisation's core values and community's needs. The development and implementation of a Sustainability Action Plan should then follow, with a long-term focus on being economically conservative, improving the local environment and supporting development within the Shoalhaven community.

Community Engagement

There will be opportunity for community engagement through Council staff and stakeholder consultation and could include a variety of community forums to assist in strategic decision making, the identification of priorities for future sustainable planning, development and implementation.

Policy Implications

A reference group to be formed to begin the development of a local sustainability policy which reflects a clear understanding of sustainability held by staff and Councillors.

Financial Implications

The long-term objective of the policy will be to assist staff in responsible resource use while being environmentally mindful, resulting in substantial cost and material savings while looking after our local natural environment.

Risk Implications

Failure to introduce a coordinated focus on sustainability through the implementation of an effective sustainability policy and action plan runs the risk of missing out on potential economic savings for the organisation (including grant funding), the opportunity to be a regional leader in environmental performance and demonstrate corporate leadership to our community.

Action Plan Report

Shoalhaven City Council

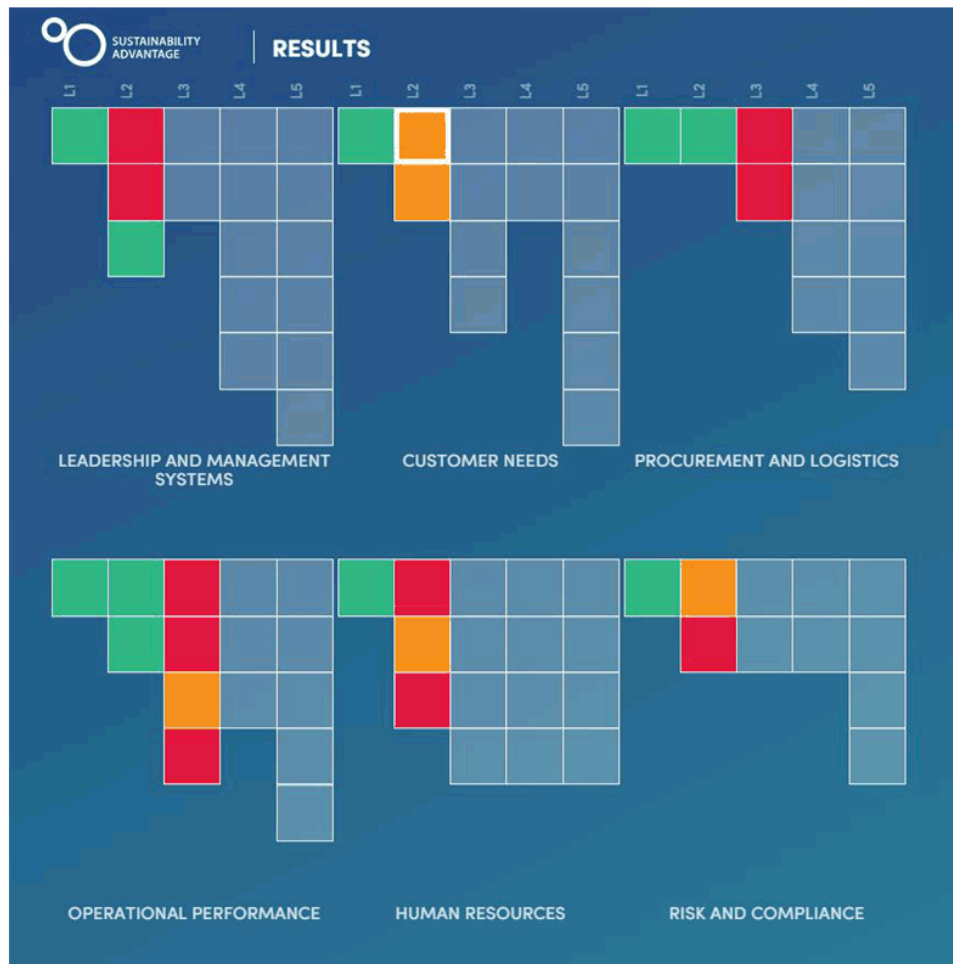
3 February 2019



Shoalhaven City Council Offices, Nowra.

Attendees:

Jane Lewis: Finance Corp & Community, Section Manager	Trevor Cronk: Assets & Works, Unit Manager – Property
Phil Costello: Planning, Environment & Development, Group Director	Luke Mckee: Planning, Environment & Development, Sustainability Coordinator
Michael Pennisi: Finance Corp & Community Chief Financial Officer	Darren O'Connell: Shoalhaven Water, Energy Coordinator
Kristy O'Sullivan: Planning, Environment & Development, Strategic Planner	Peter Knill: Assets & Works Section Manager - Project Delivery & Contracts
Eric Hollinger: Planning, Environment & Development Coordinator	Kelie Clarke: Planning, Environment & Development, Section Manager – Planning, Environment & Development
Paul Keech: Assets & Works Group Director, Assets & Works	Jessica Rippon: General Manager Executive Manager – Communications
Alison Mcvey: Planning, Environment & Development Team Supervisor – Sewage Management	Alasdair Stratton: Planning, Environment & Development Unit Manager – Natural Resources & Floodplains
Michael Smith: Planning, Environment & Development Team Leader - Environmental Planning & Assessment	Greg Pullen: General Manager, Manager - Economic Development
Colin Wood: Planning, Environment & Development, Section Manager – Building & Compliance	Richard Birdsey: OEH
Catherine Bern: Planning, Environment & Development, Section Manager - Development Services	



Action Plan

Category	Lvl.	Current Situation	Tgt.	Key Actions	Mod.	Priority
Leadership and management systems	1 Basic	You want your organisation to be more sustainable but are unsure of what this means, what you need to do and where the priorities should be.	2 Reactive	Get your CEO and management team to give your sustainability program the resources it needs. Develop a sustainability program for your organisation with clear targets, actions and priorities. Form a team from across your organisation to implement your sustainability program and to achieve your targets.	BPS	High
Customer needs	1 Basic	You have some information on the sustainability of your products and have some idea of what your customers want or expect from your business. There are opportunities in collecting basic information on your goods or services, developing simple written materials about your products and gaining a better understanding of what your customers expect.	2 Reactive	Develop information on the sustainability performance of your business. Develop information on the sustainability performance of your products and services for staff, customers and the public.	ESE	High
Procurement and logistics	2 Reactive	You've started to move to a sustainable supply chain by incorporating basic environmental considerations in your purchasing decisions and developing simple guidance for procurement staff. Some of these actions are ad-hoc.	3 Proactive	Develop detailed sustainability procurement guidelines and train your procurement staff in their use. Encourage suppliers to provide sustainable alternatives where possible.	SCM	Medium

Operational performance	2 Reactive	You've begun to improve your operational performance by collecting resource consumption data and identifying opportunities to reduce wastage of energy, water and materials. Resource efficiency initiatives are identifying opportunities to reduce waste and you are making savings in cost and materials.	3 Proactive	Set specific numerical targets to reduce energy, water and raw material use and waste generation. Report metrics and cost savings from resource productivity initiatives to management. Conduct regular audits of energy, water and resource use and waste generation to identify more resource productivity improvements. Quantify the material and dollar savings of all your energy, water and waste reduction projects.	RP	High
Human resources	1 Basic	Staff currently know a little about how sustainability relates to their work or your business. You encourage them to think about sustainability informally but you don't know what key issues they need to know about are and how staff could be engaged about them.	2 Reactive	Communicate your sustainability priorities and program to staff and explain them in induction training for new staff and contractors. Train key personnel on sustainability at work. Provide information on your sustainability program to all staff and contractors. Engage staff in your sustainability program by developing a scheme to recognise and reward people who actively supporting and develop with innovative sustainability initiatives.	EE	High
Risk and compliance	1 Basic	You have some idea what risks your business poses to the environment and which environment, health and safety regulations you need to comply with.	2 Reactive	Compile a risk register for your business. Put in place policies, procedures and programs to ensure you comply with all relevant environmental regulatory requirements	ERR	Medium

				Develop an environmental management system or any similar ongoing process to identify, evaluate and manage risks across key parts of your business.		
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Diagnostic Notes

Background

Shoalhaven City Council (Council) has been a partner of the Sustainability Advantage program since March 2018. This report presents the findings and recommendations of a Sustainability Advantage Diagnostic workshop conducted on 3 February 2019.

Process

The Sustainability Advantage Diagnostic workshop was conducted with a range of internal stakeholders at Council, including representation from the executive leadership team, managers and operational staff who have an influence on the sustainable practices of the organisation. The workshop presented a series of sustainability-related statements to participants and sought their responses as to whether Council fulfilled the objective of the statement. These statements explore the extent to which sustainability is integrated into an organisation's key functions and processes. Through this process participants discussed their perceptions about the business' sustainability performance which helped identify gaps where focussed actions should be prioritised to progress sustainability.

Findings

The diagnostic workshop had a broad attendance from across the organisation. Through the workshop a number of strengths and opportunities for improvement were identified. In particular the following strengths were identified:

- > Council has implemented a number of sustainability projects across some service areas including some that display innovation such as the REMS facility and the proposed state-of-the-art resource recovery facility
- > Ongoing examples of resource productivity improvements
- > Strong sustainability engagement with the local community

Shoalhaven Council's progress to embedding sustainability into the organisation and processes could be described as 'basic' across most of the key business function areas as indicated in the diagram and tables above. However, Council is more progressed in procurement and operational performance and could be considered 'reactive' in these processes, reflecting recent improvements through driving efficiency, and sustainability in some major contracts. Compared with other regional and metropolitan Councils across NSW in the Sustainability Advantage program, Shoalhaven Council's sustainability progress would be slightly lagging, with many Councils

that have participated in the SA Diagnostic workshop demonstrating 'reactive' to 'proactive' embedding of sustainability across all areas. The most significant opportunity for Council going forward is to set meaningful sustainability objectives that are bound by targets to improve.

There are opportunities for Council to bring together these initiatives under the clear vision for the Council and Community to progress sustainable outcomes for the city. This will enable Council to take a more proactive and strategic approach to sustainability throughout the organisation. Ideally a strategy will leverage off the great work already done by the Council and build engagement internally and externally to the opportunities of transitioning to sustainability.

Recommendations

Council will benefit from the development of a unifying strategy for sustainability to bring together the great work being undertaken and enable a strategic and proactive approach to progressing sustainability within the resources. Developing sustainability strategies and/or plans are becoming industry standard in the local government sector as Councils increasingly understand the value of achieving ongoing and strategic savings for their communities. In addition to the actions identified in the tables above, Council should prioritise the following key actions:

1. Develop a sustainability strategy for the organisation that articulates the community and Council vision for sustainability and sets key priority areas for Council to focus and deliver. This was agreed by participants at the workshop
2. As part of the strategy, establish processes to drive continuous improvement by establishing SMART objectives and operationalising these in the Delivery program and operations plan
3. Engage proactively across Council departments and report progress to staff, the community and stakeholders

The Office of Environment and Heritage through the Sustainability Advantage program is able to provide assistance with helping Council progress with these actions.

DE19.21 Development Application No.18/1844 – 120 Macleans Point Road, Sanctuary Point – Lot 653 DP 27855

DA. No: DA18/1844/4

HPERM Ref: D19/70515

Group: Planning Environment & Development Group
Section: Development Services

Attachments: 1. Recommended Conditions of Consent (under separate cover)
2. Planning Report (under separate cover)

Description of Development: Construction of two (2) boarding houses comprising 12 boarding rooms and a manager's residence and strata title subdivision

Owner: Thunderace Holdings Pty Ltd & Second Owl Pty Ltd
Applicant: PDC Planners

Notification Dates: 8 August 2018 and 23 August 2018
28 August 2018 and 11 September 2018 to Sanctuary Point Community Pride

No. of Submissions: 7 in objection
Nil in support

Purpose / Reason for consideration by Council

On 14 August 2018 the Development Committee resolved that DA18/1844 be 'called in' to Council for determination due to the significant public interest.

Recommendation (Item to be determined under delegated authority)

That Development Application No.18/1844 be determined by way of approval subject to the imposition of suitable conditions of consent as contained in attachment 1.

Options

1. Approve the Development Application (DA) in accordance with the recommendation.

Implications: Approving the DA will enable the provision of affordable housing in an appropriate location. There are third party appeal rights through the NSW Land and Environment Court (L&EC).

2. Refuse the Development Application (DA) in accordance with the recommendation.

Implications: Council would have to provide reasons for refusal to form part of the determination. The applicant would have the ability to request a review of any refusal by Council and / or pursue an appeal through the NSW Land and Environment Court (L&EC).

3. Alternative recommendation.

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

Figure 1 – Location Map with Aerial Overlay



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Background

Proposed Development

It is proposed to construct two (2) attached boarding houses, one with seven (7) rooms and the other with five (5) rooms and a manager's residence. It is also proposed to Strata subdivide the development to create two (2) strata lots.

Lot 1 will contain the following:

- Two (2) single rooms and five (5) double rooms, including one accessible room, all of which will be self-contained. Subtotal – seven (7) boarding rooms, accommodating a maximum of twelve (12) persons.
- A communal living area.

Lot 2 will contain:

- Five (5) double rooms and one (1) manager's residence, all of which are self-contained. Subtotal – five (5) boarding rooms, accommodating a maximum of ten (10) persons, and a manager's residence.
- A communal living area.

