

## Development & Environment Committee

**Meeting Date:** Tuesday, 06 August, 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  
Chief Executive Officer 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, 2 July 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  
Clr Kaye Gartner  
Clr Mitchell Pakes  
Clr Greg Watson  
Clr Mark Kitchener  
Clr Bob Proudfoot  
Mr Stephen Dunshea - Chief Executive Officer

### Apologies / Leave of Absence

Apologies were received from Clrs Findley and Guile.

### Confirmation of the Minutes

**RESOLVED** (Clr White / Clr Alldrick) MIN19.454

That the Minutes of the Development & Environment Committee held on Tuesday 04 June 2019 be confirmed.

CARRIED

### Declarations of Interest

Clr Gash – DE19.58 - Shoalhaven Development Control Plan 2014 - Proposed Amendment to Chapter N12: Culburra Beach - The Marina Area – pecuniary interest declaration – will leave the room and will not take part in discussion or vote – She is the co-owner of 97 The Marina, Culburra Beach and the amendment may or may not have a positive or negative effect on her property.



## Call Over of the Business Paper

The following items were called up for debate DE19.46, DE19.53, DE19.54, DE19.57, DE19.58, DE19.59, DE19.60, DE19.61 and DE19.62.

The remaining items (DE19.52 and DE19.55) were resolved en-bloc (Clr Gartner/ Clr White) at this time. They are marked with an asterisk (\*) in these Minutes.

## MAYORAL MINUTES

Nil

## DEPUTATIONS AND PRESENTATIONS

### **DE19.46 - Public Exhibition Outcomes - Coastal Hazard Review Planning Proposal and Coastal Management Areas DCP Amendment (Page 12)**

Ms Leonie Sinclair addressed the meeting to speak against the recommendation.

Mr David Greenslade addressed the meeting to speak against the recommendation.

### **DE19.57 - Exhibition Outcomes and Proposed Finalisation - Citywide SP3 Tourist Zones Review - Planning Proposal and Proposed Amendment to Chapter V3 Shoalhaven Development Control Plan 2014**

Mr John Willmott addressed the meeting to speak against the recommendation.

### **DE19.59 - Development Application – No. 64, Lot 1138 in DP 1210394, Seagrass Avenue Vincentia (Page 65)**

Mr Glyn Leyshon (of behalf of Bayswood residents) addressed the meeting to speak for the recommendation.

Mr Andrew Stecyk (owner) addressed the meeting to speak against the recommendation.

### **DE19.60 - Development Application – 38 Lyrebird Drive Nowra – Lot 74 DP 1198691 DA18/2175 (page 98)**

Mr Alex Kelly and Mr Anthony Barthelmess (representing the owners of the land) addressed the meeting to speak against the recommendation.

## Procedural Motion - Bring Item Forward

**RESOLVED** (Clr Gartner / Clr White)

MIN19.455

That the following matters be brought forward for consideration:

- DE19.46 - Public Exhibition Outcomes - Coastal Hazard Review Planning Proposal and Coastal Management Areas DCP Amendment
- DE19.57 - Exhibition Outcomes and Proposed Finalisation - Citywide SP3 Tourist Zones Review - Planning Proposal and Proposed Amendment to Chapter V3 Shoalhaven Development Control Plan 2014
- DE19.59 - Development Application – No. 64, Lot 1138 in DP 1210394, Seagrass Avenue

Vincentia

- DE19.60 - Development Application – 38 Lyrebird Drive Nowra – Lot 74 DP 1198691 DA18/2175

CARRIED

**DE19.46 Public Exhibition Outcomes - Coastal Hazard Review Planning Proposal and Coastal Management Areas DCP Amendment**

**HPERM Ref: D19/113261**

**Recommendation (Item to be determined under delegated authority)**

That Council:

1. Adopt the Planning Proposal (PP026) as exhibited and forward to the NSW Department of Planning and Environment for finalisation.
2. Adopt and finalise Shoalhaven Development Control Plan 2014 Chapter G6: Coastal Management Areas Amendment as exhibited, with the inclusion of the changes highlighted in Attachment 2.
3. Advise key stakeholders, including all CCBs, relevant industry representatives and those who made a submission, of this decision, and when the LEP and DCP amendments will be made effective.

**RESOLVED** (Clr Pakes / Clr Watson)

MIN19.456

That:

1. Consideration of the Planning Proposal (PP026) be deferred to allow for:
  - a. a briefing be held for Councillors to address the concerns raised at the 2 July 2019 Development and Environment Committee Meeting
  - b. The provision of an avenue for affected community members to address any of the concerns raised at the 2 July 2019 Development and Environment Committee meeting
2. Following the briefing and community consultation, that a further report on the proposal be brought to the July 2019 Ordinary Council meeting for adoption, if possible.
3. No changes be made with respect to Coastal Mapping unless a report has been provided to the Council and prior community consultation undertaken with affected residents.

FOR: Clr Gash, Clr White, Clr Wells, Clr Digiglio, Clr Aldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Levett

CARRIED

**DE19.57 Exhibition Outcomes and Proposed Finalisation - Citywide SP3 Tourist Zones Review - Planning Proposal and Proposed Amendment to Chapter V3 Shoalhaven Development Control Plan 2014**

**HPERM Ref: D19/171980**

**Recommendation (Item to be determined under delegated authority)**

That Council:

1. Adopt and finalise the exhibited Planning Proposal (PP013)
2. Forward PP013 to NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven Local Environmental Plan 2014.

3. Make the resulting amendment to the Shoalhaven Local Environmental Plan 2014 using Council's delegation.
4. Adopt and finalise the amendment to Shoalhaven Development Control Plan 2014 Chapter V3: Miscellaneous Site-Specific Issues as exhibited, with the inclusion of the change to Performance Criteria P5.1 as noted in Attachment 2.
5. Advise key stakeholders, including owners of the subject land, adjoining land owners, all Community Consultative Bodies, relevant industry representatives and those who made a submission, of this decision, and when the LEP and DCP amendments will be made effective.

**RESOLVED** (Clr Gartner / Clr Digiglio)

MIN19.457

That Council:

1. Adopt and finalise the exhibited Planning Proposal (PP013).
2. Forward PP013 to NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven Local Environmental Plan 2014.
3. Make the resulting amendment to the Shoalhaven Local Environmental Plan 2014 using Council's delegation.
4. Adopt and finalise the amendment to Shoalhaven Development Control Plan 2014 Chapter V3: Miscellaneous Site-Specific Issues as exhibited, with the inclusion of the change to Performance Criteria P5.1 as noted in Attachment 2 and with an amendment to Acceptable Solution A5.4 specifying that screening is an alternative solution.
5. Advise key stakeholders, including owners of the subject land, adjoining land owners, all Community Consultative Bodies, relevant industry representatives and those who made a submission, of this decision, and when the LEP and DCP amendments will be made effective.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Pakes, Clr Watson and Clr Kitchener

CARRIED

**DE19.59 Development Application – No.64, Lot 1138 in DP 1210394, Seagrass Avenue Vincentia**

**HPERM Ref: D18/383673**

**Recommendation (Item to be determined under delegated authority)**

That Development Application DA18/1998 be refused for the reasons set out in Attachment 1 to this report.

**RESOLVED** (Clr Gartner / Clr Alldrick)

MIN19.458

That Development Application DA18/1998 be refused for the reasons set out in Attachment 1 to this report.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

**DE19.60 Development Application – 38 Lyrebird Drive Nowra –  
Lot 74 DP 1198691 DA18/2175**

**HPERM Ref:  
D19/189185**

**Recommendation (Item to be determined under delegated authority)**

That the Committee refuse Development Application DA18/2175 for the erection of an attached dual occupancy at Lot 74 DP 1108691, 38 Lyrebird Drive Nowra, for the reasons as shown in the draft Notice of Determination at Attachment 1.

**RESOLVED** (Clr Wells / Clr Proudfoot)

MIN19.459

That:

1. Council accept Development Application DA18/2175 for the erection of an attached dual occupancy at Lot 74 DP 1108691, 38 Lyrebird Drive Nowra, a further report be provided to Council with suitable conditions for consent.
2. The next Housekeeping Amendment seek to consider inserting provisions in the Shoalhaven LEP to rule out dual occupancy development in the vicinity of Riverview Road and Lyrebird Drive, Nowra.

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

AGAINST: Clr Levett, Clr Digiglio, Clr Aldrick, Clr Gartner and Stephen Dunshea

CARRIED

## REPORTS

**DE19.46 Public Exhibition Outcomes - Coastal Hazard Review  
Planning Proposal and Coastal Management Areas DCP  
Amendment**

**HPERM REF:  
D19/113261**

Item dealt with earlier/later in the meeting see MIN19.456

**Items marked with an \* were resolved 'en bloc'.**

**DE19.52 Progress Update - Berry Heritage Investigations**

**HPERM Ref:  
D19/181822**

**RESOLVED\*** (Clr Gartner / Clr White)

MIN19.460

That Council:

1. Provide in principal support to the proposed heritage listing of the 25 properties and 2 Heritage Conservation Areas in Shoalhaven Local Environmental Plan 2014, as identified in Table 1 in this report, for preliminary community consultation only.
2. Investigate the heritage significance of No. 30 and No. 40 Alexandra Street, Berry as recommended by the Heritage Consultant.
3. Following part 2 of this recommendation, commence preliminary community consultation with the affected landowners, the Berry Forum, Berry Showground Management Committee, Berry Chamber of Commerce and Berry & District Historical Society regarding the Berry Heritage Investigations work to date.
4. Advise relevant stakeholders (affected landowners, the Berry Forum, Berry Showground

Management Committee, Berry Chamber of Commerce and Berry & District Historical Society) of this decision.

5. Receive a further report outlining the findings of the supplementary heritage investigations and preliminary community consultation.

CARRIED

**DE19.53 Exhibition Outcomes and Finalisation - Planning  
Proposal: 2017 Housekeeping Amendment (Instrument  
Changes) - Shoalhaven LEP 2014**

**HPERM Ref:  
D19/121834**

**Recommendation (Item to be determined under delegated authority)**

That Council:

1. Adopt and finalise Planning Proposal (PP033) as exhibited, with the changes outlined in Attachment 2.
2. Forward PP033 to NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven Local Environmental Plan 2014.
3. Make the resulting amendment to the Shoalhaven Local Environmental Plan 2014 using Council's delegation.
4. Undertake a separate future review of Clause 4.2B of Shoalhaven Local Environmental Plan 2014 with the following scope:
  - a. Further consideration of Item 6 (proposed for deletion from PP033) including the appropriateness of the current zoning of certain land in Clause 4.2B.
  - b. Provide clarification as to what 'land' means (i.e. identifying holdings).
  - c. Other matters that are identified during the review or were raised in submissions.
5. Prepare a future report to Council in relation to the outcome of the review at Part 4 of this recommendation, including the scope of a future Planning Proposal as appropriate and its priority in the Strategic Planning Works Program.
6. Advise key stakeholders, including all CCBs, relevant industry representatives and those who made a submission, of this decision, and when the Amendment will be made effective.

**RESOLVED** (Clr Proudfoot / Clr Pakes)

MIN19.461

That the Planning Proposal (PP033) be deferred for consideration at the July 2019 Ordinary Council meeting.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

**DE19.54 Nowra CBD Fringe Planning Proposal - Progress and Possible Next Steps**

**HPERM Ref:  
D19/122291**

**Recommendation (Item to be determined under delegated authority)**

That Council:

1. Adopt the following recommendations of the Heritage Study and provide an amended Planning Proposal to the Department of Planning and Environment:
  - a. Reduce the boundaries of the proposed Heritage Conservation Area to exclude areas where there are large areas of 'non-contributory' buildings.
  - b. Update the Statement of Significance for the proposed Heritage Conservation Area.
2. Not adopt the following recommendation of the Heritage Study and defer for consideration as part of any broader future Shoalhaven heritage review:
  - a. Expand the proposed Heritage Conservation Area boundary to include Oliver Parade which is in the study area but not in the proposed Heritage Conservation Area.
3. Not include 'post-war fibro cottages' on Leaney Avenue and Oliver Parade as 'contributory' items on the contributory items map.
4. Endorse the revised contributory items map for public exhibition with the supporting DCP Chapter.
5. Not endorse the DCP controls recommended in the Heritage Study to ensure the overall focus of the DCP Chapter remains on character rather than heritage aspects of individual 'contributory' items.