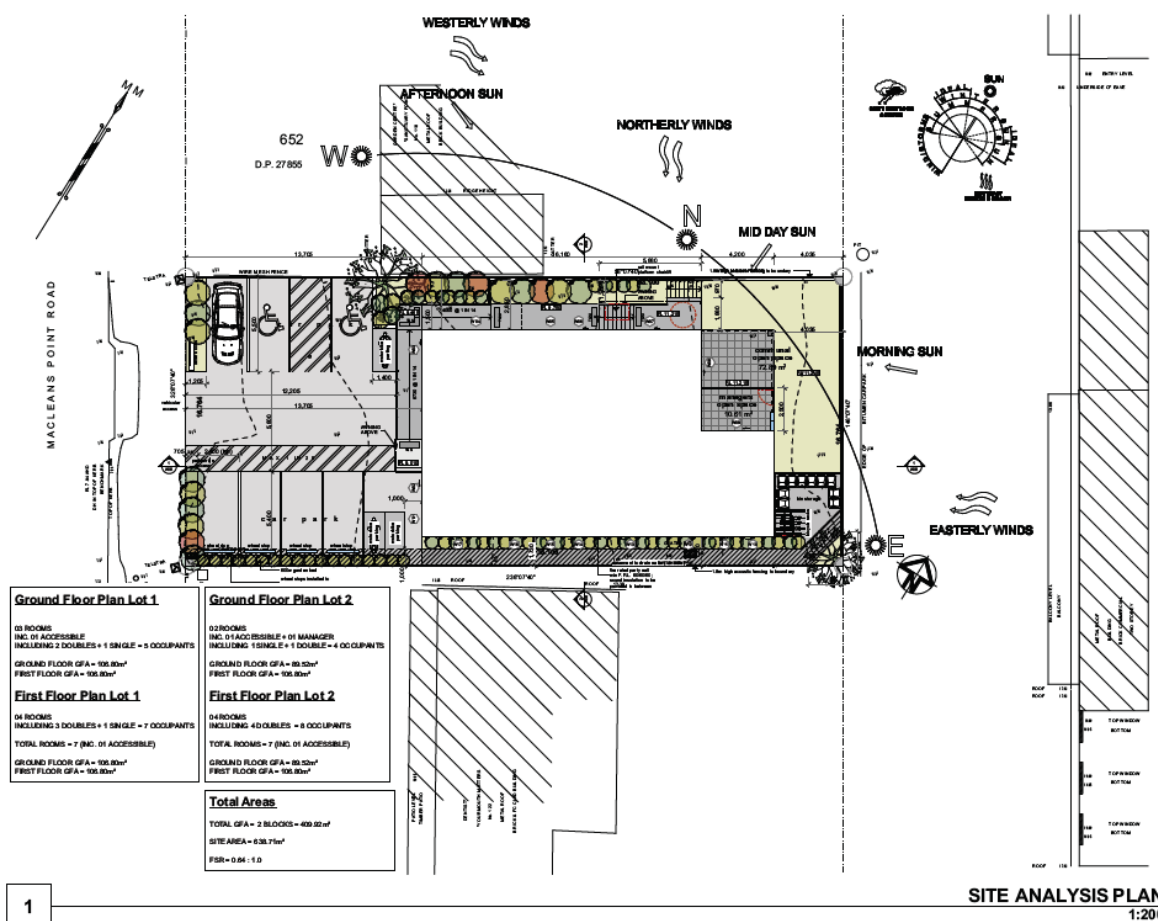
Total – twelve (12) rooms, accommodating 22 persons and a manager's residence.

The communal areas will contain the shared parking spaces, outdoor recreation areas, letterbox, bin storage, fencing and landscaping. As per the submitted plans 1.8m high

fencing is proposed along the common boundaries. The applicant has commented within the statement of environmental effects that:

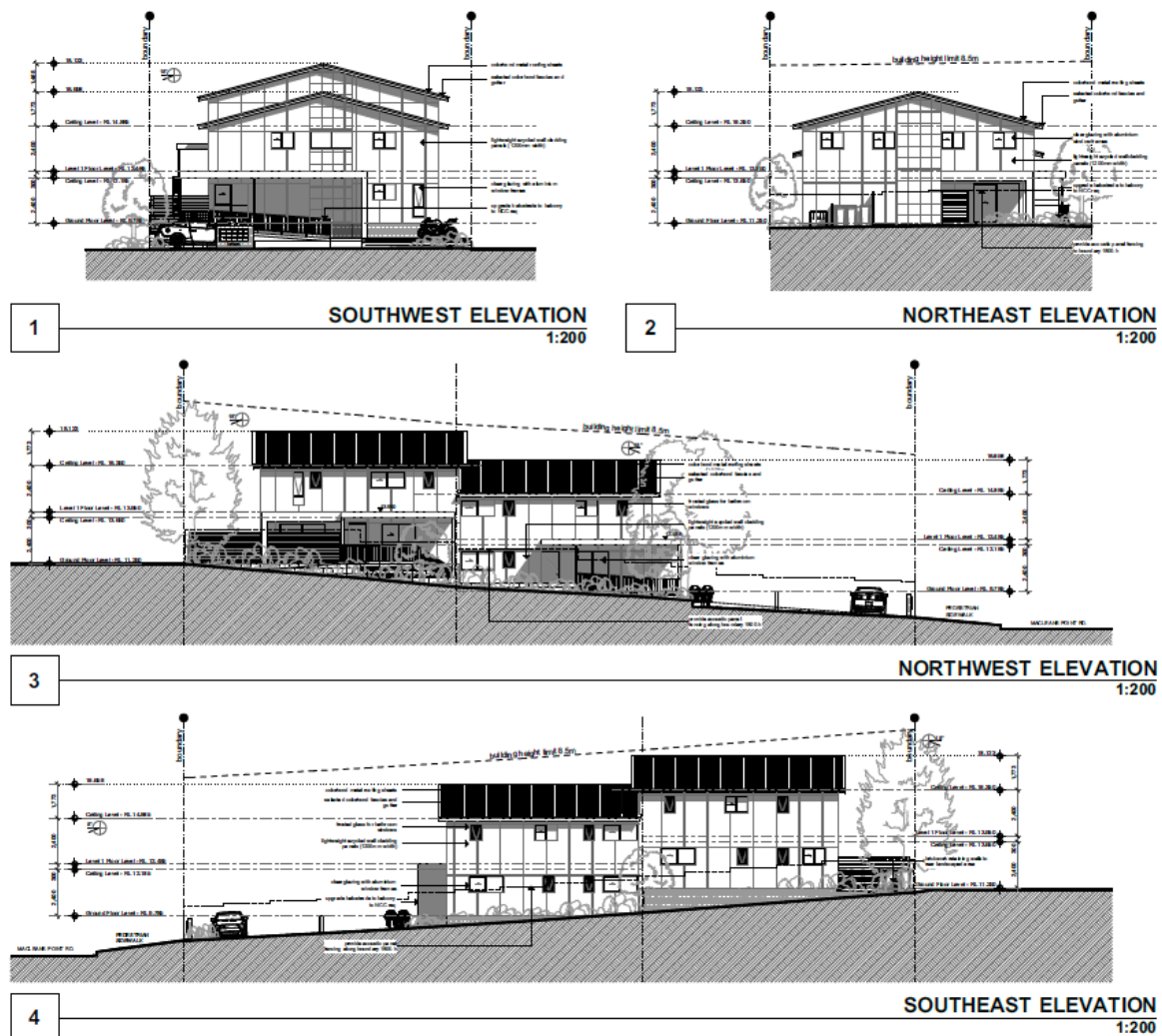
“The proposed boarding houses are intended to provide suitable accommodation for individuals and couples who are on low incomes. The proposed facilities of the boarding house ensure that all occupants are provided with a high standard of internal and external facilities.”

Figure 2 – Site Layout



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Figure 3 - Elevations



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Subject Land

- The site is rectangular in shape measuring some 639m².
- The site is vacant containing some vegetation located along the northern boundary. It is located within the B2 Local Centre zone of Sanctuary Point.
- It appears to be currently utilised as an informal access to commercial development to the east; however, there is no formal right of carriageway over the property.
- To the north, east and south are commercial developments. On the opposite side of Macleans Points Road is low density residential development.

Site & Context

The subject site is located within the town of Sanctuary Point in the B2 Local Centre zone. It is on the fringe of the commercial zone situated on the eastern side of Macleans Point Road with low density residential development opposite, comprising a mixture of single and two storey structures.

Adjoining the site to the south is a single storey structure containing a commercial use; the building is set back significantly from the front boundary with hardstand spaces for parking and access located forward of the building line. Further south (124 Macleans Point Road) is

a hairdresser operating from a single storey structure set back a similar distance to adjoining development.

To the north of the site is a retail plant nursery operating from a single storey structure located a significant distance from the front boundary with stock located forward of the building line. There is established vegetation located along the common boundary and internal to the site. Further to the north is a commercial premise operating from a single storey structure that has the 'appearance' of a dwelling house. Car parking is provided off Macleans Point Road with significant retaining walls constructed to achieve a level grade.

History

The application was lodged with Council on 30 July 2018. The site is currently vacant.

Issues

Shoalhaven Affordable Housing Strategy

The Shoalhaven Affordable Housing Strategy (the Strategy) was adopted by Council on 11 December 2017. The Strategy "provides a range of effective policy solutions to facilitate additional affordable housing across the Shoalhaven local government area". The Strategy outlines the issues of affordability in the Shoalhaven and the associated risks:

"Increasing pressure from the Sydney housing market is having a significant impact on local people, who are forced to compete in an increasingly competitive local housing market. In particular, local rents are increasing compared with local incomes in real terms, and the relative scarcity of rental accommodation at the more affordable end of the market means that real estate agents can be increasingly selective about who is housed. This is also contributing to homelessness and increasing the risk of homelessness among groups who would once have been in more secure accommodation.

Importantly, housing for purchase and rental that is affordable to very low and low income households is generally not being created through the market. Again, this is due to the increasing cost of housing and the income required to rent or purchase affordably." (pg.5)

The Strategy contains 'Locational Criteria for Affordable Housing' which preferences affordable housing within well-located areas that are close to transport and services. Ideally, housing that meets the needs of very low, low and moderate-income households should be located close to larger service centres. This has been defined by the Strategy as precincts within 400-600m of the urban areas of Nowra-Bomaderry, Vincentia and Milton-Ulladulla. In this instance the boarding houses are located in Sanctuary Point some 4.5km from the Vincentia market place and 3km from the commercial core of St Georges Basin.

With regard to public transport there is a service provided by Premier buses, departing from the Sanctuary Point shops at 6:35am, 9:30am, 1:10pm and 2:10pm to Nowra via Vincentia Marketplace from Monday to Friday; there are buses returning to Sanctuary Point departing at 3:03pm and 5:31pm from Stewart Place in Nowra. On Saturday and Sunday this is limited to a service at 9:42am in the morning and returning at 2:16pm in the afternoon.

The proposed development is considered essentially consistent with the Strategy in the provision of high quality 'new generation' boarding houses that have been designed to satisfy the requirements of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. Whilst not being within a 'well-located' area as defined under the Strategy there are sufficient public transport links to established larger commercial areas, along with the day to day services provided within Sanctuary Point, that will provide for the needs of future residents.

Shoalhaven Growth Management Strategy 2019 - 2041

This is a high level strategic document that outlines Council's vision for the growth of the Shoalhaven region over the coming decades. The document outlines a number of growth options for the region to accommodate the expected population growth as predicted by Council.

As it relates to the Jervis Bay area, Option 4 looks at accommodating future growth in existing centres by increasing densities with no further greenfield rezoning. Sanctuary Point is noted as one of those existing larger settlements that already have services in place to accommodate increased development. The proposed development is consistent with the thrust of the Growth Management Strategy.

Social Impacts

Submissions have been received during the notification period that have raised concerns with the impacts upon local businesses that may result from the proposed boarding houses.

There is the perception / assumption that the people who will reside at the boarding houses would be on some form of social welfare from the government and therefore be unemployed, amongst other things. The Shoalhaven Affordable Housing Strategy makes the following commentary regarding affordable housing and the potential residents:

"Anyone in the community could need affordable housing. This includes a young person seeking to live near where they grew up, a recently separated or divorced person with children for whom conventional home ownership may no longer be economically viable, households dependent on one (or even two) low or median waged, key worker jobs, or an older person on a reduced retirement income, including after the death of a spouse." (pg. 8)

With regard to those community concerns a review of employment data by .id (a Demographic Resource company with details of over 300 local Councils and regional authorities) revealed that Sanctuary Point had a 9% unemployment rate in 2016 compared with an unemployment rate of 6.6% for Shoalhaven City. This is a significant reduction from 2011 when the unemployment rate within Sanctuary Point was 17% compared with an unemployment rate of 7.6% in Shoalhaven City.

On the issue of concerns or fears raised by the community when considering a development application, in *New Century Developments Pty Limited v Baulkham Hills Shire Council* [2003] NSWLEC 154, his Honour Lloyd J stated:

"That the subjective fears and concerns must have a rational basis and be amenable to objective assessment in order for any significant weight to be attached to them."

In this instance the concerns raised in the public submissions regarding the potential impact of the future residents on local businesses are not able to be verified by way of 'objective assessment'.

A Boarding House Management Plan and Boarding House Rules have been submitted with the application which outline the process for applying for affordable accommodation and the management arrangement, noting that a manager's residence is proposed to facilitate a manager onsite. This includes a dispute resolution mechanism should there be issues with or between tenants of the premises. The application was referred to the NSW Police Force for comment; no concerns were raised regarding the operation of the boarding houses.

Council is satisfied that the proposed development will not result in significant adverse social impacts through the provision of affordable housing in Sanctuary Point. Conditions of consent that address the appropriate management of the boarding houses in accordance with the submitted documentation will be sufficient to mitigate potential impacts.

Variations from Shoalhaven Development Control Plan 2014

The applicant has sought several variations from planning controls contained within the Shoalhaven Development Control Plan 2014 (the DCP).

Building Envelopes

Under A1.1 of Chapter N22: Sanctuary Point Local Centre, compliance is required with the Building Envelopes referred to in the Supporting Map as outlined below:

A1.1 All development is to comply with the Building Envelopes referred to in the Supporting Map.

The building envelope for the subject site is shown in red hatching noted as 'Concept Building Envelopes Only' with the built form to be focussed along the southern boundary and continuing into the adjoining site. The proposed development does not strictly adhere to the envisaged envelope with the boarding houses set back from the southern boundary by some 1.73m; however there is a substantive setback from the northern boundary of approximately 3m. The applicant has noted that:

To comply with BCA.NCC Construction requirements and to protect privacy, amenity and solar access to the neighbouring property to the east the building is not able to be built 'to the boundary' as indicated.

Further to the above there are issues stemming from the land being in different ownership and the ability to fulfil Council's vision. It is considered that that the development has been designed generally in accordance with the building envelopes which are conceptual in nature.

**Figure 4 – Extract from DCP, Chapter N22, Building Envelopes
(Site delineated in black)**



Landscaping

Development within the subject site is also required to have a landscaped buffer along the front boundary as follows:

A1.7 Landscaped buffers to be provided to the east and west of Tourist Accommodation Area, Macleans Point Road.

The proposal does not comply. A 6m buffer is indicated along Macleans Point Road for the development. Instead, it is proposed to have landscaping beds measuring 0.7m and 1.2m

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along the front boundary. A landscaping bed measuring 0.6m is proposed along the southern boundary adjacent the proposed car park. Additional more substantial plantings are proposed along the southern and northern boundaries adjacent the proposed buildings.