**RESOLVED** (Clr Wells / Clr Gartner)

MIN19.462

That Council:

1. Adopt the following recommendations of the Heritage Study and provide an amended Planning Proposal to the Department of Planning and Environment:
  - a. Reduce the boundaries of the proposed Heritage Conservation Area to exclude areas where there are large areas of 'non-contributory' buildings.
  - b. Update the Statement of Significance for the proposed Heritage Conservation Area.
2. Not adopt the following recommendation of the Heritage Study and defer for consideration as part of any broader future Shoalhaven heritage review:
  - a. Expand the proposed Heritage Conservation Area boundary to include Oliver Parade which is in the study area but not in the proposed Heritage Conservation Area.
3. Not include 'post-war fibro cottages' on Leaney Avenue and Oliver Parade as 'contributory' items on the contributory items map.
4. Endorse the revised contributory items map for public exhibition with the supporting DCP Chapter.
5. Not endorse the DCP controls recommended in the Heritage Study to ensure the overall focus of the DCP Chapter remains on character rather than heritage aspects of individual 'contributory' items.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

<b>DE19.55 Funding Offer - NSW Heritage Grants - 2019-20 and 2020-21</b>	<b>HPERM Ref: D19/185099</b>
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**RESOLVED\*** (Clr Gartner / Clr White)

MIN19.463

That Council:

1. Accept the following NSW Heritage Grants funding offers as detailed in the report:
  - a. 2019-20 to 2020-21 financial years for the Local Heritage Places and Local Government Heritage Advisor streams; and
  - b. 2019-2021 Local Government Heritage Studies stream (Berry Heritage Investigations project).
2. Note that recurrent funding is provided in the annual Budget to meet Council's matching commitment.

CARRIED

<b>DE19.56 Proposed Housekeeping Amendment - Shoalhaven Development Control Plan 2014 - General and Generic Chapters</b>	<b>HPERM Ref: D19/185859</b>
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**Recommendation (Item to be determined under delegated authority)**

That Council:

1. Endorse the initial draft General and Generic Chapter Housekeeping Amendment (draft Amendment) to Shoalhaven Development Control Plan 2014 at Attachment 1 (including the Draft Waste Minimisation and Management Guidelines and rescission of Chapter 3: Exempt Development) and support the exhibition of the draft Amendment for a period of at least 28 days as per legislative requirements.
2. Receive a further report on the draft Amendment following the conclusion of the public exhibition period to consider feedback received, any necessary adjustments and the finalisation of the amendment.
3. Advise key stakeholders, including relevant industry representatives, of this decision and the exhibition arrangements in due course.

**RESOLVED** (Clr Gartner / Clr Digiglio)

MIN19.464

That Council:

1. Endorse the initial draft General and Generic Chapter Housekeeping Amendment (draft Amendment) to Shoalhaven Development Control Plan 2014 at Attachment 1 (including the Draft Waste Minimisation and Management Guidelines and rescission of Chapter 3: Exempt Development) and support the exhibition of the draft Amendment for a period of at least 28 days as per legislative requirements.
2. Receive a further report on the draft Amendment following the conclusion of the public exhibition period to consider feedback received, any necessary adjustments and the finalisation of the amendment.
3. Advise key stakeholders, including relevant industry representatives, of this decision and the exhibition arrangements in due course.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

<b>DE19.57</b>	<b>Exhibition Outcomes and Proposed Finalisation - Citywide SP3 Tourist Zones Review - Planning Proposal and Proposed Amendment To Chapter V3 Shoalhaven Development Control Plan 2014</b>	<b>HPERM REF: D19/171980</b>
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Item dealt with earlier/later in the meeting see MIN19.457.

Note: Cllr Gash left the meeting at 7:10pm – Cllr Watson assumed the chair in the absence of Councillor Gash.

<b>DE19.58</b>	<b>Shoalhaven Development Control Plan 2014 - Proposed Amendment to Chapter N12: Culburra Beach - The Marina Area</b>	<b>HPERM Ref: D19/191446</b>
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Cllr Gash– DE19.58 Shoalhaven Development Control Plan 2014 - Proposed Amendment to Chapter N12: Culburra Beach - The Marina Area – pecuniary interest declaration – left the room and did not take part in discussion or vote – She is the co-owner of 97 The Marina, Culburra Beach and the amendment may or may not have a positive or negative affect on her property.

#### **Recommendation (Item to be determined under delegated authority)**

That Council:

1. Endorse the preparation of an amendment to Chapter N12: Culburra Beach – The Marina of Shoalhaven Development Control Plan 2014.
2. Receive a further report on the draft Amendment prior to public exhibition.
3. Adopt the 'Interim' Policy Position that the Maps at **Attachment 1** represent Council's ongoing strategic intent in terms of building lines, erosion setback lines and 20m vegetation buffer lines for The Marina area and apply the Interim Policy Position until the lines have been reviewed, considered and finalised as part of the amendment to DCP Chapter N12.
4. Advise key stakeholders, including relevant industry representatives and landowners, of this decision.

Note: Cllr Proudfoot left the meeting at 7.17pm

**RESOLVED** (Cllr Gartner / Cllr Digiglio) MIN19.465

That Council:

1. Endorse the preparation of an amendment to Chapter N12: Culburra Beach – The Marina of Shoalhaven Development Control Plan 2014.
2. Receive a further report on the draft Amendment prior to public exhibition.
3. Adopt the 'Interim' Policy Position that the Maps at **Attachment 1** represent Council's ongoing strategic intent in terms of building lines, erosion setback lines and 20m vegetation buffer lines for The Marina area and apply the Interim Policy Position until the lines have been reviewed, considered and finalised as part of the amendment to DCP Chapter N12.
4. Advise key stakeholders, including relevant industry representatives and landowners, of this decision.

FOR: Cllr White, Cllr Wells, Cllr Levett, Cllr Digiglio, Cllr Alldrick, Cllr Gartner, Cllr Pakes, Cllr Watson, Cllr Kitchener and Stephen Dunshea

AGAINST: Nil



CARRIED

Note: Clr Gash returned to the meeting at 7:18pm and reassumed the Chair.

Note: Clr Proudfoot returned to the meeting at 7:18pm

<b>DE19.59 Development Application – No.64, Lot 1138 IN DP 1210394, Seagrass Avenue Vincentia</b>	<b>HPERM REF: D18/383673</b>
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Item dealt with earlier/later in the meeting see MIN19.458

<b>DE19.60 Development Application – 38 Lyrebird Drive Nowra – Lot 74 DP 1198691 DA18/2175</b>	<b>HPERM REF: D19/189185</b>
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Item dealt with earlier/later in the meeting see MIN19.459

<b>DE19.61 Shoalhaven City Council - Mobile Food Vans in the LGA - Private and Public Lands</b>	<b>HPERM Ref: D19/187221</b>
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**Recommendation (Item to be determined under delegated authority)**

That the report Mobile Food Vans in the LGA - Private and Public Lands be received for information.

**RESOLVED** (Clr White / Clr Wells)

MIN19.466

That:

1. The report Mobile Food Vans in the LGA - Private and Public Lands be received for information.
2. Council write to the NSW State Government to express concerns about the impact of the Mobile Food Van provisions within the State Environmental Planning Policy (SEPP) (Exempt & Complying Development Codes) on businesses in regional towns and villages and consider further consultation and amendments to the SEPP if necessary.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

<b>DE19.62 Shoalhaven Heads - River Road Foreshore Precinct Rehabilitation Project - Progress Update</b>	<b>HPERM Ref: D19/115308</b>
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**Recommendation (Item to be determined under delegated authority)**

That Council:

1. Proceed to call Tenders for the Shoalhaven Heads River Road Foreshore Precinct Rehabilitation Project in accordance with the separable portions strategy outlined in the report.
2. Receive a further confidential report regarding the Tender process in accordance with the provisions of the Local Government Act.

**RESOLVED** (Clr Wells / Clr White)

MIN19.467

That Council:

1. Proceed to call Tenders for the Shoalhaven Heads River Road Foreshore Precinct Rehabilitation Project in accordance with the separable portions strategy outlined in the report.
2. Receive a further confidential report regarding the Tender process in accordance with the provisions of the Local Government Act.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

**Procedural Motion - Matters of Urgency****RESOLVED** (Clr White / Clr Pakes)

MIN19.468

That an additional item with respect to home modifications for elderly and injured persons be introduced as a matter of urgency.

CARRIED

The Chairperson ruled the matter as urgent as it is a current issue affecting residents.

**DE19.63 Additional Item – Home Modifications – Elderly and Injured Residents – Medical Requirements****RESOLVED** (Clr White / Clr Pakes)

MIN19.469

That:

1. Council approve an Interim Policy to give approval for residence modifications in response to Occupational Therapists and Doctors instructions to allow elderly people and those who are injured to return to their homes.
2. A further report be provided back to Council on a policy provision to address this issue.

CARRIED

There being no further business, the meeting concluded, the time being 7.33pm.

Clr Gash  
CHAIRPERSON

## DE19.64 SF10541 - C130 Princes Hwy MEROO MEADOW - Lot 502 DP 1221372

**DA. No:** SF10541/4

**HPERM Ref:** D19/187428

**Group:** Planning Environment & Development Group  
**Section:** Development Services

**Attachments:** 1. s4.15 Assessment Report (under separate cover) [⇒](#)  
2. Draft Determination (under separate cover) [⇒](#)  
3. Subdivision Plan [↓](#)

**Description of Development:** Fifteen (15) lot Torrens title subdivision and associated site works

**Owner:** Linkwood Nowra Pty Ltd.

**Applicant:** Allen Price & Scarratts (APS)

**Notification Dates:** The application was notified on four (4) separate occasions on 12 December 2016, 17 January 2018, 8 November 2018 and 19 March 2019

**No. of Submissions:** 86 submissions were received to the notifications. All submissions were in objection to the application. Multiple objections were received in some cases by a single submitter(s).

### Purpose / Reason for consideration by Council

On 23 January 2017 Council resolved at the Development Committee meeting, that:

1. *All delegations for SF10541 be withdrawn and this matter be reported to council for consideration.*
2. *A residents briefing meeting be held on the abovementioned application.*
3. *The time for submissions be extended until the residents briefing meeting can be held.*

This Report is prepared in response to item 1 of the Council's resolution. A resident briefing meeting was held on 2 March 2017 in response to item 2.

### Recommendation (Item to be determined under delegated authority)

That Council:

1. Approve Development Application SF10541 for a fifteen (15) lot Torrens title subdivision and associated site works at C130 Princes Highway, Meroo Meadow - Lot 502 DP 1221372 by way of *Deferred Commencement* consent, subject to the recommended conditions of consent contained in Attachment 2 to this report.
2. Support the preparation of a planning proposal over C130 Princes Highway, Meroo Meadow - Lot 502 DP 1221372 to amend *Shoalhaven Local Environmental Plan 2014* (SLEP 2014) to rezone the current R1 General Residential component of the land to R5 Large Lot Residential and also apply a 1,500m<sup>2</sup> minimum lot size and 8.5m height limit to that part of the land.

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3. Submit the Planning Proposal to the NSW Department of Planning, Industry and Environment (PIE) to request a 'Gateway determination'. If a favourable determination is received, proceed to public exhibition and report back to Council with the outcomes of the exhibition period.

### Options

1. Support and approve the development application (DA) as a deferred commencement in accordance with the recommendation and prepare a planning proposal (PP).

Implications: This would allow the applicant to seek a Subdivision Construction Certificate (CC) for development on the subject site upon resolution of the deferred matter. The deferred matter would be finalisation of the Planning Proposal.

The proposed amendment to SLEP 2014 would support the appropriate long-term management of the land.

2. Refuse the application and not prepare a planning proposal.

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

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). Council may still wish to give further consideration to the zoning and other particulars of the land via a separate process.

3. Alternative recommendation.

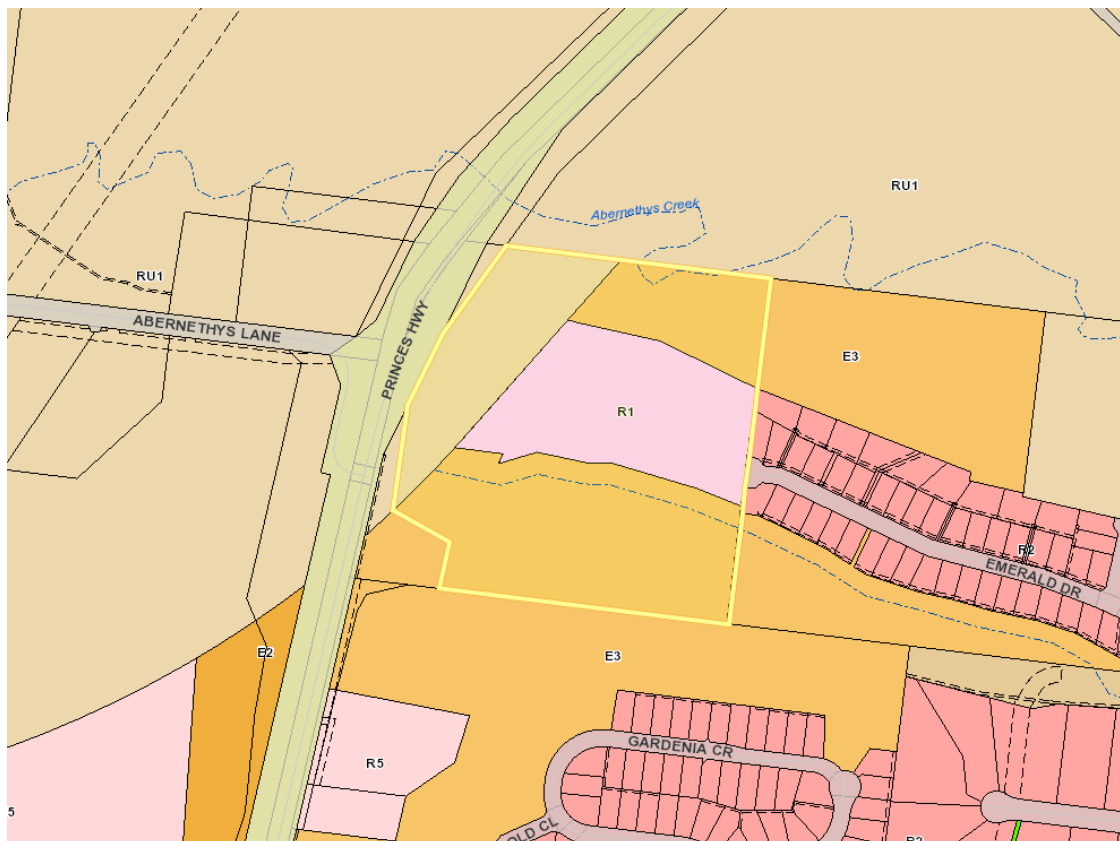
Implications: Council will need to specify an alternative recommendation and advise staff accordingly.

## Location Map

**Figure 1 – Location Map**



**Figure 2 – Zoning Map**



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## Background

On 11 December 2014, a pre-lodgement meeting was held in relation to the subject site for a development described in the pre-lodgement meeting notes as a 37 lot subdivision.

On 19 October 2016, the applicant lodged SF10541 for development described on the development application form as

*“37 Torrens Title Residential subdivision, vegetation clearing within the development footprint, demolition of the existing dwelling, swimming pool and tennis court; and associated site works”.*

On 27 October 2016, Council requested additional information from the applicant. Council requested additional information from the applicant on numerous occasions throughout the assessment process.

On 12 December 2016, the development application was notified for a period of 47 days (extended notification for the Christmas and New Year period). A total of 26 submissions were received during the notification period or shortly thereafter. All submissions were in objection to the application.

On 23 January 2017 Council resolved at the Development Committee meeting that:

1. *All delegations for SF10541 be withdrawn and this matter be reported to council for consideration.*
2. *A residents briefing meeting be held on the abovementioned application.*
3. *The time for submissions be extended until the residents briefing meeting can be held.*

On 6 February 2017, the applicant lodged amended plans and written responses to the referral process to date.

On 2 March 2017, a resident's briefing meeting (RBM) was conducted to outline the planning process and the development application and the outstanding issues to be resolved prior to determination of the application.

On 12 December 2017, the applicant lodged amended plans which included upgrades to Emerald Drive required to satisfy the Acceptable Solutions of Chapter G11: Subdivision of Land of Shoalhaven Development Control Plan 2014 (SDCP 2014).

The drawings provided details of proposed road widening along a portion of the southern side of the existing pavement along Emerald Drive. The road widening intending to create a functional width of 6-7m.

On 17 January 2018, the applicant's amended plans were re-notified for a period of 30 days. A total of 25 submissions were received following the re-notification of the development application. All submissions were in objection to the application.

On 6 September 2018, the applicant lodged amended concept plans which included a proposal to **reduce the lot yield to 15 lots** and removal of the required widening of the southern side of Emerald Drive, the retention of the existing dwelling on proposed lot 4 and construction of a single raised threshold traffic calming device (an additional three (3) devices to be provided in locations to be determined by Council).

On 8 November 2018, the application was re-notified for a period of 15 days. A total of 20 submissions were received following the re-notification of the development application. All submissions received were in objection to the application.

On 11 March 2019, the applicant lodged final amended plans and supporting reports for the amended 15 lot subdivision

On 19 March 2019, the application was re-notified for a period of 15 days. A total of 15 submissions were received following the re-notification of the development application. All submissions were in objection to the application.

As is with all applications, documentation was made and remains accessible on the DA tracking website.

#### Proposed Development

The development, as amended, seeks development consent for a 15 lot Torrens title subdivision and associated site works including the construction of an extension to Emerald Drive and associated drainage. Lot sizes range from 1,500m<sup>2</sup> to 7.16ha.

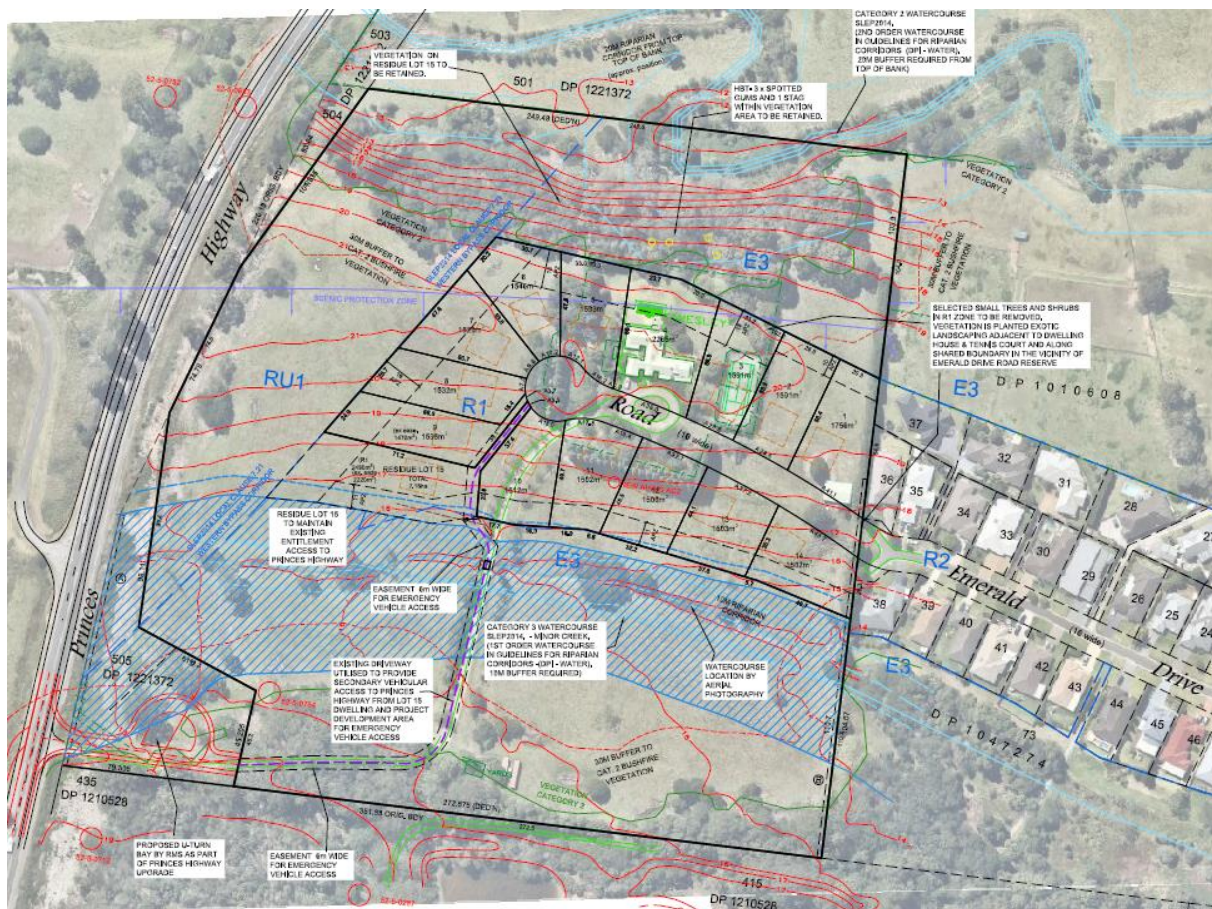
The proposal is to create 14 residential allotments and one residue lot comprising the remainder of the property with a building area within the R1 General Residential zone (15 lots in total).

The existing dwelling house is to be retained on a resulting lot. The tennis court will be removed. An extract of the subdivision plan is provided in **Figure 3**.

The development is proposed to be accessed via two access points. All 15 lots will gain access via a proposed extension of Emerald Drive. Additionally, proposed Lot 15 will retain the existing site access from the Princes Highway where the Roads and Maritime Service (RMS) is currently in the process of constructing a turning bay as part of the highway upgrade (Refer to Figure 3). The purpose of this access is to provide the Rural Fire Service (RFS) with secondary access to the development area. This would be secured by a locked gate on Lot 15 (adjacent to the southwestern corner of proposed Lot 10) to ensure traffic from the proposed development does not take advantage of this access to the highway.



**Figure 3 - Extract of the proposed subdivision plan for the proposed development.**



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### Subject Land

The subject site is located north of Bomaderry situated between the Princes Hwy and the western end of Emerald Drive in the suburb of Merero Meadow. The land is legally identified as Lot 502 DP 1221372 (formerly Lot 1 DP 130825) and is described as C130 Princes Highway, Merero Meadow.

### Site & Context

The subject site is a regular shaped allotment with a total land area of 9.707 hectares.

The site enjoys dual frontage to the Princes Highway in the west and connects with Emerald Drive in the east. Merero Road is located 600m to the east of the site. The site is presently accessed via a driveway off Princes Highway located on the south-eastern boundary of the site.

The land is gently undulating, with the property rising to a central ridge running parallel to the northern boundary. Water naturally drains to Abernethy Creek in the north-eastern corner of the site and an unnamed creek toward the southern boundary of the site which feeds into Abernethy Creek on the eastern side of Merero Road.

Significant vegetation has historically been removed from the site as part of the rural/residential land use of the site. There are stands of remnant eucalyptus located along the southern boundary and riparian vegetation along the extent of Abernethy Creek on the northern boundary. The site has also been extensively landscaped to the extent of the curtilage of the existing dwelling house and access driveway.

The site is currently a 'semi-rural' property containing a single dwelling, pool and tennis court located in the north-eastern portion of the site and shed on the eastern boundary.



The site is mapped as bush fire prone land in accordance with bush fire prone land maps prepared by Council and certified by the Commissioner of the NSW RFS.

The supporting reports associated with the RMS Berry to Nowra Princes Highway upgrade indicate that there were Aboriginal archaeological artefacts recorded on the AHIMS database within the vicinity of the subject land. The applicant's Aboriginal due diligence reports have identified Aboriginal objects that are the subject of an Aboriginal Heritage Impact permit pursuant to Section 91 of the *National Parks and Wildlife Act 1974*.