It is important to consider the character of development within Macleans Point Road in the context of the planning control. To the north is a retail plant nursery with substantial hardstand surfaces within the 6m buffer. The area within the buffer appears to be utilised for the display of plants and other stock. It contains two access points with the main access located in proximity to the common southern boundary. Well established trees are located to the rear of the site.

Figure 5 – 116 – 118 Macleans Point Road



Further to the north is a commercial development adjoining Macleans Point Road and Paradise Beach Road that contains a car parking area up to the property boundary with a significant retaining wall facilitating an even grade. There is only minor landscaping along the side boundary.

Figure 6 – 114 Macleans Point Road



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The two properties to the south are single storey structures utilised as commercial premises. They both contain hardstand surfaces (i.e. car parking and access points) forward of the building line and within the envisaged 6m landscaping buffer. So, whilst the development is contrary to the planning control, with the provision of car parking within the 6m landscaped buffer, it is not inconsistent with the character of the area. The performance criteria supporting the acceptable solution are as follows:

P1 Pedestrian areas leading from the village plaza to provide a range of landscape elements to enhance the retail core.

P2 Maximise landscape values for the village plaza and surrounds.

The proposed development will not impact on the fulfilment of the landscaping within pedestrian areas providing a nexus to the retail core, nor will the development impact on the provision of landscaping within the village plaza.

A revised landscape plan will be required prior to the issue of a Construction Certificate, which provides appropriate street trees within the road reserve that will not affect the overhead power lines, as determined through discussion with Council's Landscape Architect.

Car Parking

Car parking has been provided in accordance with the *State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009*.

Clause 29 (2) states that "A consent authority must not refuse consent to development to which this Division applies on any of the following grounds". Car parking is one of those matters that cannot be used by Council to refuse consent subject to compliance with the following:

(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and

(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and

(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and

(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,

In this instance the development is not being undertaken by or on behalf of a social housing provider and as such at least 0.5 parking spaces are to be provided for each boarding room as per (iia).

There are twelve (12) boarding rooms generating the demand for six (6) parking spaces. A manager is also to be on site with one parking space allocated to them. A total of seven (7) parking spaces are proposed inclusive of two (2) accessible parking spaces. Further to the above, three (3) parking spaces are proposed for both motorcycles and bicycles in accordance with the SEPP. Accordingly, Council cannot refuse consent to the boarding houses based on the provision of car parking alone.

It is noted that through the assessment process design changes have been made by the applicant to locate the motorcycle parking to the front of the site, to remove the 'issue' of motorcycles accessing the rear of the site down a narrow path and along a common boundary. This in turn has impacted on the car park layout. However, on balance, the design solution is considered acceptable.

Council's Development Engineer has reviewed the proposed development and has not raised any concerns with the access and manoeuvrability into and within the site in

accordance with Chapter G21 of the Shoalhaven DCP 2014. Conditions of consent have been recommended regarding the design and standard of construction to ensure compliance with AS2890.1:2004 – Parking facilities Off-street car parking.

Planning Assessment

The DA has been assessed under s4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Please refer to Attachment 2.

Policy Implications

There are no Policy implications as a result of the development as proposed.

Consultation and Community Engagement:

Seven (7) public submissions were received in relation to Council's notification of the development. Seven (7) were objections to the development. Nil were in support of the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 60m buffer of the site. The application was separately notified to the Sanctuary Point Community Pride. The formal notification was for a two (2) week period.

Further to the formal notification, Council staff also attended a meeting with concerned residents on 19 November 2018 at the St Georges Community Centre, as part of the Basin Villages Forum.

Key issues raised as a result of the notification are provided below along with comments by Council.

Summary of Public Submissions	
Objection Raised	Comment
<p><i>"Please be informed that our rear carpark and driveway at the rear of the proposed development is privately owned by Lots 687 & 688 with a Commercial Building known as Sanctuary Point Medical Center. This carpark is always occupied and busy especially during business hours being utilised by the customer, patients and staff of Medical Center, Chemist, X-Ray and Pathology tenants. Most of the patients using the carpark are elderly and frail. We don't want to compromise their safety as well as other customers by adding more traffic in this area. In this regard, we don't want access at our rear carpark".</i></p> <p><i>"On the boundary between Lots 687 & 653, we will have to close the area by erecting a fence on agreement of the other lot owner. There will be no access to both sides of these properties."</i></p>	<p>No access is to be provided via the adjoining commercial property. All access to the site is to be via Macleans Point Road.</p>
<p>The proposed boarding houses are out of character and current use of the surrounding properties in that the rear and immediate neighbour properties are all commercial</p>	<p>The zone permits a mix of land uses. The proposed use is permitted within the zone and is consistent with the character of the area as it pertains to the built form.</p>

<p>properties including medical practice, Xray Imaging practice, Pathology service, Chemist, Hairdressers, solicitors and Garden Centre.</p>	
<p><i>“To have a 24 person in total accommodation residence with minimul [sic] common areas on a 638 square metre block would have a detrimental effect on the operation on all these businesses given that the development is targeted to low income/homeless people who it would be reasonable to say would be on benefits and therefore unemployed and living in an area of the Shoalhaven that already has a very high unemployed problem.”</i></p>	<p>The application has been amended to accommodate 22 persons and a manager on site. The common areas that have been provided are in excess of what is required under the State Policy for a Boarding House. It is not clear how the residents of the development would have a ‘detrimental effect’ on the operation of the local businesses. In <i>New Century Developments Pty Limited v Baulkham Hills Shire Council</i> [2003] NSWLEC 154, his Honour Lloyd J stated:</p> <p><i>“That the subjective fears and concerns must have a rational basis and be amenable to objective assessment in order for any significant weight to be attached to them.”</i></p> <p>In this instance the comments made in the submission regarding low income / homeless people are assumptions and have no basis in fact and are not capable of ‘objective assessment’. In the Shoalhaven Affordable Housing Strategy (see pg. 8), the following comments are made regarding affordable housing and the people who may be in need:</p> <p><i>“Anyone in the community could need affordable housing. This includes a young person seeking to live near where they grew up, a recently separated or divorced person with children for whom conventional home ownership may no longer be economically viable, households dependent on one (or even two) low or median waged, key worker jobs, or an older person on a reduced retirement income, including after the death of a spouse.”</i></p>
<p>Parking for seven (7) cars will require a reduction in the garden/buffer from 3 metre to 1 metre. The provision of bicycle and motor bike parking is accessed from the rear of the building via private property.</p>	<p>Reference is made to acceptable solution A10.1 within Chapter G21 of the Shoalhaven DCP 2014 which requires perimeter planting of 3m for a car park. There is a note that relates to A10.1 stating:</p> <p><i>Council <u>may</u> consider a reduction in the minimum width of perimeter planting around car parks on smaller sites from 3m to 1m where it can be justified by the applicant that the reduction in landscaping will not create any adverse impacts on surrounding development/amenity.</i></p>

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	<p>In this instance the applicant proposed landscaped beds measuring approximately 0.7m and 1.2m wide along the front boundary. A further landscape bed 0.6m wide framing the southern side of the car park. More substantial planting is located adjacent the built form. Street trees will be required in this instance either side of the access point. Council is satisfied that the quantity of landscaping is sufficient in this instance and the variation is capable of support.</p>
<p>Page 12 Subdivision of Land, for strata each site needs their own street frontage. The proposal does not meet this requirement as one strata property faces Mcleans Point Rd. and the second strata property faces and is accessed via a private property at the rear of the development.</p>	<p>In this instance the boarding houses share access and carparking forward of the building line, forming part of the common property. There are no concerns with the proposed arrangement.</p> <p>The subdivision layout does not prevent legal and practical access.</p>
<p>NSW requirement for boarding house that Accommodates more than 20 residents the property must provide a residence for an onsite manager. Although this development will accommodate 24 residents there will be no management facilities as the development is proposed to Strata into two properties of 12 residents.</p>	<p>The application has been modified to cater for a manager's room within one of the boarding houses.</p>
<p>They are 'setting future residents of these buildings up for failure'. Sanctuary Point already has an unemployment problem, minimal medical and shopping facilities and most importantly, little public transport.</p>	<p>The Affordable Housing Strategy contains 'Locational Criteria for Affordable Housing' which preferences affordable housing within well-located areas that are close to transport and services. Ideally, housing that meets the needs of very low, low and moderate-income households should be located close to larger service centres. This has been defined by the Strategy as precincts within 400-600m of the urban areas of Nowra-Bomaderry, Vincentia and Milton-Ulladulla. In this instance the boarding houses are located in Sanctuary Point some 4.5km from the Vincentia market place and 3km from the commercial core of St Georges Basin.</p>
<p>The closest Job Centres are approximately eight kilometres away and if someone misses the bus the next available one is not for a further two hours. This possibly means missing an appointment and potentially being cut off their Centrelink benefits. If anyone is lucky enough to be employed the last bus leaves Nowra around 5.30pm and does not arrive back to Sanctuary Point to around 7pm. The buses run even less at weekends and is non-existent on public holidays.</p>	<p>With regard to public transport there is a service provided by Premier departing from the Sanctuary Point shops at 6:35am, 9:30am, 1:10pm and 2:10pm to Nowra via Vincentia Marketplace from Monday to Friday, there are buses returning to Sanctuary Point at 3:03pm and 5:31pm. On Saturday and Sunday this is limited to a service at 9:42am in the morning and returning at 2:16pm in the afternoon.</p>

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	The proposed development is not inconsistent with the Strategy in the provision of high quality 'new generation' boarding houses that have been designed to satisfy the requirements of the State Environmental Planning Policy (Affordable Rental Housing) 2009. Whilst not being within a 'well-located' area as defined under the Strategy there are sufficient public transport links to established commercial areas, along with the day to day services provided within Sanctuary Point, that will provide for the needs of future residents.
Car parking around the existing development is basically non-existent and will badly affect the small businesses and current nearby residents in the area.	Car parking and motorcycle parking have been provided consistent with the requirements of the State Environmental Planning Policy (Affordable Rental Housing) 2009, this calculation takes into account whether a development is in an accessible location and whether it is being undertaken by a social housing provider.

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Financial Implications:

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending any appeal in the Land and Environment Court, should the applicant utilise appeal rights afforded under the Environmental Planning and Assessment Act 1979 (EP&A Act).

Legal Implications

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. In the event that such a review is ultimately pursued (if the recommendation is not adopted) the matter would be put to Council for consideration.

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

Summary and Conclusion

- The development is permitted within the zone and is consistent with the objectives of the zone.
- The development will result in affordable accommodation in a suitable location.
- The development will not result in significant social impacts subject to appropriate management and therefore the imposition of appropriate conditions of consent.
- The development is generally satisfactory, with no significant reason or issue being identified warranting a negative recommendation.

Having regard to the above, approval is recommended subject to the imposition of suitable conditions of consent as attached to this report.

DE19.22 Shoalhaven River Estuary Coastal Management Program - Acceptance of NSW OEH Grant - Coast and Estuary Grant Program

HPERM Ref: D19/82267

Group: Planning Environment & Development Group
Section: Environmental Services

Purpose / Summary

To report to Council the successful grant of \$75,000 for the preparation of a Coastal Management Program for the Shoalhaven River estuary under the NSW Government Coastal and Estuary Grants Program.

Recommendation

That Council:

1. Accept the NSW OEH grant funds of \$75,000, for the preparation of Shoalhaven River Estuary Coastal Management Program, over two (2) years.
2. Provide matching funds of \$75,000 over two (2) years from the existing coastal management planning budget as previously resolved (MIN17.1087) to match the \$75,000 offered by the NSW Government, to prepare Shoalhaven City Council's Coastal Management Program (CMP) for the Shoalhaven River Estuary.
3. Write to the NSW Minister for Environment, Heritage and Local Government, Hon Gabrielle Upton, thanking her for the grant funding offer.

Options

1. As recommended.

Implications: The grant offer is subject to Council providing the balance of funds for the project, as outlined in the grant application. With the matching dollars of \$75,000 over two (2) years, from Council's existing coastal management planning budget. The tender process can proceed and preparation of the Coastal Management Program (CMP) will begin in the next few months.

2. Council not accept the grant offer for the preparation of a Coastal Management Program for the Shoalhaven River Estuary

Implications: Council will be unable to complete the preparation of the CMP as per the requirements of the NSW Coastal Management Act 2016. Without a CMP certified by the NSW Government, Council cannot access funding for implementation of works under the Coastal and Estuary Grants Program. The current Shoalhaven River Estuary Management Plan is now 11 years old and requires updating with new data and knowledge from studies undertaken since its adoption. NSW Office of Environment & Heritage (OEH) has already informed Council that the Shoalhaven River Estuary Management Plan does not meet the requirements of the NSW Coastal Management Manual.

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3. Alternative recommendation.

Implications: Unknown.

Background

The Stage 2 Coastal Reforms are being implemented by the NSW Government. The reforms are encapsulated in the Coastal Management Act 2016. The legislation requires coastal Councils prepare Coastal Management Programs and seek certification of CMPs to be eligible for funding on-ground works under the Coastal and Estuary Grants Program. A funding stream was provided in the NSW Government's Coastal and Estuary Grants Program to assist Councils undertaking the work.

Council's grant application for the preparation of the CMP for the Shoalhaven River Estuary was successful and \$75,000 is offered to Council, subject to Council meeting the balance of funds required to complete the project.

Council will begin preparing tender and consultant's brief, for the preparation of the Coastal Scoping Study, which is the first phase in the preparation of a CMP, subject to Council accepting the grant offer.

Community Engagement

The Shoalhaven Heads Estuary Taskforce (SHET) and Council's previous Natural Resources & Floodplain Management Committee were consulted regarding the preparation of the CMP and the submission of the funding application. This was reported to Council and Council resolved to lodge the grant application and commit funds from existing coastal management budget (MIN17.1087). The preparation of the CMP will include a community engagement program.

Policy Implications

The CMP will provide Council with strategic management direction for the Shoalhaven River Estuary for ten (10) years following its adoption which will replace the existing estuary management plan.

Financial Implications

A Council contribution of \$75,000 will be required over two (2) years to match the NSW Government grant to complete the CMP. These funds will come from Council's Coastal management planning operational budget (15931), with an allocation of \$37,500 per year.