The site is bound to the west by the Princes Highway which is currently undergoing an extensive upgrade associated with the State Government's Berry to Bomaderry works program. It is noted that a U-turn bay is proposed to be located on the south-eastern corner of the site (Refer to **Figure 4** below). On the western side of the Princes Highway and along the extent of Abernethys Lane the predominant land use is a mix of rural and residential.

To the south, the site is adjoined by Council (environmental) managed land. Further to the south again, the land has predominately been developed for low-density residential development consisting of detached single and two-storey dwelling houses. It is noted that there are limited examples of multi-dwelling housing.

To the north, the land has been historically used for agriculture (and associated dwellings).

To the east, the site is adjoined by the western extent of Emerald Drive and Maddor Park Estate. The estate having been developed for residential accommodation with the predominant built form being single storey detached dwelling houses.

**Figure 4 – extract from the concept designs for the Berry to Bomaderry upgrades for the section of the Princes Highway to the extent of the subject site.**  
*Extracted from the RMS website.*



### Existing Road Network

The Princes Highway at the boundary of the site is a two-way undivided highway. The Princes Highway is being upgraded to include four lanes of divided highway to improve road safety and traffic efficiency.

Emerald Drive is considered an access street under SDCP 2014 Chapter G11: Subdivision of Land and is 16m wide (road reserve). Emerald Drive services 73 residential dwellings and has a nominal local road speed limit of 50km/h. Emerald Drive provides a trafficable width of approximately 5.0m, constituting a formal central two-way carriageway of approximately 4.2m gutter invert to gutter invert, and layback gutter dish drains on both sides of approximately 0.7m each.

Meroo Road to the east of the site is a major collector road between the Princes Highway and Bomaderry. Meroo Road carries one lane of traffic in each direction and has unrestricted parking along most of its length.

The proposed access and traffic impacts associated with the development are detailed further in this Report and in consideration of submissions.

### History

On 18 July 2000, Council granted Development Consent SF8781 for a 76 lot subdivision of land now known as Maddor Park Estate (accessed via Emerald Drive).

The approved road design for the subdivision stipulated construction of a 5m carriageway width within a 16m and 18m road reserve (which included traffic calming pavement).

The first request from the landowner for rezoning of the subject site was received in August 2002.

Under Shoalhaven Local Environmental Plan 1985 (SLEP 85) the subject site was zoned 1(b) Rural (Arterial and Main Road Protection) Zone.

On 18 January 2005, a report to Council's Development Committee considered the proponent's rezoning request that part of the site be rezoned from its current zoning of Rural 1(b) (Arterial and Main Road Protection) to a residential zoning.

The proposed residential area was to be accessed from Emerald Drive on the eastern boundary of the site and comprised an extension of the existing residential area to the east (Maddor Park Estate). The report recommended limiting the extent of the potential rezoning having regard to the site constraints to that generally consistent with the R1 General Residential zone under Draft SLEP 2009.

It was recommended that a planning report be prepared to support the proposed rezoning and to address the following issues:

- Flooding and water quality;
- Visual impacts including views to and from the site (specifically in relation to the urban/ rural interface);
- Traffic impact assessment;
- Impact on agricultural values of the site; and
- Preliminary concept plan for the future development of the site.

On Tuesday 25 January 2005 Council resolved to:

- a) *Support preparation of a draft LEP (at the owners cost);*
- b) *The General Manager (Planning Group) be requested to consider a reduction in the buffer zone area adjacent to the Princes Highway.*

This resolution resulted from a request from the then landowner to rezone the subject land to enable residential subdivision. Specific provisions were recommended to be incorporated into the draft plan so that the primary vehicular access to the subject land would be via Emerald Drive and not the Princes Highway.

On 12 February 2008, a report to the Policy and Planning Committee considered the rezoning application and sought Council's direction in regard to aspects of the proposed draft plan prior to proceeding to request a certificate to publicly exhibit the Draft Local Environmental Plan (LEP) No. LEP 379 (Draft LEP 379).

On 6 June 2008, the NSW State planning agency at the time, now known as PIE, wrote to Council of PIE's refusal to issue their section 65 Certificate under the *Environmental Planning and Assessment Act 1979* (the EP&A Act) in regard to Draft LEP 379 for the subject site.

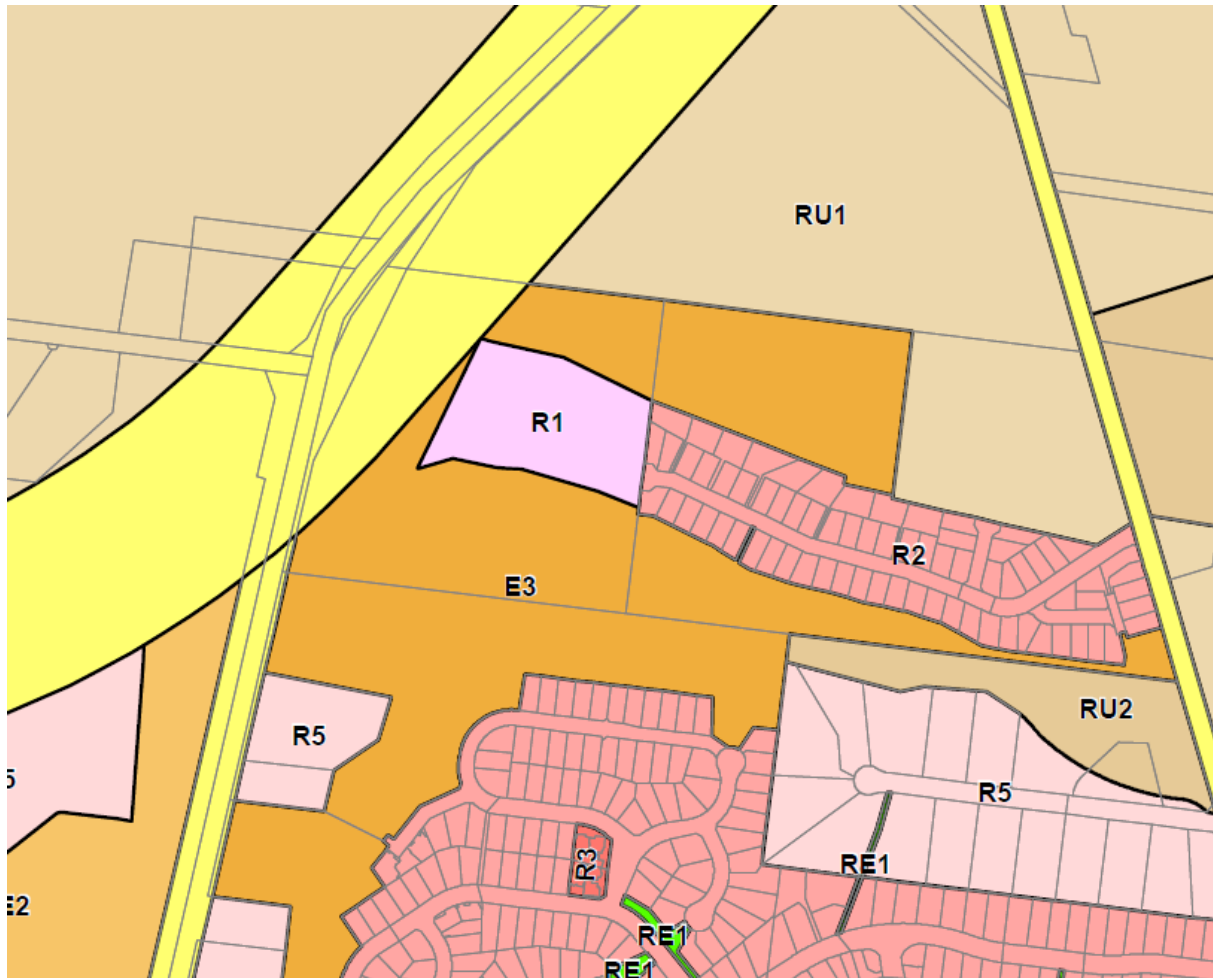
On 9 January 2009, PIE wrote to Council to reiterate that they would not support the rezoning of the subject site which would allow for residential development to within 50m of the Princes Highway.

However, PIE went on to state that it was "*willing to support a rezoning that allows residential development to within 100m of the Princess Highway.*"

PIE advised that should Council and the landowner accept that no development was to occur within 100m of the Princes Highway the matter should be dealt with as part of the Draft Shoalhaven LEP 2009 rather than a stand-alone LEP amendment.

On 18 July 2011, Shoalhaven City Council's draft Shoalhaven LEP 2009 was placed on public exhibition for 13 weeks. A copy of an extract of the Land Zoning Map – LZN-024 Nowra Bomaderry indicating the proposed zoning boundaries relative to the subject site is provided in **Figure 5** below.

**Figure 5 - Extract of the Land Zoning Map – LZN-024 Nowra Bomaderry indicating the proposed zoning boundaries relative to the subject site**



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On 8 April 2014, Shoalhaven LEP 2014 was gazetted.

## Issues

### Traffic Impacts

The proposed development has the potential to impact on local traffic conditions, with the local street network (Emerald Drive and Intersection with Meroo Road) being identified as a potential impediment to the proposed development due in part to the width of the Emerald Drive road pavement, no traffic calming devices and concerns with sightlines at the Meroo Meadow intersection.

A number of traffic reports have been prepared for the application since lodgement of the DA. However, it is important to consider the development in light of the most recent amendment to the lot yield and therefore consideration of the principal traffic report titled *Traffic Impact Assessment* (Traffic Report) prepared by Ason Group dated 8 March 2019 (D19/83206).

The Traffic Report assess the revised proposal (15 lot subdivision) in relation to the:

- current planning context,
- existing conditions;
- public transport, cycling and pedestrian network;
- existing traffic conditions;
- operational impacts; and
- design.

## Road Network

Emerald Drive currently services 73 residential dwellings and has a nominal local road speed limit of 50km/h.

Emerald Drive provides a trafficable width of approximately 5.0m, constituting a formal central two-way carriageway of approximately 4.2m gutter invert to gutter invert, and layback gutter dish drains on both sides of approximately 0.7m each. This profile extends to the full extent of Emerald Drive.

The current construction of Emerald Drive is consistent with the upper carriageway width of a laneway (carriageway width 3.5–5.0m with less than 15 Annual average daily traffic (AADT)) as per SDCP 2014 Chapter G11: Subdivision of Land.

### Emerald Drive – Current Conditions

Under the current circumstances with no further development, the AADT flows do not exceed 500vpd (vehicles per day) in Emerald Drive. This is based upon data collected by the applicant from an automatic traffic counter (ATC) installed in Emerald Drive in February 2016 (Appendix B to Traffic Report).

Applying the surveyed daily trip rate to the 73 dwellings within the existing subdivision provides an AADT estimate of just under 500vpd. **Figure 6** below, indicates that AADT would not exceed 500vpd for Emerald Drive and at the intersection with Meroo Meadow.

**Figure 6 - Existing Emerald Drive sectional daily traffic flows. Extracted from the Traffic Report prepared by Ason Group (D19/82306).**



### Emerald Drive – Projected Conditions (15 Lot subdivision)

Based upon the applicant's amended application for 15 lots (one dwelling per lot) with access along Emerald Drive the Traffic Report provides predicted daily traffic flows which indicate that AADT would exceed 500vpd at a point west of Ruby Lane, generally adjacent to 24 Emerald Drive (refer to **Figure 7**). Reference to SDCP 2014 Chapter G11: Subdivision of Land suggests that west of this location a 6.0m carriageway would be required, while east of this location a 7.0m carriageway would be required. Refer to **Table 1** below.

The amended application does not propose road widening works along Emerald Drive.



The applicant's plans for retention of Emerald Drive's current construction standard has been considered by Council's Traffic and Transport Unit to be satisfactory under the current circumstances and road widening is neither feasible nor supported. It is noted that residents also expressed concern about the potential widening.