Risk Implications

The risk to Council, if the grant is not accepted, is that preparation of the CMP cannot proceed, and Council will not fulfil its obligations under the Coastal Management Act 2016. Without a CMP certified by the NSW Government, Council cannot access funding for implementation of works under the Coastal and Estuary Grants Program.

DE19.23 Exhibition Outcomes and Proposed Finalisation - Shoalhaven Contributions Plan 2019

HPERM Ref: D18/375094

Group:

Section: Strategic Planning

Attachments: 1. Summary of Submissions [↓](#)

Purpose / Summary

Report the outcomes of the public exhibition of the Draft Shoalhaven Contributions Plan 2019 and enable the finalisation of the Plan.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Shoalhaven Contributions Plan 2019 as exhibited with the proposed amendments described in Table 2 of this report and proceed to finalise the plan.
2. Give effect to the Shoalhaven Contributions Plan 2019 by publishing a written notice in local newspapers in accordance with legislation.
3. Notify development industry representatives, Community Consultative Bodies and those who made submissions, of Council's decision.
4. Endorse the position that all funds from deleted projects are to remain within each relevant planning area and be transferred to a "recoupment fund", with those funds used as Council's apportionment towards projects and to provide seed funding for community infrastructure projects identified in the revised contributions plan.
5. Endorse the preparation of a future amendment to the adopted Shoalhaven Contributions Plan 2019 to:
 - a. update project costings, apportionment, and timeframes,
 - b. clarify calculation of credits, when contributions are charged for industrial/commercial subdivision, dedication of land and works in kind, and how merit assessment for miscellaneous development types is to be undertaken; and
 - c. address general housekeeping matters that may arise.

Options

1. Adopt the Draft Shoalhaven Contributions Plan with amendments as set out in Table 2 of the report and proceed to finalise the Plan as recommended.

Implications: This is the preferred option as it will enable the new Plan to be finalised and made effective. This will deliver a more flexible, user-friendly Plan and will facilitate the ability to deliver higher priority projects in a timelier manner.

2. Adopt the Draft Shoalhaven Contributions Plan with different amendments and proceed to finalise the Plan.

Implications: Dependent on the extent and nature of any amendments, this may necessitate re-exhibition of the draft Plan and delay the implementation of a more flexible, user-friendly Plan. Any amendments would need to be in line with the

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requirements of the NSW Environmental Planning and Assessment (EP&A) Act 1979 and Regulations.

3. Do not proceed to adopt/finalise the updated Plan or defer its adoption.

Implications: This is not recommended as the existing plan is now outdated and contains a large number of projects that are unlikely to be implemented or are recoupment projects that are not likely to be recouped in a reasonable timeframe. If needed, the adoption could be deferred to enable Councillors to be briefed on the outcomes of the exhibition and related implications.

Background

The Draft Shoalhaven Contributions Plan 2019 (the draft Plan) was the result of a significant, 'whole of Council' review of the existing Shoalhaven Contributions Plan 2010. This review aims to simplify the Plan that is now nine (9) years old, deliver a new contemporary plan and in doing so provide a mechanism for community infrastructure projects to be delivered/completed in a timelier manner.

The main components of the review are:

1. Revision of the content of the Plan to clarify areas of uncertainty and make it easier to interpret;
2. Review and rationalise the projects in the Plan to allow projects to be prioritised and completed in a timelier manner;
3. Creation of an updated, more user-friendly website including a new calculator.

Council's Development Committee considered the draft Plan at its 10 April 2018 meeting and resolved to:

1. *Adopt for exhibition purposes the draft Amendment No. 10 to Shoalhaven Contributions Plan 2010 as attached;*
2. *Exhibit draft Amendment No. 10 for a minimum period of 28 days in accordance with legislation;*
3. *Receive a further report after public exhibition to consider any submissions and to adopt the amendment for finalisation; and*
4. *Acknowledge a further amendment to the Contributions Plan will be necessary once the two significant projects identified in this report have been revised and adopted by council.*

The Development Committee made further later amendments to projects in the draft Plan in the Jervis Bay-St. Georges Basin area at its meeting on 3 July 2018, as flagged in part 4 of the April 2018 resolution above. These amendments related to community facilities and were included in the exhibited draft Plan.

Community Engagement

The draft Plan was formally publicly exhibited from 26 September to 26 October 2018 inclusive (31 days) in accordance with Council's resolution of 10 April 2018. The exhibition notification included advertisements in local newspapers, direct notification to development industry representatives and community consultative bodies (CCBs), and the creation of a new website for the draft Plan.

The exhibition website for the draft Plan can still be accessed at the following link:

<https://cp.shoalhaven.nsw.gov.au/>

The material that was exhibited and made available through the website included the following:

- [Explanatory Statement – Draft Shoalhaven Contributions Plan](#)
- [Appendix A – Projects to be deleted](#)
- [Appendix B – New and revised projects](#)
- [Fact Sheet – Contributions planning explained](#)

As a result of the public exhibition, five (5) submissions were received:

- Three (3) internal submissions from Council's Development Services Section, Recreation Community & Culture Section and Local Planning Team;
- One (1) submission from The Berry Forum CCB;
- One (1) submission from local development consultancy firm, Allen Price & Scarratts Pty Ltd.

The key issues raised in the submissions that were received during the exhibition period, and Council staff comments, are summarised below in **Table 1**. A more detailed description of issues raised in submissions, Council staff comments and recommendations is also included in **Attachment 1**.

Copies of the actual submissions received will be available for review in the Councillors' Room prior to the meeting.

Table 1: Summary of key issues raised in submissions and staff comments

Comment from	Issues raised	Staff comments
Council - Recreation Community & Culture Section	<p>The deletion of the <i>Berry Gardens Neighbourhood Centre</i> project (01CFAC0013) is supported on the basis that the need for this facility has significantly reduced due to the proposed Berry District Park ('Boongaree') and the role it will play as a multi-user community hub.</p> <p>Suggest that a new contributions project be created for the Berry District Park and that contributions paid into 01CFAC0013 be transferred to it.</p>	<p>Noted. The creation of a new contributions project for the Berry District Park ('Boongaree') is considered to have merit and will require a separate subsequent amendment to the Plan once project costing, catchment and other details have been determined.</p> <p>Consistent with Council's resolution of 21 March 2017 (MIN17.197) that: <i>funds from recoupment projects and identified deleted projects be transferred to a "recoupment fund" and used as Council's apportionment to projects and to provide seed funding for community infrastructure projects identified in the revised Contributions Plan</i>, the contributions collected for project 01CFAC0013 and other deleted projects would be transferred into the recoupment fund to be spent on high priority infrastructure projects necessary to support future population growth, for example, the provision of essential up-front community infrastructure in urban release areas like Moss Vale Road South and North. This approach has been used by several other Councils in recent reviews of their contribution's plans, such as Shellharbour, Wollondilly and Bega Valley</p>
Berry Forum	Where will the funds collected for the <i>Berry Gardens Neighbourhood Centre</i> project (01CFAC0013) be spent when the project is deleted?	

Comment from	Issues raised	Staff comments
	Council has collected a significant amount of contributions on this project and should spend them on improving community facilities in Berry.	<p>Councils.</p> <p>Alternatively, Council could resolve to retain project 01CFAC0013 in the Plan until such time as a project for the new Berry District Park project is created and the contributions could be transferred into it. This would mean that contributions from 01CFAC0013 would then be spent on community infrastructure in Berry. This approach would, however, be inconsistent with the treatment of contributions from other deleted projects which are being transferred into the proposed general recoupment fund.</p> <p>To address this concern, it is recommended that:</p> <ul style="list-style-type: none"> • Project 01CFAC0013 be deleted and the funds collected be included in the recoupment fund. • The recoupment fund, that is to be made up of all previously deleted projects and the projects being deleted through this review, be allocated based on planning area, so that for example the funds collected in Planning Area 1 are spent on contribution projects in Planning Area 1 and so on. • Through the next subsequent amendment to the Plan, add the Berry District Park ('Boongaree') to the list of projects under the general active recreation project for Planning Area 1 (01AREC2008). It will then be able to benefit from some contribution funding. This will, however, increase the cost of the overall project in the plan by about \$16,000,000 and increase the contribution rate from \$721.31 to approximately \$891.93 which would be payable by all relevant developments in Planning Area 1.
Council – Development Services Section	Additional explanatory information is needed in the Plan to clarify Council's policy on various matters including calculation of contribution credits; assessment of	The majority of these issues require further functional consideration by the internal staff Contributions Panel in discussion with the Development Services Section and should be included in the next review of the Plan, rather than delay the introduction of the new plan.

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Comment from	Issues raised	Staff comments
	miscellaneous developments; calculation of car parking contributions; dedication of land and works in kind; and when contributions are charged for industrial/commercial subdivision.	<p>Two issues can however be resolved at this point through minor amendments to the draft Plan as outlined below:</p> <p><u>Add note</u> in Section 3.7 under “Other requirements for commercial and industrial development”, at the end of the 2nd paragraph to note that where car parking contributions are to be paid, the calculation of the rate is not rounded up or down e.g. if the calculation is 4.4 car parks then the contribution rate per car park is multiplied by 4.4 to determine the contribution total. This is stated in the Shoalhaven Development Control Plan 2014 and should also be included in the contribution plan for transparency.</p> <p><u>Amend current wording</u> in Section 3.7:</p> <p><i>“Where a room in a development is proposed as “study” and is of similar size to other bedrooms within the development, it is to be treated as a bedroom for the purposes of calculating contributions under this Plan”</i></p> <p>to read:</p> <p><i>“Where a room in a development is:</i></p> <ul style="list-style-type: none"> <i>• Proposed as a “study”, “home theatre”, “media room” or the like; and</i> <i>• Is of appropriate dimensions and capable of being used as a bedroom,</i> <p><i>it is to be treated as a bedroom for the purposes of calculating contributions under this Plan.”</i></p>
Council – Local Planning team	The new website is much easier to navigate and understand than the existing website.	<p>The new website is designed to be more user-friendly and consistent with the look and feel of the existing Local Environmental Plan (LEP) and Development Control Plan (DCP) websites. It is considered to be sufficiently user-friendly for most users.</p> <p>No change is recommended. Any substantial remodelling of the website at this point has the potential to delay the finalisation of this important project. The website will continue to be refined and updated as needed in the future.</p>
Allen Price & Scarratts	<p>The new website is difficult to understand and navigate.</p> <p>More information is needed to instruct the user how to use it.</p>	
Allen Price & Scarratts	The reasons for the changes made to apportionment,	As stated in the exhibited <i>Explanatory Statement</i> , costing for certain projects has been updated where more realistic

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Comment from	Issues raised	Staff comments
	completion timeframe and costs for revised projects are unclear as no explanation was provided in the public exhibition material.	<p>information is known. Completion timeframe has been extended in response to the higher cost of some of these projects and based on the current priorities set out in Council's Delivery and Operational Plan.</p> <p>No changes were made to the apportionment of any revised projects. As noted/flagged in the explanatory information, Council was awaiting updated population forecasting based on data from the 2016 census which was not finalised by Council's consultants until after the exhibition period. Now that the updated population forecasting has been received, Council can revise the apportionment of the existing contribution projects.</p> <p>This will form the basis of the next review of the Plan, the commencement of which is included in the report recommendations.</p>
Allen Price & Scarratts	Many projects have cost estimates which have not been updated for over 10 years. Cost estimates for these projects should be updated as part of this review.	Noted. Costings have been updated for certain projects where more accurate/realistic figures are known. It is intended to continue to review and update costings for remaining projects via ongoing future amendments to the Plan.
Council - Recreation Community & Culture Section	Project 02AREC0004 <i>Planning Area 2 – Recreation Facilities Upgrades</i> includes provision for exercise equipment at Bicentennial Park, Callala Bay. A new location needs to be selected for this upgrade due to constraints and limitations at the current site. As such, it is suggested that 'Bicentennial Park' be replaced with the generic 'Callala Bay' in the project's supporting information.	Agreed, valid suggestion. The project sheet will be updated to reflect this change.
Council - Recreation Community & Culture	Project 03OREC0009 <i>Embellishment of Passive Open Space - Tomerong</i> should be revised to remove provision of	Agreed, valid suggestion. Project information will be updated to remove reference to amenities.

Comment from	Issues raised	Staff comments
Section	amenities from the project cost and description of embellishments. The park is considered a local park given its low service level and does not warrant the inclusion of amenities.	
Allen Price & Scarratts	<p>Projected population for the Shoalhaven LGA for 2036 in the draft Contributions Plan 2018 is 119,984 and in the existing Contributions Plan 2010 it is 131,970 (and 11,986 difference).</p> <p>What impact has this had on developer contribution rates in the draft Plan? Council may need to increase its apportionment on new and revised projects so that development does not bear the full burden of the reduced population funding pool via higher contribution rates.</p>	As noted earlier, project apportionments have not been updated as yet to reflect the latest population projections and household composition figures from the 2016 Census based on the availability of data. This will be undertaken as part of a future amendment to the Plan, which will likely result in amended contribution rates.
Allen Price & Scarratts	Appears that Council is deliberately releasing itself from its apportionment (share) of projects by deleting projects and using the recouped funds as its apportionment towards other projects. These other projects are not always in the contributions plan and effectively become 100% apportioned to development. This practice appears to contravene the legislation relating to development contributions. It is not fair on developers or communities who anticipate the infrastructure.	<p>Council is permitted to add, remove and amend projects as part of a review of the contributions plan under the provisions of the EP&A Act. This ensures that the Plan remains current and continues to fund infrastructure that meets community requirements.</p> <p>88 infrastructure projects have been identified that are considered to be redundant or unlikely to be delivered for various reasons. Retaining these projects in the Plan and continuing to charge contributions for them is difficult to justify into the future.</p> <p>As previously resolved by Council, the recoupment fund will be 'ring-fenced' specifically for contributions projects and will not be permitted to be used to fund other works or projects. This approach will allow Council to fast-track high priority projects necessary to support future population growth, such as essential community infrastructure in urban release areas. This will be done by using the recoupment fund to pay</p>

Comment from	Issues raised	Staff comments
		<p>the <u>developers</u>' share of the cost of the infrastructure to provide the infrastructure up front and then recouping this money from the developers when they proceed with development and pay contributions. This will reduce delays in achieving release of land in these areas and also provide infrastructure early, benefitting the community and developers alike. This approach does not contravene the legislation relating to developer contributions and has been used by several other Councils in recent reviews of their contribution's plans, such as Shellharbour, Wollondilly and Bega Valley Shire Councils.</p> <p>No change is recommended in response.</p>
Allen Price & Scarratts	Why have contribution rates for 17 projects increased by more than CPI? No explanation is provided in the exhibition material.	Project costings for these 17 projects were updated to reflect the current costs of the proposed works. These costings are more accurate and also reflects the fact that annual CPI increases have possibly not kept pace with construction costs.
Allen Price & Scarratts	Several town centre car parking projects have high contribution rates which are deterring development and driving poor development outcomes (e.g. 01CARP2002 Berry - \$38,014 per car park; 01CARP3001 and Nowra - \$26,830 per car park). Has Council reviewed these projects to ensure they are achieving their intended purpose?	<p>These projects are a critical part of the coordinated approach to the supply of additional car parking spaces in the respective areas to meet demand from future population growth. As this demand is wholly attributable to future development, it is considered reasonable that the projects be apportioned 100% to development. The high value of the projects reflects the high cost of acquiring land in those locations.</p> <p>It should be noted that contributions for car parking only become payable if the developer is unable to provide car parking within their own site. Council then allows them to provide fewer car parks but requires a contribution to allow Council to provide the necessary car parking with the general vicinity.</p> <p>It should be acknowledged that Council has also made a number of concessions outside the contributions planning framework to assist in this regard (e.g. No additional car parking required for change of use DAs and the Nowra CBD Parking Discount Policy).</p> <p>No change is recommended in response at this point.</p>

Comment from	Issues raised	Staff comments
Allen Price & Scarratts	Development in some areas cannot proceed until essential infrastructure is provided, however, the associated projects often have a completion timeframe of 'development dependent'. What does this mean? Council should be actively facilitating development and growth by delivering infrastructure upfront and then recouping the cost when development proceeds.	<p>This comment is valid and noted. 'Development dependent' means that completion of the project is dependent on the timing of development and also therefore the payment of contributions. Council's capacity to fund all identified infrastructure projects upfront is generally limited which is why the timeframe for many projects is 'development dependent' as without the development occurring, Council does not have the funds to construct the infrastructure. This is generally the case were the infrastructure is solely for the benefit of the properties within the catchment area, e.g. a service road that provides rear access that then allows the benefiting properties to be subdivide and/or develop the rear of their properties.</p> <p>This review of the plan will however enable Council to prioritise and complete essential projects in a timelier manner by rationalising the number of projects and authorising the pooling of funds from similar contributions projects in the same planning area. This will help to facilitate development that may otherwise be held up potentially awaiting construction of essential infrastructure as Council will be able to construct infrastructure upfront using pooled funds which will then allow development to proceed and Council will be then able to recoup funds.</p> <p>No change is recommended in response.</p>
Allen Price & Scarratts	The policy on contribution refunds needs to be more flexible. Restricting requests for refunds to within 12 months of date of payment is unreasonable and an added risk for developers.	<p>Consistent with the NSW Department of Planning and Environment's Development Contributions Practice Note, the Land and Environment Court has found that there is no express power for a Council to refund a contribution, and that a refund cannot be provided in circumstances where the Council has expended the money in accordance with the Plan or committed or applied the money. Thus, Council's policy is considered reasonable as it actually allows for refunds where a mistake has been made by Council or if a development is not going to proceed and the development consent is surrendered. In line with the Practice Note, only funds that have not been spent can be refunded</p> <p>The restriction on the request for refunds being within 12 months is in line with the <i>Recovery of Imposts Acts 1963</i> which sets a</p>

Comment from	Issues raised	Staff comments
		<p>12 month limit to act to recover a tax (being a fee, charge or other impost). As per Section 4.5 of the Plan, contributions are only payable at issue of a linen certificate for subdivision, issue of a construction certificate (where required) or prior to commencement of construction. This means contributions are only required to be paid once the developer is ready to proceed which minimises risk to the developer.</p> <p>The wording of the clause as exhibited is consistent with the Practice Note and the Act. Therefore, no change is recommended.</p>
Council – Local Planning team	The three (3) new contributions projects for the Moss Vale Road South URA that recently became effective in Shoalhaven Contributions Plan 2010 – Amendment No. 9 (01ROAD0154, 01DRAI006 and 01REC0015) need to be included in the final contributions plan.	Noted. The 3 new projects 01ROAD0154, 01DRAI006 and 01REC0015 will be included in the final Contributions Plan.
Council - Recreation Community & Culture Section	Project 01OREC0011 <i>Passive Recreation – Falcon Crescent, North Nowra</i> should be deleted as the facility is no longer required due to the growth of existing and new passive recreation facilities in the immediate locality (e.g. the significant passive recreation area to be provided in the adjacent Moss Vale Road South URA).	Agreed, valid request. Recommend project 01OREC0011 <i>Passive Recreation – Falcon Crescent, North Nowra</i> be deleted from the Plan as it is no longer considered to be required.
Council - Recreation Community & Culture Section	Project CWC FAC0007 <i>Shoalhaven City Arts, Multimedia and Music Centre</i> needs to be revised to reflect the new name as Shoalhaven Regional Gallery.	Agreed, valid request. The supporting information exhibited with this project incorrectly said that the project is to be deleted at the conclusion of the exhibition period. CWC FAC0005 <i>Shoalhaven Multimedia and Music Centre</i> is the project proposed to be deleted (it was included in the exhibited list of projects proposed to be deleted). The improvements in CWC FAC0005 were incorporated into CWC FAC0007.

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Comment from	Issues raised	Staff comments
		The supporting information for CWCFC0007 also needs to be amended to reflect the fact that the project has been completed and is a recoupment project.

Additional Issue

A further issue has arisen since the public exhibition of draft Plan related to a development application for the subdivision for a multi-dwelling housing development (five townhouses). The multi-dwelling housing development was granted consent in 1982 prior to the commencement of the Contributions Plan 1993 and consequently, no contributions were paid. Two of the townhouses were constructed at the time but the remaining three are only now under construction. An application for the subdivision of the townhouses has been submitted. Council had advised the applicant that the consent for the subdivision would include a condition that contributions would be payable. The applicant then provided legal advice that concluded that the subdivision itself does not increase demand for infrastructure and that it is unreasonable to require payment of contributions. This advice has been accepted and, on this basis, the draft Plan should be updated to make it clear that contributions will not be charged on the subdivision of developments approved prior to the commencement of the original Contribution Plan 1993.

As a result of the submissions received and the additional issue outlined above, the following amendments (Table 2) are proposed as a result.

Table 2: Proposed amendments arising from the exhibition period

Section of Plan	Proposed Amendment
Section 3.5 Determination of reasonable contributions	Add wording to make it clear that contributions will not be charged on the subdivision of developments approved prior to the commencement of the Contribution Plan 1993.
Section 3.7 How is existing and future demand measured?	<p>Amend wording in Section 3.7 where it states, “Where a room in a development is proposed as “study” and is of similar size to other bedrooms within the development, it is to be treated as a bedroom for the purposes of calculating contributions under this Plan” to read:</p> <p>“Where a room in a development is:</p> <ul style="list-style-type: none"> • Proposed as a “study”, “home theatre”, “media room” or the like; and • Is of appropriate dimensions and capable of being used as a bedroom, <p>it is to be treated as a bedroom for the purposes of calculating contributions under this Plan.”</p> <p>Add note in section 3.7 under “Other requirements for commercial and industrial development”, at the end of the 2nd paragraph to note that where car parking contributions are to be paid, the calculation of the rate is not rounded up or down, e.g. if the calculation is 4.4 car parks then the contribution rate per car park is multiplied by 4.4 to determine the contribution total.</p>

Schedule 2	Remove the relevant properties that have been developed and paid the required contributions from Schedule 2 Old Subdivision Properties.
Schedule 1; Schedule 3; Projects page	<ul style="list-style-type: none"> Contribution project 01OREC0011 <i>Passive Recreation – Falcon Crescent, North Nowra</i> will be deleted from the Plan as it is no longer considered to be required. Rename project CWCFA0007 <i>Shoalhaven City Arts, Multimedia and Music Centre</i> to <i>Shoalhaven Regional Gallery</i> and amend its supporting information to reflect the fact that the project has been completed and is a recoupment project. Project 02AREC0004 <i>Planning Area 2 – Recreation Facilities Upgrades</i> amend supporting information to replace the location with the generic wording 'Callala Bay'. Project 03OREC0009 <i>Embellishment of Passive Open Space - Tomerong</i> amend to remove amenities provision from the project cost and description of embellishments. Include the newly adopted projects 01ROAD0154, 01DRAI006 and 01REC0015 in the final Contributions Plan 2018.
Section 4, subsection 4.2	Insert additional text to clarify that where project contribution rates exceed the maximum contribution cap for residential contributions set by the NSW Minister for Planning, Council will not charge contributions in excess of the cap (except for those with a current exemption). See further comments below under 'Recent legislative changes'.

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Recent legislative changes

Section 7.11 contributions for residential development are currently capped at \$20,000 per dwelling and \$30,000 in greenfield areas. There is no cap for non-residential development.

In July 2017, the NSW Minister for Planning announced the removal of the cap on development contributions for residential lots where an Independent Pricing & Regulatory Tribunal (IPART) reviewed contributions plan, which is approved by the Minister and adopted by the Council, sets a higher rate. Contribution projects must meet 'essential infrastructure' criteria to be included in an approved plan.

The draft Plan currently contains some contributions that are exempt from the cap by the NSW Minister for Planning which will continue to be exempt. Contributions for some other projects that are not exempt exceed the cap. It is intended that additional text will be inserted into section 4.2 of the final Plan to clarify that Council will only levy contributions up to the cap for these projects. Council could alternatively seek IPART's approval to levy higher contributions; however, there is a risk that IPART will remove projects from the Plan if it does not consider them to be essential infrastructure and there is a significant time delay in having plans reviewed by IPART (12+ months).

Contributions Calculator

One of the components of this review was the creation of an updated, more user-friendly website and new online Contributions Calculator (part of or connected to the new website). While the website has been completed and will be ready to 'go live' at the commencement of the new Plan, there has been a minor delay with the background software for the Calculator, which is being adapted to synchronise with the new website and accommodate changes to

the Plan. Thus, the current Contributions Calculator may continue to be utilised until the updated Calculator becomes available online in mid-2019 at the latest.

Future Amendments

Costings have only been updated for a limited number of projects in this current review. Costings for remaining projects need to be reviewed and updated to ensure that they are accurate and realistic. Project apportionments and timeframes also need to be updated to reflect the 2016 Census population projections and household composition figures which were only received recently. Thus, a Council resolution is sought to prepare a further amendment to the Plan (once adopted) to address these matters. This will be reported to Council for endorsement prior to any public exhibition.

Council's Recreation, Community and Culture Section has also flagged potential changes to the scope of works for a number of recreation and community facilities projects. These projects will be reviewed as part of the draft amendment mentioned above, if possible, and subject to targeted consultation with local communities. The Development Services Section also identified some areas in the draft Plan where how the Plan is implemented could be further clarified.

Contribution project *01AREC0009 Planning Area 1 Recreational Facilities Upgrades (various locations)* should also be amended at the appropriate point to add the Berry District Park ('Boongaree') to the list of projects under the general active recreation project for Planning Area 1 and the project cost and contribution rate be updated to reflect this.

Policy Implications

The draft Shoalhaven Contributions Plan is a simplified, more user-friendly plan that will enable Council to deliver priority community infrastructure projects in a timelier manner, in line with the needs of the growing community.

It is noted that the intended recoupment fund can potentially be spent on any type of project but must be within the same Planning Area as collected. It is intended that operating rules/procedures will be developed for the internal Contributions Plan Panel that will ideally prioritise 'like for like' projects in the same planning area initially if these are available.

Financial Implications

For a number of the projects being deleted, the debt incurred is being balanced with money available from deleted projects with a positive balance.

As previously resolved by Council, the money remaining from deleted projects is to be 'ring-fenced' specifically for contributions projects and will not be permitted to be used to fund other Council works. It will be restricted to providing either Council's apportionment or seed funding for priority projects with a high developer apportionment. This will ensure that projects can commence and be completed in line with development requirements in urban release areas and other areas zoned for development. This approach has been used by several other Councils in recent reviews of their contribution's plans, such as Shellharbour, Wollondilly and Bega Valley Shire Councils.

Council will need to continue to consider how Council's liabilities that are outlined in the Contributions Plan are to be met going forward.