It is important to note that approval of the current application without the need for road widening would constitute a variation to SDCP 2014 Chapter G11 Subdivision of Land – Acceptable Solution A19.1 (refer to **Table 1** below).

**Figure 7 - Future Emerald Drive sectional daily traffic flows. Extracted from the Traffic Report prepared by Ason Group (D19/82306).**



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**Table 1 - classification of streets (extracted from SDCP 2014 Chapter G11: Subdivision of Land).**

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

### *Emerald Drive and Meroo Road Intersection*

The intersection of Meroo Road with Emerald Drive provides a T intersection under priority (unsigned Give Way) control. The intersection provides a short auxiliary left turn lane to Emerald Drive, and a widened southbound carriageway (paved kerbside lane) over a short distance to notionally allow for a southbound vehicle to pass a vehicle turning right to turn into Emerald Drive (refer to **Figure 8**).

The Emerald Drive approach provides a paved carriageway of approximately 5.5m for approximately 12m, after which the carriageway returns to 5m. Meroo Road has a posted speed limit of 60km/h.

**Figure 8 – Aerial image of Emerald Drive and Meroo Road intersection.**



In relation to the operation of the Emerald Drive and Meroo Road intersection under the current conditions, the Traffic Report indicates on page [11] that:

*“[T]he intersection operates at a high Level of Service in both peak periods, with average delays of less than 6 seconds to vehicles departing Emerald Drive and an overall average delay of less than 1 second. The intersection provides significant spare capacity. Ason Group has also provided sensitivity testing of alternative distribution (north/south) scenarios and determined similar results.*

*It is important to note that, at present, the narrow width of the Emerald Drive approach has the potential to reduce capacity at the intersection and reduce the efficiency of inbound movements given the narrow carriageway width remaining when vehicles are queued to depart Emerald Drive. While a more detailed review of the SIDRA results indicates an 85th percentile queue in Emerald Drive of less than 1m – indicating that 85% of the time no more than a single vehicle would be queued to depart – it is likely that on occasions 2-3 vehicles might be queued, which would reduce the length of the*

*arrival lane as it tapers back to the broader design profile. The Proposal is unlikely to fundamentally change these operations or increase average queue lengths on the approach to Meroo Road.*

In the event that the subdivision is approved and developed with a single dwelling house on each lot, the Traffic Report indicates on page [16] that:

*“SIDRA testing of the future traffic flows at the intersection Meroo Road with Emerald Drive indicates that the intersection will continue to operate at a high Level of Service in both peak periods, with average delays retained at less than 6 seconds to vehicles departing Emerald Drive and an overall average delay of less than 1.3 seconds and 1.2 seconds in the AM and PM peaks respectively. The intersection would also continue to provide significant spare capacity.*

*The impact of the proposed development on the critical intersection of Emerald Drive with Meroo Road has been assessed as a net increase over and above the baseline future conditions and the results of this analysis are summarised in... [Table 2 below].”*

**Table 2 - Future and Development Intersection Performance**  
**(Figures extracted from Page 16 of the Traffic Report).**

Intersection	Control Type Period	Period	Intersection Delay	Level of Service
Emerald Drive / Meroo Road	Priority	AM	1.3	A
		PM	1.3	A

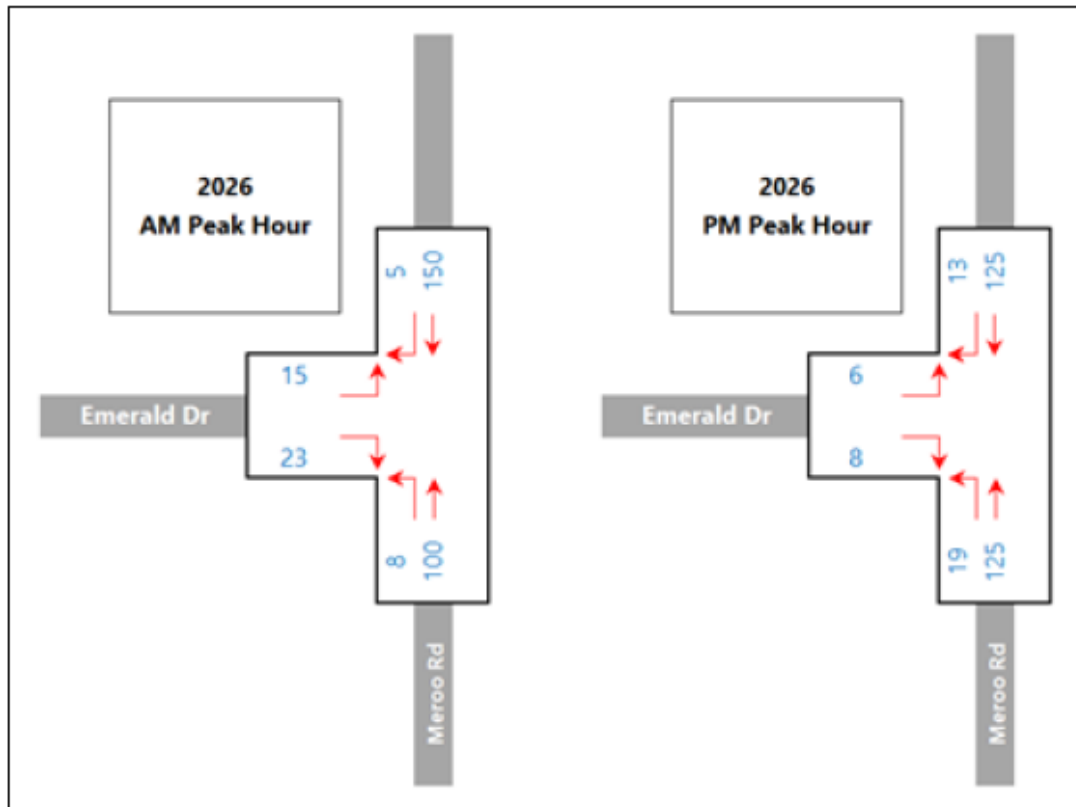
The Traffic Report concludes that the intersection operates satisfactorily having regard to future traffic volumes. Council’s Traffic and Transport Unit has considered the Traffic Report and is satisfied that the operation of the Emerald Drive and Meroo Road intersection is operating satisfactorily and efficiently and is not required to be upgraded to facilitate the proposed development.

A summary of estimated 2026 peak period traffic flows at the intersection is provided in **Figures 9 and 10** below:

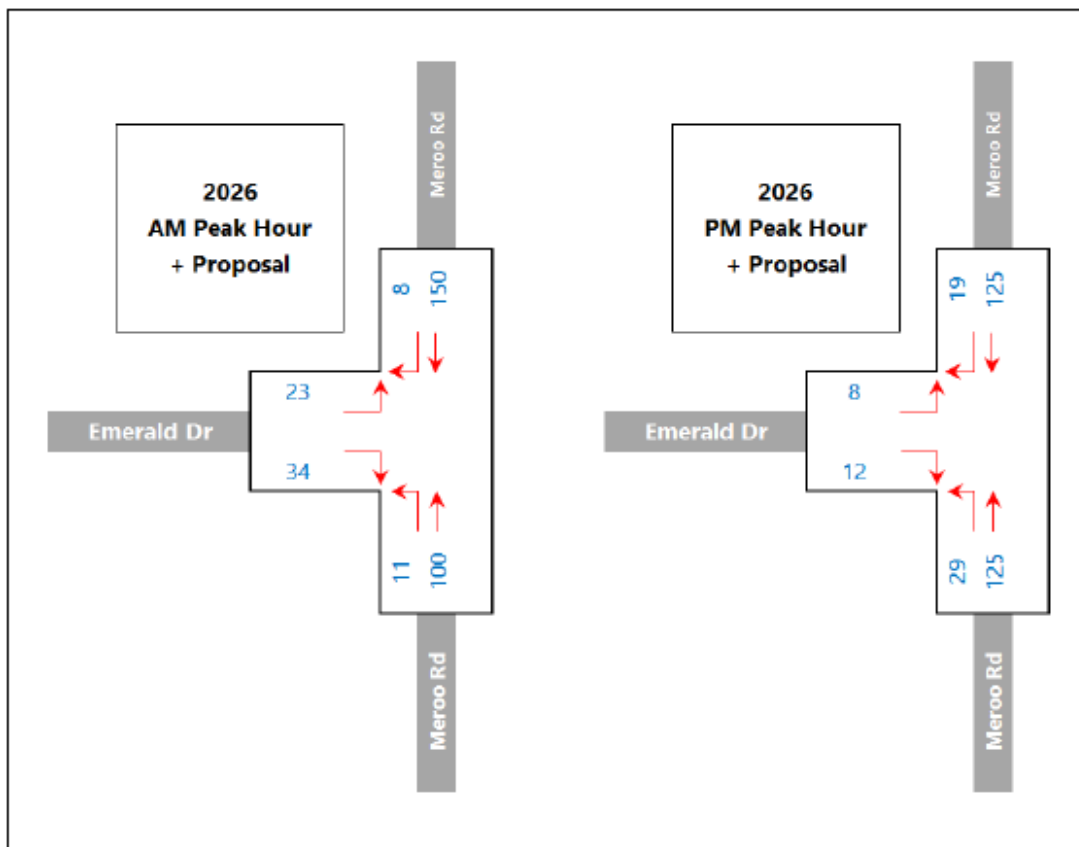
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**Figure 9 - Estimated 2026 Peak Period Traffic Flows**  
(No Proposal) (extracted from Page 13 of the Traffic Report).



**Figure 10 - Estimated 2026 Peak Period Traffic Flows**  
(with Proposal) (extracted from Page 14 of the Traffic Report).

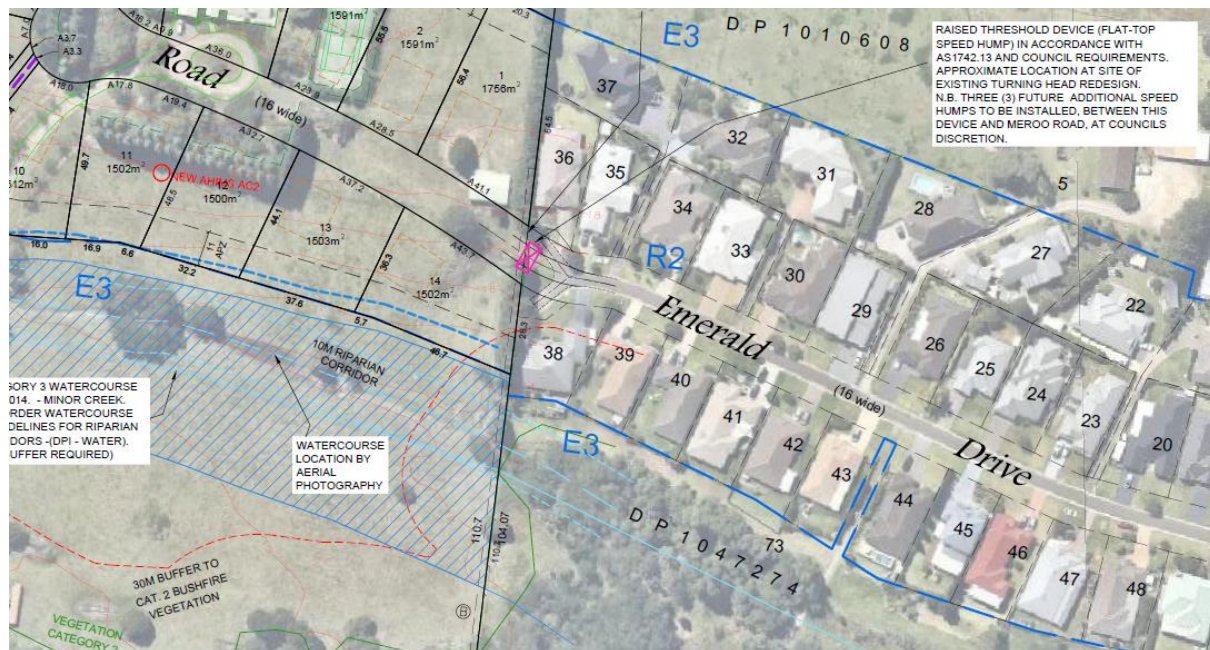


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## Proposed Emerald Drive Road Upgrade Works

In lieu of Emerald Drive road widening, the applicant proposes to construct four (4) raised threshold devices (flat-top speed humps) at appropriate locations along Emerald Drive. The approximate location of the first device is provided in **Figure 11** below. The location of the three (3) remaining devices will be identified in consultation with Council prior to the issue of a Construction Certificate.