Attachment 2: Summary of Submissions received on the Draft Contributions Plan 2018

Received from & date	Issues raised	Staff comment	Recommendation
Internal submission from Development Services section, 31/10/18	A section should be included that explains how contribution credits are calculated and in what circumstances credits exist.	Agreed.	To be considered in the next amendment in the plan.
	For industrial and commercial subdivisions, are contributions to be charged at the time the land is subdivided or later when the land is developed?	This is addressed in Section 2.4 of the draft contributions plan which states that commercial and industrial subdivisions will be levied contributions at the rate of 1 ET per lot created. Subsequent development proposals with greater demand than the original 1 ET will be levied contributions as per the rates set out in section 3.7 of the draft plan.	To be considered in the next amendment in the plan.
	Some of the properties in Schedule 2 'Old Subdivision Properties' have been developed and paid the required contributions and need to be removed from the schedule.	Agreed. Schedule 2 has been revised by removing properties that have been developed and paid the required contributions.	That Council adopt the revised Schedule 2 which now excludes properties that have paid the required contributions.
	The contributions calculator needs to be simplified and made available to the public.	Agreed. A simplified, more user-friendly contributions calculator is being developed and will be included in the new contributions plan website when the new plan commences.	No further action.
	For miscellaneous and other forms of development, is any further guidance provided on how developments will be assessed 'on merit', how demand for community infrastructure will be determined and what information is required from applicants?	Section 3.7 of the draft contributions plan states that the demand for community infrastructure from miscellaneous forms of development will be determined by reviewing demand indicators from the development (for example, Roads and Maritime Services guidelines for traffic	To be considered in the next amendment in the plan.

		generation). No further detail is provided as the information required from applicants will vary depending on the nature of the development proposed. It should be noted that the Shoalhaven Development Control Plan 2014 provides a guide as to what information will generally need to be submitted with development applications in order to assess the impacts of proposals.	
	The plan should clarify that the number of car parking spaces required for a development is not to be rounded up or down when calculating contributions for car parking.	Agreed. Additional text should be added into section 3.7 of the draft contributions plan to clarify that the number of car parking spaces is not to be rounded up or down when calculating contributions. This matches the wording in Chapter G21 <i>Car Parking and Traffic</i> of the Shoalhaven Development Control Plan 2014.	That Council adds a note in Section 3.7 of the contributions plan under "Other requirements for commercial and industrial development", at the end of the 2 nd paragraph to note that where car parking contributions are to be paid, the calculation of the rate is not rounded up or down e.g. if the calculation is 4.4 car parks then the contribution rate per car park is multiplied by 4.4 to determine the contribution total. This is stated in the Shoalhaven Development Control Plan 2014 and should also be included in the contribution plan for transparency.
Internal submission from Council's Recreation, Community & Culture Unit, 26/10/18	The proposed deletion of projects relating to active recreation, community facilities and passive recreation is supported on the basis that funds from deleted projects will be pooled for expenditure on like-for-like	Noted, however, funds from deleted projects are proposed to be transferred into a recoupment fund to be spent on priority projects with high apportionment based on planning area. While the funds won't have to be spent on the same	No further action.

	infrastructure within the same planning area.	category of infrastructure, Council will have much greater capacity to deliver high priority infrastructure in a timely manner than if recoupment funds were further split into infrastructure type.	
	<p>The deletion of project 01CFAC0013 <i>Berry Gardens Neighbourhood Centre</i> is supported on the basis that the need for this facility has significantly reduced as a result of the proposed Berry District Park (Boongaree) and the role this facility will play as a multi-user community hub.</p> <p>It is suggested that a new contributions project be created for the Berry District Park and that funds paid into 01CFAC0013 be reallocated to it. As a district park it will meet additional demand for active recreation facilities generated by future residential development in Berry (e.g. Huntingdale estate and other areas identified in the Growth Management Strategy).</p> <p>Reallocating funds from 01CFAC0013 to Berry District Park via a new contribution project would also be consistent with Council's resolution to fund design works to the value of \$165,000 from developer contributions (MIN17.526).</p>	<p>Noted. The creation of a new contributions project for the Berry District Park (Boongaree) is considered to have merit but would require a separate amendment to the Plan once project costing, catchment and other details have been determined.</p> <p>In accordance with Council's resolution of 21 March 2017, contributions collected for 01CFAC0013 and other deleted projects would be transferred into the recoupment fund to be spent on high priority infrastructure projects necessary to support future population growth, for example, the provision of essential community infrastructure up front in urban release areas like Moss Vale Road North and South.</p> <p>Alternatively, Council could resolve to retain project 01CFAC0013 in the Plan until such time as a project for the new Berry District Park is created and the contributions could be transferred into it. This would mean that contributions from 01CFAC0013 would be spent on community infrastructure in Berry. It would, however, be inconsistent with the</p>	<p>To address this concern to some degree, it is recommended that:</p> <ul style="list-style-type: none"> • 01CFAC0013 be deleted and the funds collected be included in the recoupment fund. • The recoupment fund, to be made up of all previously deleted projects and projects being deleted through this review, be allocated based on planning area so that funds collected in Planning Area 1 be spent on contribution projects in Planning Area 1 and so on. • The Berry District Park (Boongaree) be added to the list of projects under the general active recreation project for Planning Area 1 (01AREC2008). It will then be able to benefit from some contribution funding. This will, however, increase the cost of the overall project by about \$16,000,000 and increase the contribution rate from \$721.31 to approximately \$891.93

		treatment of contributions from other deleted projects which are being transferred into the recoupment fund.	which would be payable by all relevant developments in Planning Area 1.
	It is recommended that Project 01OREC0011 <i>Passive Recreation – Falcon Crescent, North Nowra</i> (Planning Area 1) be deleted as the facility is no longer considered to be required due to the growth of existing and new passive recreation facilities in the immediate locality (e.g. the significant passive recreation area to be provided in the adjacent Moss Vale Road South URA).	Agreed, valid suggestion. The supporting information exhibited with the project notes that the project may be deleted after the public exhibition period.	That Council remove contribution project 01OREC0011 <i>Passive Recreation – Falcon Crescent, North Nowra</i> from the contributions plan and transfer funds collected into the recoupment fund.
	It is recommended that Project 02AREC0002 <i>Culburra Sporting Complex (Proposed Long Bow Point Subdivision)</i> (Planning Area 2) be deleted given the recent refusal of the related State Significant Development Application by the Independent Planning Commission. Demand for community, active and passive recreation infrastructure necessary to support future development in the area can be assessed as part of the Halloran Trust Planning Proposal.	Noted. Council is not currently charging contributions for this project as future lot yield, project costs and project location is not known. The project will be reviewed after the completion of the Planning Proposal for the Halloran Trust landholdings at Culburra Beach, Callala Bay and Currarong, as stated in the supporting information that was exhibited with the draft contributions plan. This process will determine the potential number of future lots and demand for new infrastructure to enable the preparation of a separate amendment to the contributions plan.	No further action.
	Project 02AREC0004 Planning Area 2 – <i>Recreation Facilities Upgrades</i> includes exercise equipment at Bicentennial Park, Callala Bay. A new location needs to be selected for this upgrade due to	Agreed	Agreed. The project sheet will be updated to reflect this change.

	constraints and limitations at the current site. As such, it is suggested that 'Bicentennial Park' be replaced with the generic 'Callala Bay' in the project's supporting information.		
	It is acknowledged that 03AREC3003 <i>Bay and Basin Leisure Centre (The Wool Road, Vincentia)</i> is proposed to be retained as a recoupment project only.	Noted.	No further action.
	The separation of the <i>Bay and Basin Community Hub</i> and the <i>Bay and Basin Branch Library</i> into separate projects (03CFAC4001 and 03CFAC0006 respectively) is supported and is consistent with recent Council resolutions to establish the hub and library at separate locations. The mapping of project location for 03CFAC0006 will need to reflect the fact that a site has not yet been selected for the library.	Noted. The mapping prepared for 03CFAC0006 does not identify a specific location for the library.	No further action.
	Project 03OREC0009 <i>Embellishment of Passive Open Space - Tomerong</i> should be revised to remove amenities provision from the project cost and description of embellishments. The park is considered a local park given its low service level and does not warrant the inclusion of amenities.	Agreed.	Project information to be updated to remove reference to amenities.
	CWARE0005 <i>Shoalhaven Community and Recreation Precinct, Cambewarra Road, Bomaderry</i> is supported as a new	Noted.	No further action.

	project. It is a significant infrastructure project that will service the northern Shoalhaven, particularly the Nowra-Bomaderry URAs.		
	Project CWCFC0007 Shoalhaven City Arts, Multimedia and Music Centre needs to be revised to reflect the new name as Shoalhaven Regional Gallery.	<p>Agreed. The supporting information exhibited with this project incorrectly said that the project is to be deleted at the conclusion of the exhibition period. CWCFC0005 <i>Shoalhaven Multimedia and Music Centre</i> is the project to be deleted (it was included in the exhibited list of projects proposed for deletion). The improvements in CWCFC0005 were incorporated into CWCFC0007.</p> <p>The supporting information for CWCFC0007 also needs to be amended to reflect the fact that the project has been completed and is a recoupment project.</p>	Rename project CWCFC0007 to Shoalhaven Regional Gallery and amend its supporting information to reflect the fact that the project has been completed and is a recoupment project.
	Project CWCFC2002 Shoalhaven Entertainment Centre - Bridge Road, Nowra, should be revised to include future upgrade works to the existing facility that will be needed to meet additional demand for arts and cultural events/shows as the population of Shoalhaven increases.	Noted. CWCFC2002 is a recoupment project as the facility has been completed. Council could create a new project to levy contributions towards the suggested capacity upgrades to meet demand from future population growth. This will require the preparation of a separate amendment to the adopted contributions plan in consultation with Council's Recreation, Community & Culture Unit. Any draft amendment will be reported to a future Development Committee meeting for endorsement prior to public exhibition.	No further action.

Internal submission from Local Planning section, 31/10/18	The new website on exhibition is a dramatic improvement on the current website and the search function is particularly useful.	Noted.	No further action.
	An interactive map that includes details of all contribution projects and their benefit/acquisition areas in the LGA would be a very helpful addition to the website. There are several areas where it is difficult to determine if a property is affected by a CP project – particularly where the property is outside the benefitting area but is affected by the CP acquisition area.	Noted. It is intended to create an interactive map of all contributions projects and include this on the new website. This would allow users to search properties for applicable contributions projects. The timing of this is uncertain at this stage.	No further action.
	The project search tool only allows users to find projects using the specific project code (which users don't often know).	The search tool allows users to search by: <ul style="list-style-type: none"> • Project code; • Project category (e.g. recreation, car parking etc.); • Project location (e.g. Bomaderry, citywide etc.); • Terms that appear in the project description 	No further action.
	There are several contributions projects that require Council to loan funds for the construction of projects ahead of schedule to facilitate development i.e. Huskisson Service Lanes and Moss Vale Road South URA – Provision of Open Space. The interest rate should be included in the contributions project costs and perhaps a general statement in the plan that explains the interest rate as a cost.	Noted. Interest can be included in the project costs for relevant projects via a separate amendment to the Plan, once Council has identified those projects which are to be funded by loans and budgeted the costs.	No further action.

	The 3 new contributions projects for the Moss Vale Road South URA that recently became effective in Shoalhaven Contributions Plan 2010 – Amendment No. 9 (01ROAD0154, 01DRAI006 and 01REC0015) need to be included in the final contributions plan.	Noted. The 3 new projects 01ROAD0154, 01DRAI006 and 01REC0015 will be included in the final contributions plan 2018 to be adopted by Council.	Include the newly adopted projects 01ROAD0154, 01DRAI006 and 01REC0015 in the final contributions plan 2018.
	Dedication of Land/Works in Kind – the current contributions plan is not explicitly clear on the process by which Council can consider and accept the dedication of land (where identified for acquisition) or works in kind in lieu of monetary contributions. Further guidance on this process should be added into the contributions plan. The Local Planning team are seeking legal advice on this process and this will be provided once received.	Noted. Additional detail on the process by which Council can consider and accept the dedication of land or works in kind can be included in the contributions plan via a separate amendment, following the receipt of legal advice on the matter.	No further action.
The Berry Forum, 24/10/18	It is understood that project 01CFAC0013 <i>Berry Gardens Neighbourhood Community Centre</i> is to be deleted. Where will the funds collected for this project be spent in the future? According to the DA tracking website more than \$788,000 has been levied on the developer (of the Huntingdale Park Estate). The funds should be spent on improving community facilities in Berry, where increasing pressures of population growth are being felt.	Noted. As outlined in the Explanatory Statement exhibited with the draft contributions plan, contributions collected for 01CFAC0013 and other deleted projects would be transferred into the recoupment fund to be spent on high priority infrastructure projects necessary to support future population growth, for example, the provision of essential community infrastructure up front in urban release areas like Moss Vale Road North and South. This is in line with Council's resolution on 21 March 2017. The recoupment fund would be based on	To address this concern to some degree, it is recommended that: <ul style="list-style-type: none"> • 01CFAC0013 be deleted and the funds collected be included in the recoupment fund. • The recoupment fund, to be made up of all previously deleted projects and projects being deleted through this review, be allocated based on planning area so that funds collected in Planning Area 1 be spent on contribution projects in Planning Area 1 and so on.

		<p>Planning Area i.e. funds collected for 01CFAC0013 could be spent on projects anywhere in Planning Area 1 once the project is deleted.</p> <p>Council's Recreation, Community & Culture Unit has suggested that a new contributions project be established for the Berry District Park (Boongaree) and that funds collected for 01CFAC0013 be reallocated to it (see above). This is considered to have merit but would require a separate amendment to the Plan once project costing, catchment and other details have been determined.</p> <p>Alternatively, Council could resolve to retain project 01CFAC0013 in the Plan until such time as a project for the new Berry District Park is created and the contributions could be transferred into it. This would mean that contributions from 01CFAC0013 would be spent on community infrastructure in Berry. It would, however, be inconsistent with the treatment of contributions from other deleted projects which are being transferred into the recoupment fund.</p>	<ul style="list-style-type: none"> The Berry District Park (Boongaree) be added to the list of projects under the general active recreation project for Planning Area 1 (01AREC2008). It will then be able to benefit from some contribution funding. This will, however, increase the cost of the overall project by about \$16,000,000 and increase the contribution rate from \$721.31 to approximately \$891.93 which would be payable by all relevant developments in Planning Area 1.
	What works are planned for project 01CARP2002 <i>Berry Town Centre Car Parking (Queen Street)</i> during the indicated timeframe of 2020-24? The timeframe was previously 2014-18.	Noted. As per the supporting information exhibited with the draft contributions plan, the project includes the following works:	No further action.

	Demand for car parking in Berry continues to climb dramatically and existing car parking facilities are increasingly inadequate.	<ul style="list-style-type: none"> Princess Street: 20 spaces and service road (as per Shoalhaven DCP 2014 Chapter N2); 61 Princess Street and 15 Alexandra Street: 42 spaces; Princess Street – Draft Landscape Masterplan: 41 spaces (90 degree parking to replace existing parallel parking to create 17 new spaces); 141 additional spaces on land not yet identified. 	
	Will 01OREC0009 <i>Land acquisition for passive open space (Princes Highway, Berry)</i> will take place, given the recent approval of the final stage of the Huntingdale Park Estate?	If project 01OREC0009 is retained in the final adopted contributions plan as recommended, the timeframe for the project's completion will be dependent on the timing of development and the payment of contributions, as stated in the supporting information exhibited with the project.	No further action.
Allen Price & Scarratts Pty Ltd, 25/10/18	The contributions plan website is difficult to understand and navigate. More information is needed to instruct the user how to use it.	Noted. The new website is designed to be more user-friendly and consistent with the look and feel of the existing Local Environmental Plan (LEP) and Development Control Plan (DCP) websites. It is considered to be sufficiently user-friendly for most users.	No further action.
	The reasons for the adjustments made to apportionment, timing and costs for revised projects are unclear as no supporting commentary was provided in the public exhibition material.	As stated in the Explanatory Statement, costing and population projections for certain projects have been updated where more accurate information is known. Completion timeframe has been extended in response to the higher cost of some of these projects. No changes to	No further action.

		apportionment were made to any revised projects. This is reliant on current population projections and household composition data from the 2016 census which was not finalised by Council's consultants until after the exhibition period.	
	Many projects have cost estimates which have not been updated for over 10 years. Cost estimates for these projects should be updated as part of this review.	Noted. As stated in the Explanatory Statement, costing for certain projects has been updated where more accurate information is known. It is intended to review and update the costing of remaining projects via future amendments to the plan.	No further action.
	Projected population for Shoalhaven LGA for the year 2036 is 11,986 less in the draft contributions plan 2018 compared with the existing Contributions Plan 2010 (119,984 draft plan vs 131,970 current plan). What impact has this reduction in projected population had on developer contributions? Council may need to increase its apportionment on new and revised projects so that development is not charged higher contribution rates as a result of the reduced population funding pool.	Noted. Appendix B to the exhibited Explanatory Statement provides details of new and revised contribution projects, including changes to project costing, contribution rates and project timeframes. Of the 52 revised projects, contribution rates have increased for 17 (or 33%). Project costings for all 17 of these projects were revised upward which is the cause of the increase in contribution rates. As noted above, project apportionments have not been updated to reflect the latest population projections and household composition figures from the 2016 Census. This will be undertaken as part of a future amendment to the Plan, which will likely result in amended contribution rates.	No further action.