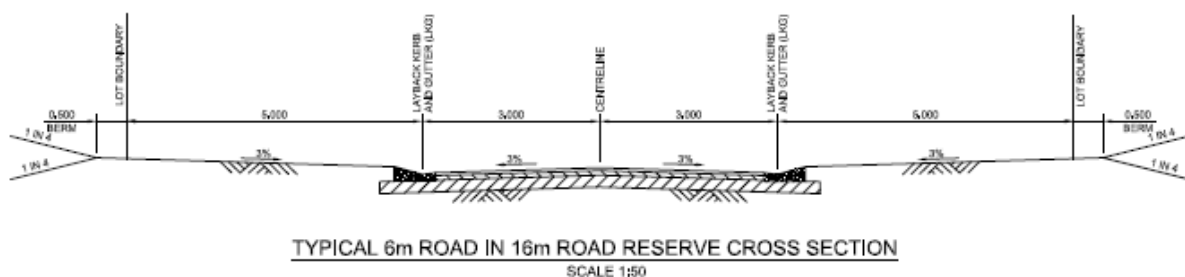
**Figure 11 - Extract from plan titled Plan Showing Proposed Subdivision and Site Analysis prepared by Allen Price and Scarratts indicating the approximate location of the first raised threshold device.**



A turning head catering for service vehicles is currently located at the western end of Emerald Drive, immediately adjacent to the site. The applicant proposes to extend Emerald Drive to enable road access to all lots in the development. A typical cross-section of the proposed extension of Emerald Drive is provided in **Figure 12** below.

A typical cul-de-sac treatment at the western extent of the Emerald Drive extension is proposed. The design of these cul-de-sac treatments would provide a 19m turn radius and 24m verge to accommodate Council waste vehicles and emergency vehicles.

**Figure 12 - Typical cross-section of the proposed extension of Emerald Drive.**



### Provision of alternate access to the site for all lots

As previously stated, all 15 lots are proposed to gain access via an extension of Emerald Drive with Lot 15 also retaining access to the Princess Highway, the access will afford the NSW RFS secondary access to the development area.

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The applicant, Council and RMS (roads authority in relation to the Princes Highway) have explored the potential for alternative access arrangements for access to the subdivision during the period following the initial pre-lodgement meeting on 11 December 2014 and subsequent to lodgement of the application on 19 October 2016.

The alternate access options are provided below.

Option 1: Construction of a new connection road to the north to be located along southern boundaries of adjacent rural properties to the east of the development linking to Meroo Road in the east (Option 1 indicated in **yellow** in **Figure 13** below). The main concerns or impediments to this proposal may be broadly summarised as follows:

- private ownership of land containing dwellings and rural outbuildings and infrastructure;
- the impact on the amenity of residents on the northern side of Emerald Drive would be significant with most lots having public roads to their front and rear boundary;
- the land is largely flood prone making the construction of flood free access difficult and costly;
- rural holdings would be further fractured and the viability of the rural holdings potentially compromised.

Option 2: Construction of a new connection road along the southern boundary of existing lots on the southern side Emerald Drive through the public reserve to link to Meroo Road (Option 2 indicated in **green** in **Figure 13** below). The main concerns or impediments to this proposal may be broadly summarised as follows:

- the road would be on land dedicated as a public reserve;
- the land is wholly flood-prone;
- the road would impact on private land owned in Halstead Place including pond filling and an engineered watercourse crossing;
- the impact on the amenity of residents on the southern side of Emerald Drive would be significant with these lots having public roads to their front and rear boundary

Option 3: Construction of direct access to Princes Highway with no access to Emerald Drive (Option 3 indicated in **orange** in **Figure 13** below). The main concerns or impediments to this proposal may be broadly summarised as follows:

- safety issues with sight lines for southbound highway traffic;
- fracture of RU1 land on residue lot which would further limit the potential use of the residue land for an agricultural use;
- this arrangement has been rejected by the RMS as part of the original application for 37 lots and again as part of the amended application for 15 lots. The RMS has accepted access for proposed lot 15 on the basis that there is existing access and access to the highway is required and desirable to enable emergency services access (in particular the RFS).
- Without the support of the RMS to access the Princes Highway this option cannot be pursued any further.

Option 4: Construction of direct access to Princes Highway utilising the existing access driveway which would include a revised proposed layout with no access to Emerald Drive (Option 4 indicated in **blue** in **Figure 13** below). The main concerns or impediments to this proposal may be broadly summarised as follows:

- RMS has agreed to only a single lot use of the existing access driveway by way of existing rights of access to the subject site (emergency access exempted);
- RMS has consistently indicated that they wish to limit direct access onto the Princes Highway and to limit traffic volumes;



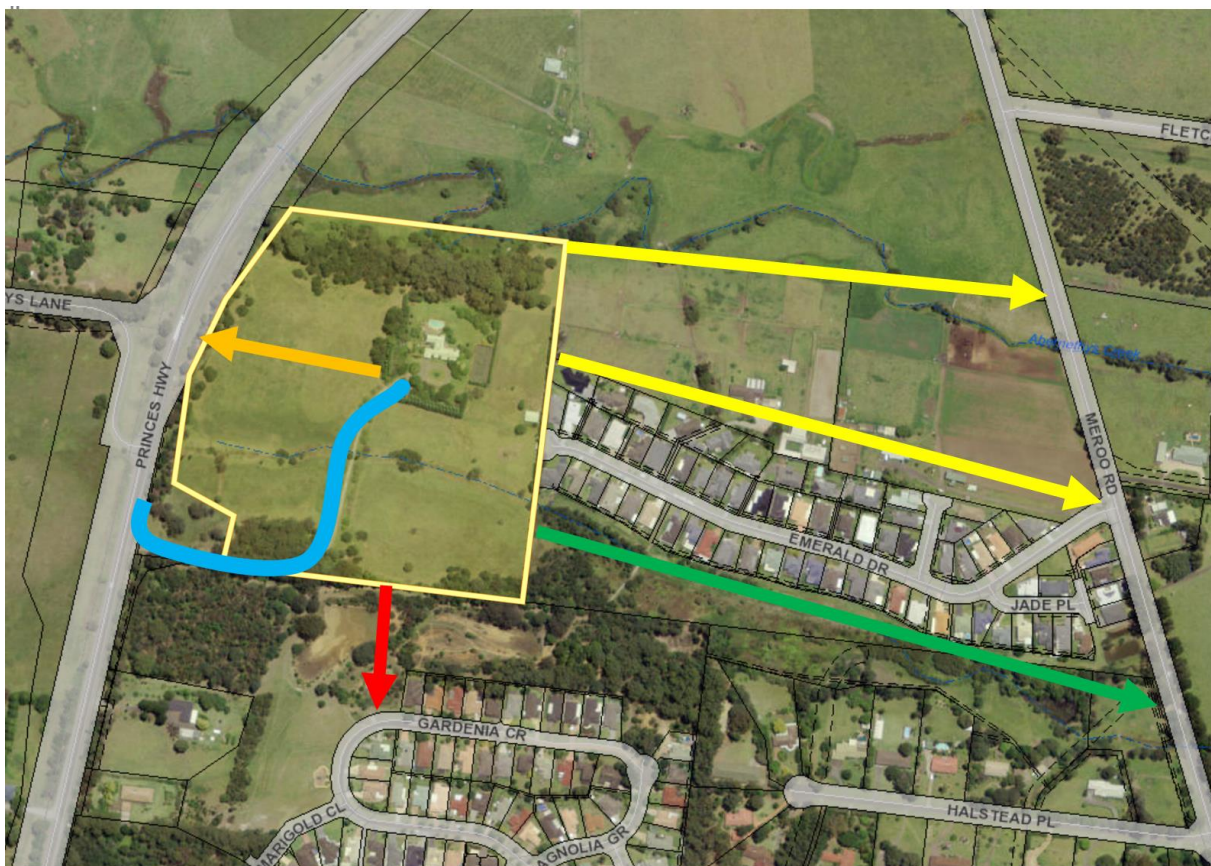
- RMS has agreed to use of Highway as secondary access for emergency services over easement via a locked gate on proposed Lot 15;
- An access road in this location would result in further fracturing of the E3 zoned land on residue lot;

Option 5: Construction of a road through Council's public reserve to the south of the development site, linking the new development to Jasmine Drive via Gardenia Crescent, Magnolia Grove and Sheraton Circuit (Option 5 indicated in **red** in **Figure 13** below). The main concerns or impediments to this proposal may be broadly summarised as follows:

- The public access road would be located on land dedicated as a public reserve;
- The land is largely flood-prone;
- Road pavement widths along Gardenia Crescent and Magnolia Grove present similar traffic and road network issues as is present within Emerald Drive;
- Additional ecological impacts are likely and may require entry in the Biodiversity Offset Scheme to offset flora and fauna impacts.

It is important to note that the Council as the assessing authority can only assess the application as proposed by the applicant and cannot direct the design. Council can encourage consideration of alternate designs but cannot redesign the application for the applicant.

**Figure 13 - Potential alternate access arrangements for providing access to the subdivision which does not include the use of Emerald Drive. Each coloured line indicates the five (5) potential options that have been explored as part of the application.**



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### Significant public submissions in relation to the application

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications on four (4) separate occasions following the submission of additional information.

**Table 3 – Summary of notification /submissions**

	Date	Details	Submissions
1	12 December 2016	Notified for a period of 47 days (extended notification for the Christmas and New Year period).	26 Objections
2	17 January 2018	Re-notified for a period of 30 days	25 Objections
3	8 November 2018	15 days	20 Objections
4	19 March 2019	15 days	15 Objections
		TOTAL	86

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

Some submissions received by Council raised a single issue relating to a specific part of the development. Other submissions raised several issues and relate to several perceived deficiencies with the development. Such submissions have been broken into the relevant heads of objection and addressed in the section 4.15 Assessment Report that accompanies this Council Report (Attachment 1).

The **key** issues identified in objection to the development through the notification process may be generally summarised as follows:

#### Traffic and road infrastructure

- The current road network is insufficient to support further development of the subject site. The revised Traffic Report acknowledges Emerald Drive's existing width does not comply with Chapter G11: Subdivision of Land under SDCP 2014, which requires a minimum 6.0m pavement to accommodate an AADT figure of up to 500 vpd.
- The current design of Emerald Drive would not provide compliance with AUS-SPEC or Landcom residential road design guidelines.
- The increased traffic flows through the construction phase of the development will severely impact on traffic flows and the safety of residents
- The Emerald Drive and Meroo Meadow intersection is unsafe and the increased traffic flows from the development will exacerbate the situation.
- Proposed traffic calming devices are unsatisfactory and will not result in a satisfactory outcome for Emerald Drive in terms of safety and operation.
- The increased heavy vehicle movements will result in continued damage to Emerald Drive and the surrounding road network.

- The Traffic Report does not consider the increase in traffic due to commercial vehicles or make reference to this traffic at peak times. No consideration of the impacts of construction traffic has been made within the report.
- Council should engage an independent traffic consultant to review the Traffic Report to provide a transparent assessment.

Comment:

The traffic impacts and existing and essential road infrastructure upgrades have been considered by the applicant as part of the numerous traffic reports that have been submitted to Council and assessed by Council's Traffic and Transport Unit.

The applicant's final Traffic Report has considered the existing and future traffic impacts associated with the site based upon one dwelling house per lot. It is noted that the current planning regime would permit development and subdivision of the lots based on 500m<sup>2</sup> minimum lot sizes, which would likely result in additional traffic impacts on Emerald Drive and the functioning of the Emerald Drive and Meroo Meadow subdivision.

It has been suggested that it may be appropriate to seek to impose appropriate restrictions on the title of the lots in accordance with s88B of the *Conveyancing Act 1919* to restrict development on the lots and prevent traffic impacts. However, title restrictions cannot be used to prevent a planning purpose / outcome that would be otherwise permissible by an environmental planning instrument. There is scope to impose a requirement for a building envelope to be placed on the subdivision plan for each lot which would be consistent with the nominal building envelope stipulated under Chapter G11: Subdivision of Land of SDGP 2014.

Council may also choose to explore the appropriate amendments to SLEP 2014 through a planning proposal and 'Gateway Determination' to rezone and amend appropriate development standards which would curtail more intense land uses. This approach has been recommended and is explored later in this Report.

The additional traffic impacts associated with subdivision, construction and eventual dwelling construction on the lots have not been considered by the submitted Traffic Report. Traffic impacts associated with construction works are difficult to effectively estimate and survey and it is unclear whether the applicant may seek to obtain a staged CC for works at the site. Conventional traffic reports will generally not consider these details.

However, the applicant will be required to prepare and lodge a construction traffic management plan as a condition of the development consent (if approval is granted). Council can require such a plan to be prepared by a suitably qualified person and list the matters for inclusion.

The construction traffic management plan must assess traffic impacts on the local road network created by the construction of the development. An appropriate condition is also recommended to ensure all subdivision construction traffic be directed via the existing driveway access from the Princess Highway and that no section 138 approval to access to Emerald Drive shall be issued by Council to open Emerald Drive until all required civil, demolition and drainage works have been completed to the extent to the eastern boundary with Emerald Drive.

Additionally, a dilapidation report would also be required to deal with any damage to public infrastructure as a result of construction traffic.

It is considered that the requirement for four (4) raised threshold devices along Emerald Drive to aid in traffic calming along with the reduction in the lot yield from 37 lots to 15 lots has significantly reduced the potential traffic impacts associated with the development and has removed the need for widening. It is also noted that the road widening of Emerald Drive was opposed by residents during the notification of the 'road widening' plans by Council on 8 November 2018.

The operation of the Meroo Road and Emerald Drive intersection has been assessed and considered by the applicant via a Traffic Report which has also been reviewed by Council's Traffic and Transport unit as part of the assessment of the application. The safety, functionality and efficiency of the intersection have been reviewed and determined to be satisfactory under the existing and future conditions. It has been determined that there is presently no requirement for upgrade works at the intersection.

Council has suitably qualified professionals working in the Traffic and Transport Unit who have reviewed all plans and information submitted by the applicant. The assessment has been detailed and independent of external influences. It was not considered warranted to refer the matter for external review by an independent traffic consultant. There is nothing unusual about this. This is standard practice for most NSW Councils where there is in-house expertise to assess technical aspects of a development.

#### Safety concerns associated with road users and pedestrians along Emerald Drive

- The width of Emerald Drive, coupled with the absence of a pedestrian or shared pathway connecting Maddor Park Estate and the new development to Meroo Meadow Road and the parking of residents cars on the verge requires that pedestrians and cyclists share Emerald Drive with vehicles. The proposed development is likely to result in an increase in the potential for conflict between pedestrians and cyclists with vehicles using the road.

#### Comment:

The safety, functionality and efficiency of Emerald Drive have been determined to be satisfactory under the existing and future conditions, should the subdivision be approved.

It is considered that the requirement for four (4) raised threshold devices along Emerald Drive to aid in traffic calming along with the reduction in the lot yield from 37 lots to 15 lots has significantly reduced the potential traffic impacts associated with the development.

The management of traffic impacts associated with the subdivision construction works will be further managed through a construction traffic management plan in the event of an approval.

#### Further development impacts on Emerald Drive

- The current planning controls relating to the site and resulting lots do not prevent further development or subdivision of the lots which have not been modelled in the Traffic Report and are likely to result in unacceptable traffic impact.

#### Comment:

The current planning regime would not prevent further development (i.e. multi-dwelling housing, dual occupancy, child care centres or residential flat buildings) and further subdivision of the lots which would have a significant and detrimental impact on the safety and functioning of Emerald Drive and the Meroo Road intersection with Emerald Drive.

Accordingly, it is recommended that a Planning Proposal (PP) and/or site-specific development control plan for the site to ensure that future development of the lots does not result in unsatisfactory traffic impacts on Emerald Drive and the Meroo Road intersection.

The potential options open to Council to limit further development are discussed later in this report.

#### Alternate access to the site should be explored with no access from Emerald Drive

- The proposed extension of Emerald Drive to the west to accommodate the development is not an acceptable option that will result in unsatisfactory traffic impacts on a road which is already under prescribed in terms of the effective road pavement width when considered against the provision of SDCP 2014 Chapter G11:

Subdivision of Land. The applicant should explore alternative access arrangements to the north, south or via the Princes Highway.

Comment:

As has been identified earlier in this Report, the potential for alternate access to the site has been explored by the applicant, Council and the RMS throughout the assessment process. The potential for access to the Princes Highway for all lots has been considered and rejected by the RMS under the original proposal for 37 lots and again under the amended application for 15 lots. The RMS has agreed to enable access for Lot 15 and emergency vehicles to Emerald Drive via the right of carriageway accessed via the turning head to be constructed on Lot 505 DP 1221372.

It is important to note that Council previously approved the construction of Emerald Drive with the existing road pavement width under SF8781 and rezoning of the subject site was prepared and gazetted largely on the basis that access to the subject site would in all likelihood be via Emerald Drive.

It is considered that there is no realistic alternative to access the subject site beyond that proposed by the applicant for the extension of Emerald Drive.

Negative impacts on the amenity of Emerald Drive residents

- The additional dwellings on the resulting lots and extension Emerald Drive will have a negative impact on the amenity of existing residents and the Emerald Drive streetscape.

Comment:

The additional lots will likely result in an additional dwelling house on each lot with subsequent traffic movements to and from the dwellings consistent with typical residential usage. It is not considered that the impacts associated with an additional 15 lots will have a significant and discernible impact on the amenity of the residents of Maddor Park Estate or the broader locality.

The proposed lots range from 1,500m<sup>2</sup> to 7.16ha. The larger lot sizes are considered to be more reflective of the surrounding rural/residential setting.

Street planting will contribute to the streetscape. It is envisaged that similar housing to existing will be constructed continuing the low density streetscape and character.

Noise impacts

- The noise associated with the additional traffic movements and driver behaviour associated with the traffic calming devices (heavy braking and accelerating) will have a negative impact on all residents and particularly for those residents directly adjoining traffic calming devices.

Comment:

It is likely that the installation of four (4) raised thresholds (traffic calming devices) along Emerald Drive will result in driver behaviour that may result in associated noise impacts i.e. braking before the devices and accelerating after going over the device. Emerald Drive has a speed limit of 50km/h. The Traffic Report and associated surveys demonstrate that average speeds are below 40km/h and the addition of 15 lots to the subdivision is unlikely to increase vehicle speeds. The raised thresholds should be designed to reduce associated noise impacts where possible.



### Property Values

- The proposed subdivision and extension of Emerald Drive will have such a detrimental effect on the character of the neighbourhood, that property values will be negatively affected.

### Comment:

Whilst this is a typical and worrying concern when people are faced with new development, it is not a planning consideration that Council can consider in the assessment of the application. The planning assessment of an application is prescribed by section 4.15 of the EP&A Act 1979.

### Stormwater Impacts

- The extension of the Emerald Drive road and dwellings on the 15 lot proposal will create a significant additional stormwater impact. The revised subdivision proposal does not seem to provide updated details of stormwater management or an assessment of peak stormwater events to the North into Abernethy's Creek or South into the watercourse flowing east behind the existing houses along the southern side of Emerald drive into the pond near Meroo Road.

### Comment:

Lots will include inter-allotment drainage and street drainage installed to manage stormwater runoff.

All future dwellings are to include 5kL on-site detention (OSD) rainwater tanks (beyond any requirements for BASIX), to limit peak runoff flow rates to pre-developed levels and to improve downstream water quality and on-site retention for rainwater re-use.

A drainage easement through proposed Lot 14 will cater for major overland flows in the 100-year storm event and an appropriate restriction is to be placed on the lot in accordance with s88B of the *Conveyancing Act 1919*.

A soil and water management plan will be prepared prior to work commencing on the site to manage site disturbance and control sediment runoff from the construction site.

The development has been considered by Council's subdivision and drainage engineers to be satisfactory and is consistent with the applicable objectives relating to sustainable stormwater management and sediment control.

The redesign of the application does not prevent further subdivision or intensification of land uses that would have an unreasonable impact on Emerald Drive.

### Comment:

The subject site has split zoning under SLEP 2014, consisting of land zoned part: R1 General Residential, E3 Environmental Management and RU1 Primary Production. Refer to the extract from the Land Use Zoning Map of SLEP 2014 in **Figure 14** below.

Development permitted with consent and prohibited in the R1 General Residential zone is identified under Item 3 and 4 of Land Use Table to the zone as follows:

#### **3 Permitted with consent**

**Attached dwellings; Boarding houses; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Exhibition homes, Exhibition villages; Group homes; Home-based child care; Home businesses; Home industries; Hostels; Jetties; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture;**

**Places of public worship; Pond-based aquaculture; Recreation areas; Registered clubs; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Sewerage systems; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Water supply systems**

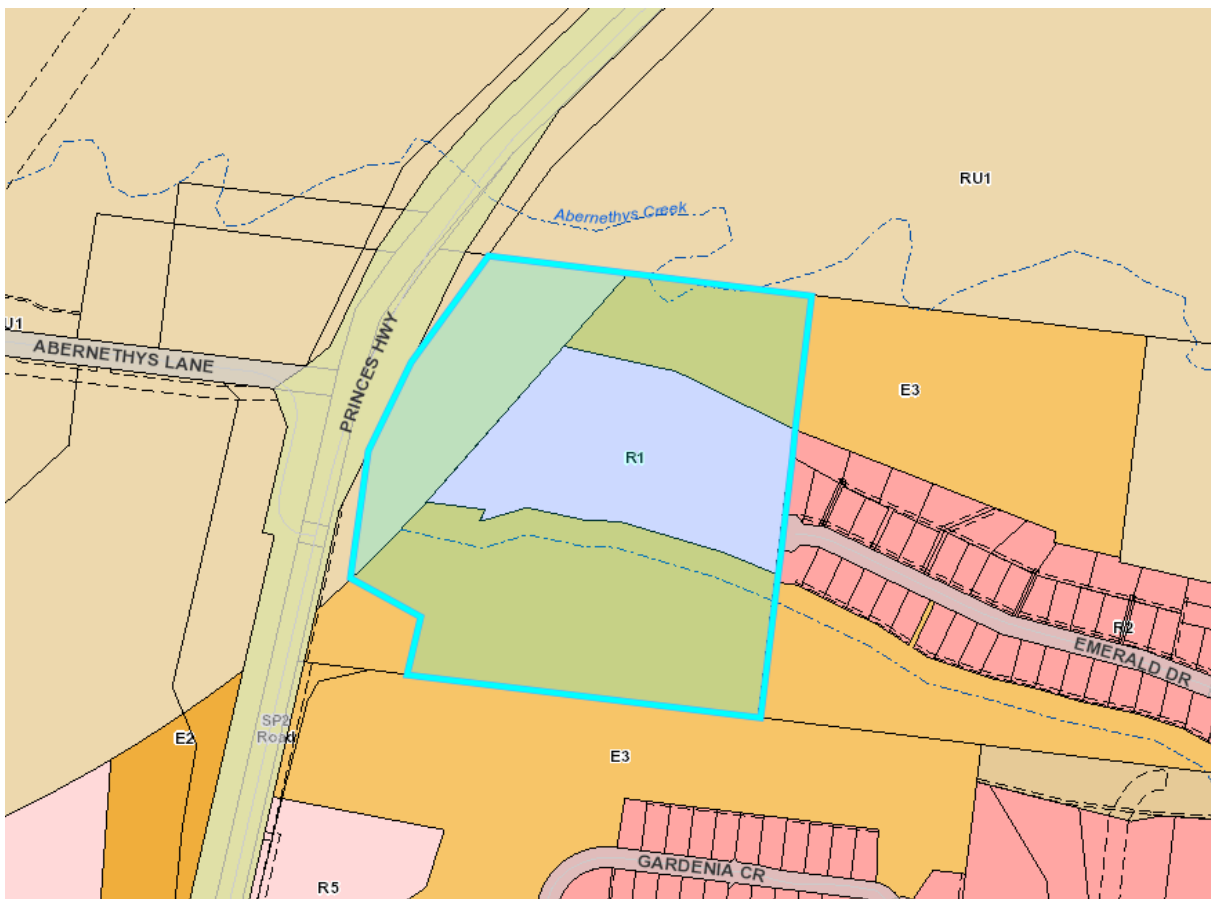
#### 4 Prohibited

*Farm stay accommodation; Any other development not specified in item 2 or 3*

Under the current provisions of SLEP 2014 and in the event that the current proposal is determined by way of approval a development application could be lodged for a land uses (**bolded**) which would all result in a significant increase in traffic volumes on Emerald Drive. The intensification of land uses and the associated impacts are of considerable concern to residents.