	<p>It appears that Council is deliberately releasing itself from its apportionment (share) of projects by deleting projects and using the recouped funds as its apportionment towards other projects. These other projects are not always in the contributions plan and effectively become 100% apportioned to development. This practice appears to contravene sections 7.11 and 7.12 of the EP&A Act relating to development contributions. Has Council sought legal advice?</p> <p>This practice is not fair on developers who pay contributions in good faith and on the basis that Council is committed to funding its share of projects and delivering the infrastructure.</p> <p>It also robs communities of Council's contribution when projects are deleted and the funds get spent on non-related projects in other areas.</p>	<p>The review of projects in the contributions plan is necessary in ensuring that the plan remains current and continues to fund infrastructure that meets community needs. Council is permitted to add, remove and amend projects as part of a review of the contributions plan under the provisions of the EP&A Act.</p> <p>This review of the contributions plan has identified 88 infrastructure projects that are considered to be redundant or unlikely to be delivered for various reasons. Retaining these projects in the Plan and continuing to charge contributions for them is difficult to justify.</p> <p>As previously resolved by Council, the recoupment fund is to be 'ring-fenced' specifically for contributions projects and will not be permitted to be used to fund other works. It will allow Council to fast-track high priority projects necessary to support future population growth, such as essential community infrastructure in urban release areas. This will be done by using the recoupment fund to pay the <u>developers'</u> share of the cost of the infrastructure to provide the infrastructure up front and then recouping this money from the developers when they proceed with development and pay contributions. This will reduce delays in achieving release</p>	<p>No further action.</p>
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		of land in these areas, benefitting the community and developers alike. This approach does not contravene the legislation relating to developer contributions.	
	Has Council budgeted for its contribution (apportionment) towards new and revised projects and is this publicly available so that developers and the community have certainty that Council will contribute its apportionment and deliver the infrastructure?	Projects scheduled for completion within 4 years are budgeted for in Council's operational and delivery plans. Many projects have completion timeframes that are beyond the statutory budget horizon. As noted in previous reports to Council, Council will need to continue to consider how its commitments outlined in the Contributions Plan are to be met going forward.	No further action.
	Given that consumers ultimately bear the cost of developer contributions through land prices, Council is inflating local land values and impacting economic growth by charging contributions on projects that are unnecessary and that it does not intend to deliver.	This review proposes to remove 88 projects considered to be redundant from the contributions plan so that Council can redirect funds to the delivery of priority projects in a timelier manner, in line with the needs of the growing community.	No further action.
	Where will funds from deleted projects be spent and how will development that originally made the contributions benefit?	Funds from deleted projects are proposed to be transferred into a pooled 'recoupment fund' and spent on priority infrastructure projects that are necessary to facilitate future population growth, such as the provision of recreation facilities in urban release areas. This will reduce delays	No further action.

		in land release in these areas and benefit developers and the community alike.	
	Will Council provide its apportioned contribution from deleted projects towards new projects?	As per Council's resolution of 21 March 2017, funds from deleted projects are to be used for the most part to fund the developer's apportionment of high priority projects and to provide seed funding for community infrastructure projects in the revised contributions plan.	No further action.
	CWAREC2004 Synthetic Hockey Field Facility (Bernie Regan Sporting Complex, North Nowra). Council has constructed 1 of the 2 proposed hockey fields but proposes to delete the project as completed. Council's apportionment is 76.41% but the works have been majority funded by development contributions. How can Council legally delete the project as completed?	Council is permitted to add, remove and amend projects as part of a review of the contributions plan under the provisions of the EP&A Act. Council's adopted Community Infrastructure Strategic Plan has identified that the 2 nd field is no longer required.	No further action.
	Why have contribution rates for 17 projects increased by more than CPI? No explanation is provided in the exhibition material.	Project costings for these 17 projects were updated to reflect the current costs of the proposed works. This reflects the fact that annual CPI increases have not kept pace with construction costs.	No further action.
	Has the apportionment of any revised projects been changed? No explanation is provided in the exhibition material.	Apportionment has not been changed for any projects. Apportionment will be revised as part of a future amendment to the Plan to reflect the latest population projections and household composition figures from the 2016 Census.	No further action.
	Several town centre car parking projects have unaffordable contribution rates which are deterring development and	These projects are critical for the coordinated approach to the supply of additional car parking spaces in the	No further action.

	driving poor development outcomes (e.g. Berry \$38,014 per car park, Nowra \$26,830 per car park). Has Council reviewed these projects to ensure they are achieving their intended purpose?	respective areas to meet demand from future population growth. As this demand is wholly attributable to future development, it is considered reasonable that the projects be apportioned 100% to development.	
	Some infrastructure projects are required upfront before development can proceed in an area but have a completion timeframe marked as 'development dependent' e.g. 01ROAD2144 (Hillcrest Ave, South Nowra road and drainage works). What does 'development dependent' mean? Council should be actively facilitating development and growth by delivering infrastructure in a timely manner and then recouping the cost when development proceeds.	Noted. 'Development dependent' means that completion of the project is dependent on the timing of development / payment of contributions. Council's capacity to fund infrastructure projects upfront is generally limited which is why the timeframe for many projects is 'development dependent'. This review of the contributions plan will enable Council to prioritise and complete essential projects in a timelier manner by rationalising the number of projects and authorising the pooling of funds from similar contributions projects in the same Planning Area. This will help to facilitate development that may otherwise be held up awaiting construction of essential infrastructure.	No further action.
	The policy on contribution refunds needs to be more flexible. Restricting requests for refunds to within 12 months of date of payment is unreasonable and an added risk for developers.	Consistent with the NSW Department of Planning and Environments' Development Contributions Practice Note, the Land and Environment Court has found that there is no express power for a Council to refund a contribution, and that a refund cannot be provided in circumstances where the Council has expended the money in	No further action.

		<p>accordance with the Plan or committed or applied the money. Thus, Council's policy is considered reasonable as it actually allows for refunds where a mistake has been made by Council or if a development is not going to proceed and the development consent is surrendered. In line with the Practice Note, only funds that have not been spent can be refunded. The restriction on the request for refunds being within 12 months is in line with the <i>Recovery of Imposts Acts 1963</i> which sets a 12 month limit to act to recover a tax (being a fee, charge or other impost). As per Section 4.5 of the Plan, contributions are only payable at issue of a linen certificate for subdivision, issue of a construction certificate (where required) or prior to commencement of construction. This means contributions are only required to be paid once the developer is ready to proceed which minimises risk to the developer.</p> <p>The wording of the clause as exhibited is consistent with the Practice Note and the Act. Therefore, no change is recommended.</p>	
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DE19.24 Further Update - Possible Heritage Listing - Former Huskisson Anglican Church

HPERM Ref: D19/99451

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments:

1. Previous Council Report - Feb 19 - Possible Heritage Listing - Huskisson Church [↓](#)
2. Letter - March 19 - NSW Heritage Council - IHO Outcome - Huskisson Church [↓](#)

Purpose / Summary

Further update following Council's resolution of 5 February 2019, and obtain direction given the nature of subsequent advice received from the Heritage Council of NSW.

Recommendation (Item to be determined under delegated authority)

That Council

1. Receive the report for information.
2. Note the letter received from the Heritage Council of NSW on 27 March 2019.
3. Decide whether it wishes to reconsider its previous resolved position in this regard and consider the possible heritage significance of the site through the LEP listing process.

Options

1. Receive this report for information and note the further correspondence received.

Implications: Council resolution of the 5 February 2019 would stand, and Council would not take steps to reconsider the points raised in the letter as part of the possible heritage listing of the site at this point.

Heritage issues associated with the site will still need to be considered in the assessment of the development application that has been lodged over the site.

2. Reconsider the possible listing of the site in the Local Environmental Plan (LEP) as a "local" heritage item.

Implications: Given the nature of the advice received from the Heritage Council of NSW that Council reconsider its position on the site, it may be appropriate for Council to consider this request. This would enable all the information related to the site to be evaluated. This would also enable, as part of the process, engagement and consultation with all relevant parties, including local Aboriginal groups as suggested in the Heritage Council letter.

3. Another course of direction as resolved.

Implications: Dependent on the nature of the resolution.

DE19.24

Background

Council initially resolved on 16 October 2018 to reaffirm its strong opposition to any heritage listing. The matter was reconsidered by the Development Committee on 5 January 2019 (**Attachment 1** – Previous Report) when it was resolved under delegation to:

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.*

Council has now received a letter (**Attachment 2**) regarding this matter from Frank Howarth, the Chair of the NSW Heritage Council, that warrants appropriate consideration.

The letter was received on 27 March 2019 and details the outcome of the further consideration of this matter by the Heritage Council's State Heritage Register Committee at its meeting on 6 February 2019, where it was decided not to proceed with an Interim Heritage Order (IHO) over the site as it was concluded that it is not likely to be of state significance, but is highly likely to be of local significance. Given this, the Committee "strongly encourages Council to consider the heritage significance of the site".

The letter provides a commentary from the Committee on the following aspects:

- Indigenous heritage
- Church History
- Landscape
- Ground penetrating radar

The letter asks Council to review the material that is available and consider:

- *whether other areas of the site require investigation for the presence of graves, and review the techniques that would be best employed;*
- *whether the Cyril Blackett church could be retained in its current location;*
- *whether any development that proceeds, could provide an opportunity for the interpretation of those graves and of Aboriginal heritage in the area;*
- *the heritage value of the landscape and plantings and the importance of this open green space to the local community in a town that is so rapidly developing.*

The letter concludes by asking Council to revisit its previous decision to consider development of the site without further consultation or investigation of its cultural values and again notes that further consultation with local Aboriginal people could go some way towards reuniting planning requirements of a growing area and local community aspirations.

Discussion

The letter received from Heritage Council of NSW advises that the site in question is likely to be of "local" heritage significance and they have asked Council to revisit its decision in this regard. It has also been suggested that further consultation with local Aboriginal people would be appropriate, as part of any possible reconsideration of the site's cultural heritage values.

Given the significant nature of this request, it is considered appropriate that it be brought to Council's attention for consideration and to obtain further direction. This report provides options for consideration in this regard.

Reconsidering the significance of this site through the local heritage listing process (LEP) would include consultation with all sectors of the community using independent assistance.

Community Engagement

This will depend on the option pursued. If Council resolves to reconsider the cultural heritage values of the site and its possible listing in the Local Environmental Plan (LEP) this would need to follow a detailed process involving community engagement and consultation.

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

HPERM Ref: D19/12940

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. NSW OEH Letter, 2 January 2019
2. National Trust Letter, 22 November 2018

Purpose / Summary

Provide an update following the Council resolution of 16 October 2018 and obtain further direction in regard to this matter.

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.

Options

1. Receive this report for information and note the correspondence received.

Implications: This would mean that the Council resolution of the 16 October 2018 would stand, and Council would not take steps to reconsider the possible heritage listing of the site at this point.

The heritage issues associated with the site would still need to be appropriately considered in the assessment of the development application that has been lodged over the site.

2. Reconsider the opposition to the possible listing of the site in the Local Environmental Plan (LEP) as a heritage item.

Implications: Given that the potential context of the site has changed and that a request has been received from the NSW Office of Environment & Heritage that Council reconsider its position on the site, it may be appropriate for Council to consider this request. This would enable most recently obtained information to be evaluated.

3. Reconsider this issue once the site has been reconsidered by the NSW Heritage Council's State Heritage Register Committee.

Implications: The advice received indicates that this matter will go back to the State Heritage Register Committee in February 2019 for further consideration. Depending on the outcome of this, Council may wish to reconsider this matter again when their position and advice is known.

4. Combination of the options detailed above.

Implications: Will depend on the combination that is decided on. It could be appropriate given Council's previously resolved strong opposition to any heritage listing to receive the report for information (Option 1) and also reconsider the matter following the reconsideration of the site by the State Heritage Register Committee (Option 3), dependent on the advice received in this regard.

Background

Following consideration of a Notice of Motion, Council resolved on 16 October 2018 to:

1. *Reaffirm its strong opposition to the Heritage listing of the abandoned Anglican Church at Huskisson and notify the NSW Heritage Office of the decision, as in Council's opinion nothing has changed.*
2. *Include with the letter a copy of its earlier submission opposing the listing of the item as an item of local significance.*
3. *Call in the determination of the DA relating to the demolition of the Church to the full Council for the reason of public interest.*

This report provides an update in regard to Parts 1 and 2 of this resolution and seeks Council's further direction in regard to this issue.

Consistent with the resolution, Council staff wrote to the NSW Office of Environment & Heritage (OEH) on 19 October 2018 and included the material referred to in Part 2 of the resolution. OEH were requested to bring Council's advice to the attention of the NSW Heritage Council as part of their consideration of the Interim Heritage Order (IHO) request that had been submitted.

It is understood that a request for an IHO to be placed over the property was initially considered by NSW Heritage Council's State Heritage Register Committee on 7 November 2018. The Committee resolved at that point to recommend to the NSW Minister for Heritage, The Hon. Gabrielle Upton that an IHO be placed on the site.

Separate to this and following information arising that there could possibly be significant Aboriginal burials on the site, the proponent of the current development application over the site did additional work regarding Aboriginal heritage/history and ground penetrating radar (GPR) work over the remainder of the site that was not covered by earlier GPR work done for Council. This material is understood to have then been provided to OEH. The additional GPR work was also provided to Council as part of the development application process.

Council received a subsequent written response from the Heritage Division of OEH on 2 January 2019 (see **Attachment 1**) that advises as follows:

- They have reviewed the proponent's subsequent heritage work – which indicates that the site is not likely to be of state significance
- Important member of the local indigenous community is however likely to be buried there, thus further investigation and consultation with local Aboriginal people/descendants is warranted
- Matter will go back to the State Heritage Register Committee in February for further consideration
- Asks that Council revisit its decision to consider development of the site without further consultation or investigation of potential cultural values. **Note:** *it is assumed that this refers to the 16 October 2018 resolution reaffirming strong opposition to the Heritage listing.*
- Further consultation with local Aboriginal people could go some way towards reuniting planning requirements of a growing area and local community aspirations.

The National Trust of Australia (NSW) also wrote to Council on 22 November 2018 advising of their intention to list the Church, Hall and Cemetery site on the National Trust Register – see **Attachment 2**. Their letter also notes that they support the making on an IHO over the site. The National Trust Register is 'non-statutory' and sits outside the legislation of NSW. It relates to items or places that the Trust determines have cultural significance and are worthy of conservation.

Discussion

The advice received from OEH provides an indication that the site in question might be of 'local' heritage significance and they have asked Council to revisit its decision in this regard. It has also been suggested that further consultation with local Aboriginal people would be appropriate, as part of any possible reconsideration of the site's cultural heritage values.

Given the nature of this request, it is appropriate that it be brought to Council's attention for consideration and to obtain further direction. This report provides options for consideration in this regard.

Community Engagement

This will depend on the option pursued. For example, should Council resolve to reconsider the cultural heritage values of the site and its possible listing in the Local Environmental Plan (LEP) this would need to follow a detailed process involving community engagement and consultation.



**Office of
Environment
& Heritage**

Shoalhaven City Council

Received

- 2 JAN 2019

DOC18/981538

File No. _____

Referred to: _____

Attention Gordon Clark
Russ Pigg
General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Dear Mr Pigg

As you know, the Office of Environment and Heritage (OEH) have received several requests to place an Interim Heritage Order (IHO) under the *Heritage Act 1977* on 17 Hawke Street, Huskisson. Since this time, we have received correspondence from community members as well as Members of Parliament requesting the Minister for Heritage determine an IHO to investigate the potential state significance of this site.

The Heritage Council's State Heritage Register Committee considered the matter on 7 November 2018 and resolved to recommend that the Minister place an IHO over the four lots bounded by Hawke, Bowen and Currambene streets for a period of 12 months. This decision was based on the possibility that burials in the church grounds may be significant and that a more comprehensive assessment was needed to determine this.

Since 7 November 2018, a report commissioned by the proponent, undertaken by a respected archaeologist, has been completed and provided to OEH. The research indicates that this site is not likely to be of state heritage significance. However, an important member of the local Indigenous community is likely to be buried within the church grounds. As the report recommends, I believe that this warrants further investigation, including consultation with local Aboriginal people and his descendants.

The purpose of an IHO is to provide time for investigation of heritage values. Since the state of knowledge about the site has been advanced with cultural values identified at the local level, and as the development application for the site is still under review, I have decided to bring the matter before the State Heritage Register Committee in February 2019 for further consideration.

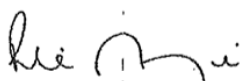
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ABN 30 841 387 271
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DE19.24 - Attachment 1

Page 2

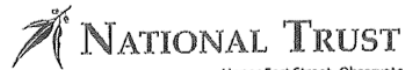
I note your previous correspondence and ask you to revisit council's decision to consider development of the site without further public consultation or investigation of the site's potential cultural values. We understand that this is a polarising issue in the community, and further consultation, especially with the local Aboriginal people could go some way towards reuniting the planning requirements of a developing coastal area and the local community's aspirations.

Yours sincerely



Pauline McKenzie
Executive Director
Heritage Division

DE19.24 - Attachment 1



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Sydney NSW 2001
T +61 2 9258 0123 F +61 2 9251 1110
www.nationaltrust.org.au/NSW

22 November 2018

Mr Russell Pigg
General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Email: council@shoalhaven.nsw.gov.au

Dear Mr Pigg,

National Trust Register listing of former Huskisson Anglican Church, Hall and Cemetery Site

The National Trust is currently finalizing a proposal for listing on the National Trust Register of the former Huskisson Anglican Church, Hall and Cemetery Site. The proposed listing was considered at the November meeting of the National Trust's Built Heritage Conservation Committee and it was determined that the former Holy Trinity Anglican Church, designed by Cyril Blacket and completed in 1931 was worthy of listing on the National Trust Register.

The National Trust's Landscape Conservation Committee and Cemeteries Conservation Committee are also examining this site (Lots 7, 8 and 9 Section 3 DP 758530, bounded by Hawke, Bowen and Currumbene Streets and an un-named laneway between Currumbene and Hawke Streets. The National Trust understands that a survey on 18 March, 2015, using ground penetrating radar, close to the rear of the church identified seven grave sites.

The Church grounds are likely to contain additional unmarked graves, containing the remains of European and Aboriginal people. The identity of many of those buried in the graveyard is yet to be investigated, but the graves of three are known. The church grounds did contain several wooden crosses and gravestones and a white picket fence around two graves, but the monuments have been moved to an unknown location.

The Trust also understands that King Budd Billy II (c1815 – 31 May, 1905) known as the "King of Jervis Bay" was given a full Christian burial in the graveyard adjoining the church on this site, now the church call. This was confirmed in the July 22, 1905 edition of the Evening News and indicates that this is an important Aboriginal "contact" site.

It is also understood that an application for an Interim Heritage Order (IHO) has been lodged with the Office of Environment and Heritage (OEH) in regards to this site and that the NSW Heritage Council has recommended to the Minister that an IHO be placed on the site. The National Trust strongly supports the making of this Interim Heritage Order to allow the full heritage significance of this site to be investigated.

Yours sincerely,

Graham Quint
Director, Conservation

The National Trust of Australia (New South Wales)
ABN 82 491 958 802



DOC19/150203

Attention Gordon Clark
Russ Pigg
General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Dear Mr Pigg

I am writing to you again regarding the Interim Heritage Order (IHO) request for 17 Hawke Street, Huskisson.

The Heritage Council's State Heritage Register Committee (Committee) first considered this request on 7 November 2018 and resolved to recommend that the Minister place an IHO over the four lots bounded by Hawke, Bowen and Currumbene streets for a period of 12 months (letter from the Office of Environment and Heritage (OEH) to Shoalhaven City Council sent 21 December 2018).

As forecast in that letter, the matter was returned to the Committee for further consideration on 6 February 2019, so that additional information provided to OEH since November could be considered. At this meeting the Committee also heard presentations from the initiators of the IHO and the site proponent.

On 6 February 2019, the Committee decided not to recommend an IHO to the Minister for Heritage, the Hon. Gabrielle Upton. This decision was made after much discussion, with the conclusion being that this site is not likely to be of state heritage significance but is highly likely to be of local heritage significance. As local heritage is the responsibility of the local council, the Committee determined to write to the Shoalhaven City Council to strongly encourage you to consider the heritage significance of the site when reviewing any development proposals.

The Committee heard from the proponent and Save Husky Church and each provided historical information. At times this information was in conflict, indicating areas where further investigation may be required. The Committee believes there are a range of issues that require further consideration at a local level, including:

Indigenous history:

- while the Aboriginal due diligence report is itself useful information, the *National Parks and Wildlife Act* is not an appropriate framework for considering more contemporary Aboriginal cultural heritage issues;

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- we agree with the previous assessment of this report by the Office of Environment and Heritage (OEH), and the recommendation that further investigation and consultation with the local Aboriginal people take place;

Church history:

- the 1931 Cyril Blackett church is likely to be of local heritage significance;
- there are two conflicting versions of how the c1890 church has moved across the site over time. An understanding of the original location of the c1890 church and its subsequent relocation requires more work;

Landscape:

- we note this is a rare green space within the growing centre of Huskisson;
- arborist reports indicate the potential rarity and landscape quality of these trees;
- the heritage reports do not consider the plantings as part of the sesquicentenary celebrations in 1938 – this information could contribute to likely local significance of the trees;

Ground-Penetrating Radar:

- this report is inadequate as the site survey was partial and it used technology better adapted to other purposes.

We ask that Shoalhaven City Council (Council) review the information available to them via both parties and consider:

- whether other areas of the site require investigation for the presence of graves, and review the techniques that would be best employed;
- whether the Cyril Blackett church could be retained in its current location;
- whether any development that proceeds, could provide an opportunity for the interpretation of those graves and of Aboriginal heritage in the area;
- the heritage value of the landscape and plantings and the importance of this open green space to the local community in a town that is so rapidly developing.

We note your previous correspondence and again ask you to revisit Council's decision to consider development of the site without further public consultation or investigation of the site's potential cultural values. We understand that this is a polarising issue in the community, and further consultation, especially with the local Aboriginal people, could go some way towards reuniting the planning requirements of a developing coastal area and the local community's aspirations.

Yours sincerely



Frank Howarth
Chair
Heritage Council of NSW

DE19.25 Two (2) Bushcare Group Action Plans - Review

HPERM Ref: D19/99736

Group: Planning Environment & Development Group
Section: Environmental Services

Attachments: 1. Warden Head Bushcare Action Plan (under separate cover)
2. Bangalee Reserve Bushcare Action Plan (under separate cover)

Purpose / Summary

The purpose of the report is to present two (2) reviewed Bushcare Group Action Plans for adoption – for Warden Head and Bangalee Reserve.

Recommendation (Item to be determined under delegated authority)

That Council adopt the following two (2) reviewed Bushcare Group Action Plans:

1. Warden Head; and
2. Bangalee Reserve.

Options

1. As recommended.

Implications: The two (2) Bushcare Group Action Plans have been reviewed by Council's Environmental Services Section and State Government agencies. All plans have been sent to relevant Council Consultative Bodies (CCB's) and all residents and ratepayers within 200 metres of the reserve affected. This is as per the requirements of the Bushcare/Parkcare Policy and Procedures and in line with Council's Community Engagement Plan. A Councillor briefing was planned for 21 March 2019 to explain and discuss the updates to the reviewed action plans and seek input from Councillors.

2. Adopt one of the reviewed Bushcare Group Action Plan and seek further changes to the other.

Implications: The positive and negative implications of choosing this option would depend on what the proposed changes are.

3. Not adopt any of reviewed Bushcare Group Action Plans.

Implications: This decision would significantly affect volunteer's morale and result in a loss of volunteer participation in Council's Bushcare program.

Background

Part C of MIN08.117 Ordinary Council meeting dated 29 January 2008 states that:

"Council affirms its direction that planting and other associated pursuits should only be done by abovementioned groups in accordance with Bushcare and Parkcare action plans as approved by Council".

This part of the Council resolution requires that all Bushcare and Parkcare Groups that operate on Council owned or managed land, prepare action plans that are to be reported to Council for adoption.

DE19.25

Part D of MIN08.1552 Ordinary Council meeting dated 25 November 2008 states that:

“An all-embracing Consultation Policy be developed that will include nearby residents, the wider community, Tourism Shoalhaven, CCBs, Chambers of Commerce, community groups, church groups and local schools.”

The level of consultation required is dependent on the actions outlined within the plan and is specified in chapter 6, Community Consultation, of the Bushcare/Parkcare Group Policy 2018 and Bushcare/Parkcare Group Procedures 2012 (The Policy was updated in 2018; the procedures separated and are currently being revised). The Policy requires Group Action Plans to be reviewed every six (6) years.

Under the Council’s Community Engagement Policy engagement matrix, all Bushcare Action Plans are classed as a local low impact project. Therefore, combined with the requirements of the Bushcare Policy and Procedure, both reviewed Bushcare Action Plans used direct communication via a mail-out to all residents/ratepayers and the CCB’s and were made available through the SCC website.

The Bushcare Group Action Plans were mailed to 342 adjoining residents/ratepayers near the affected public reserves, Ulladulla and Districts forum and Ulladulla Local Aboriginal Land Council (Warden Head plan) and the Nowra Local Aboriginal Land Council (Bangalee Reserve plan).

A summary of the submissions is contained in the tables below.

Warden Head Bushcare Action Plan Review (D18/280529) - Summary of Submissions – 1 Submission received from 2 individuals

Issues raised by submissions	Changes made, or actions taken because of the submissions	Number of submissions that raised this issue
<i>‘completely in agreement with the Bushcare plan for Warden Head’</i>	<i>None required</i>	<i>1</i>

Bangalee Reserve Bushcare Action Plan Review (D18/278470) - Summary of Submissions – 1 Submission received from 1 individual

Issues raised by submissions	Changes made, or actions taken because of the submissions	Number of submissions that raised this issue
<i>‘The Plan looks fairly comprehensive. It would be useful to tie some dollar figures into some of the proposed work - that would help when it comes to submitting funding applications and it's always useful to capture the dollar value of the time/effort expended by volunteers.’</i>	<i>No changes were made because it difficult to estimate volunteer hours for the six-year period of the plan, which provides much of the contribution to each activity listed. A possible project that could be funded through external sources is listed in Section 7. At this stage, this represents a project concept which would require substantial planning in the development of a funding proposal. Therefore, no value is given for the project in the plan.</i>	<i>1</i>

Community Engagement

CCBs, residents, ratepayers and Local Aboriginal Land Councils were informed of the opportunity to comment on the two (2) Bushcare Action Plans via mail. A total of 342 letters were mailed to residents and ratepayers within 200 metres of the reserves affected by the reviews.

Residents/Ratepayers were able to view the draft Bushcare Action Plans via a “Documents on Exhibition” web link on Council website and were given 28 days to make a submission. People without internet access were able to contact Council and request a hard copy of the plan and make a submission via the mail. This community engagement is in line with Council Community Engagement Policy for low impact local projects.

A Councillor briefing was planned for 21 March 2019 to explain and discuss the updates to the reviewed action plans and seek input from Councillors.

Financial Implications

Over the six years of the two (2) Bushcare Actions Plans, the cost of implementation will be a total of \$45,700. These costs include an allocation of existing staff resources which support the Bushcare Program, which will be funded from the existing annual operation budget (job number 15915). A materials and equipment contribution of \$400 per annum per group is also included in these costs.

The in-kind volunteer contribution over the six years of the two Bushcare plans is estimated at \$106,000. This is a significant contribution from our volunteers in meeting the objectives of Council’s Community Strategic Plan.

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.