The increase in traffic would likely exceed that presently modelled under the Traffic Report which has adopted an average of 6.4 vehicles movements per day (vpd) per dwelling. The highlighted land uses would be expected to generate a significantly higher vpd for each of the lots and AADT.

**Figure 14 - Extract from SLEP 2014 Land Use Zoning Map. The subject site highlighted in blue.**



The Lot Size Map relating to the subject site indicates that there are two minimum lot sizes relating to the subject site – “AB4” 40ha and “I” 500m<sup>2</sup>. The 500m<sup>2</sup> minimum lot size mapping is consistent with the land zoned R1 General Residential under SLEP 2014. Refer to **Figure 15** extract from SLEP 2014 Lot Size Map.

Under the current provisions of SLEP 2014 and in the event that the current proposal is determined by way of approval a development application could be lodged for a re-

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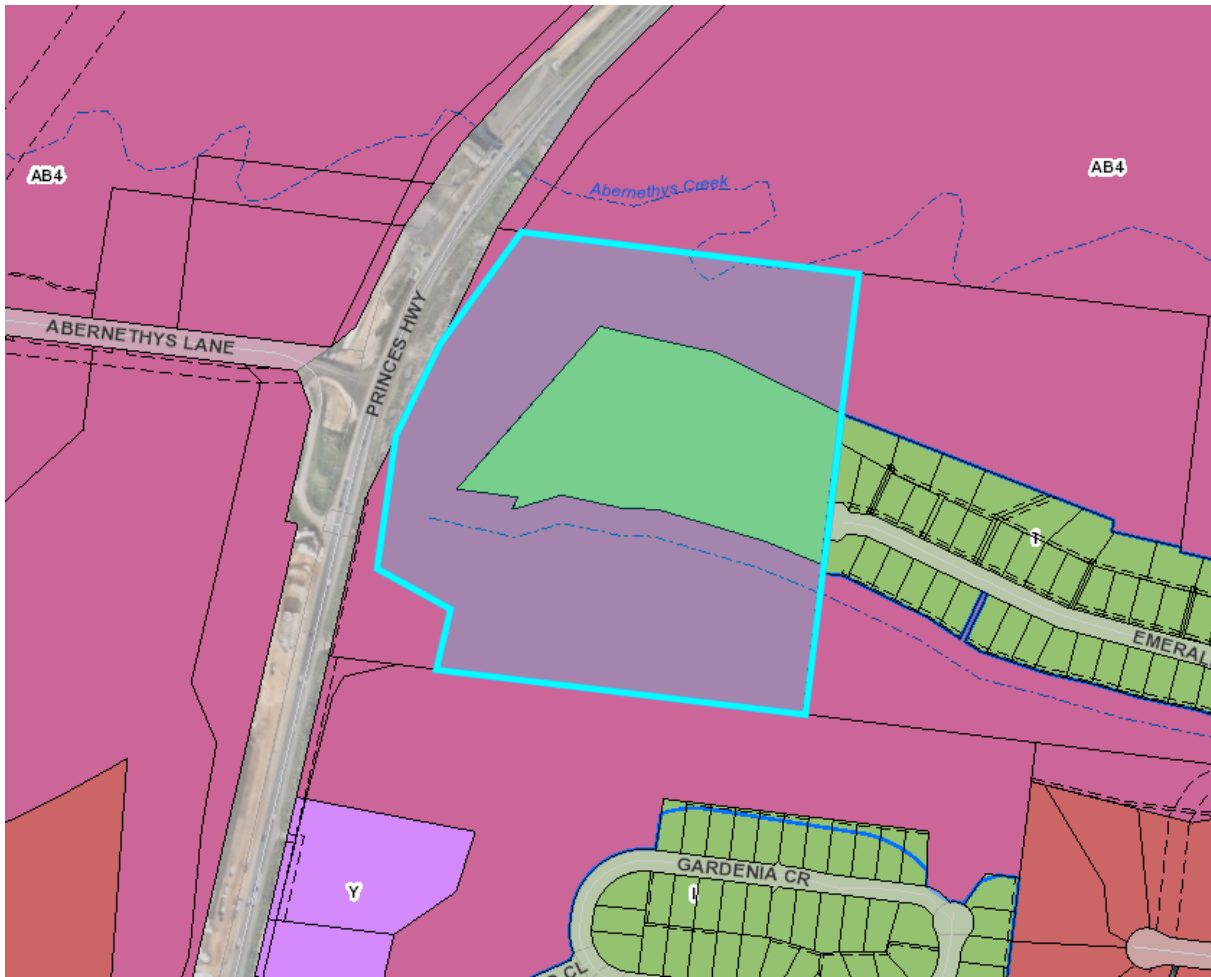
subdivision of any of the lots in accordance with clause 4.1 of SLEP 2014. Based on the current subdivision design an application could be lodged to re-subdivide each lot to generate an additional 15 lots (30 lots in total) or a subdivision pattern similar to that previously proposed by the applicant as part of the original application lodged in October 2016.

Furthermore, there are additional provisions under Part 4 Principal Development standards of SLEP 2014 which allow for subdivision of the land which would result in a lot less than the minimum lot size indicated on the Lot Size Map; they include the following provisions:

- Clause 4.1C Exceptions to minimum subdivision lot sizes for certain residential development; and
- Clause 4.1F Minimum subdivision lot size for community scheme and strata plan lots.

Any subsequent re-subdivision of the resulting 15 lot subdivision would result in an increase in traffic volumes on Emerald Drive which would exceed that presently modelled under the Traffic Report which indicates that AADT would exceed 500vpd at a point west of Ruby Lane, generally adjacent to 24 Emerald Drive (refer to **Figure 7** in this Report).

**Figure 15** - Extract from SLEP 2014 Lot Size Map. The subject site highlighted in blue.



There are a number of approaches that Council could explore to ensure that further subdivision and subsequent dwelling houses and more intense land uses are not capable of being situated on the resulting lots, this *may* include matters along the following lines however the imposition of any restrictions via an 88B Instrument would have to be worded in a manner that they do not prevent the achievement of a planning purpose /outcome permitted in an Instrument.

- Placement of appropriate covenant on the lots as a restriction on the use of land by deed of agreement between the parties pursuant to s88 *Conveyancing Act 1919*. Such restrictive covenants could include:
  - No part of a dwelling or other habitable building may be constructed or allowed to remain on any lot hereby burdened unless it is contained wholly within the approved building envelope delineated on the plan in relation to the burdened lot; and
  - No driveway access shall be permitted to be constructed or retained on any lots unless such driveway access is the only driveway access on the lot.

However, such restrictions would serve to highlight to future owners that the intention is for the land to accommodate conventional low density residential development. In the event that an approval is granted for the development and the PP is pursued, it would be likely that an application would be made to remove any such requirement noting that the building envelope is relatively modest having regard to the land size.

Given the recommendation is for a Deferred Commencement, restrictions are not deemed necessary.

- Preparation and lodgement of a planning proposal (PP) in relation to:
  - Zoning (relating to R1 General Residential land only). A zoning of R5 Large Lot Residential is considered more appropriate for the land as it is consistent with the development application's large lot nature and would enable land owners to pursue land uses consistent with the nature of the land;
  - Minimum lot size (relating to land identified as "I" under the Lot Size Map which relates to the 500m<sup>2</sup> minimum lot size). A minimum lot size of 1,500m<sup>2</sup> would maintain the large lot residential nature proposed as part of the development application. This will assist in managing future development of the land to avoid congestion and adverse impacts on the immediate road network; and
  - Building height. The Height of Buildings Map does not show a maximum height for the land and therefore the height of a building on the land shall not exceed 11 metres. A maximum height of 8.5m over the land (R1 part only) is considered appropriate as it reflects the height limit of surrounding residential land and the citywide approach to heights in this context.
- Preparation of an area specific development control plan to guide future development of the lots and stipulate performance criteria and acceptable solutions to ensure that the rural/residential character of the lots is maintained, the resulting development does not result in a significant increase in traffic generation beyond that anticipated under the Traffic Report. This is considered not to be a suitable approach for this site. Furthermore, having regard to the hierarchy of planning controls and the intention of a development control plan, it should be noted that they are designed to guide development and provide a degree of flexibility. In simple terms, it is easier to vary provisions in these plans as opposed to controls included in a local environmental plan (LEP).

The applicant has also advised Council the landowner is prepared to enter into a legal agreement. Such an agreement would prevent or seek to defer registration of the lots or lodgement of a subdivision certificate until the PP was resolved. Whilst the intention may be clear, some concern remains about the veracity of such an agreement.

Another option which has been suggested is a deferred commencement style consent. However, a deferred matter should *generally* not be something that relies on another independent process or approval. A deferred consent however would ensure resolution of

the PP prior to the subdivision occurring. This greatly reduces the risk of land being sold /purchased and potentially developed for uses with a higher traffic generation.

### **Planning Assessment**

The application has been assessed under section 4.15 of the EP&A Act, with all necessary heads of consideration reviewed. (Attachment 1)

### **Community Engagement**

The notification of the application was undertaken in accordance with Council's Community Consultation Policy including advertising and notification of local residents within the vicinity of the development, with letters being sent within a 100m radius of the site and to Community Consultative Bodies.

A total of 86 submissions were received to the application. All submissions were in objection to the application.

Should a planning proposal proceed through Gateway to exhibition it would be exhibited for a period of at least 28 days in accordance with legislative requirements.

### **Policy Implications**

If an approval is to be issued, the policy implications, if the recommendation is adopted, will be that the strategic planning framework will need to be explored to limit further development in the locality having regard to the unique circumstances of the estate, being a long narrow road, servicing the number of lots.

### **Financial Implications**

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

Should Council support the preparation of a planning proposal, this process would be managed through the Strategic Planning budget and may impact on the work programme.

### **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 approval or refusal. Alternatively, an applicant for development consent who is dissatisfied with the determination of the application by the Council may, as mentioned above, appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act.

### **Summary and Conclusions**

- The proposal is acceptable having regard to the relevant environmental planning instruments and the SDCP 2014.
- The extent of variations to SDCP 2014 are limited to nominated road widths indicated in Chapter G11: Subdivision of Land. The variations are identified in the attached section 4.15 Assessment Report;
- The proposed development is unlikely to result in significant adverse unreasonable environmental impacts on both the natural and built environments, and social and

economic impacts in the locality having regard to the urban zone and context of the land;

- Subject to appropriate conditions, the site is considered suitable for the proposed development noting that it has been zoned for urban development (although the capacity of the land has been questioned and the proposal modified in response);
- The submissions received by Council raise concerns with the development and associated impacts. The submissions have been considered and addressed as part of the Council Report and section 4.15 Assessment Report;
- The development is considered to be in the public interest in that it will provide additional land for housing development; and
- The development is compatible with the surrounding development and will not have a significant adverse impact on the landscape character of the area.

Regarding the above, the proposal is not considered unacceptable, objectionable or warranting refusal. Accordingly, a positive recommendation is made.





## **DE19.65 Development Application – 38 Lyrebird Drive Nowra - Lot 74 DP 1198691 DA18/2175**

**DA. No:** DA18/2175

**HPERM Ref:** D19/228785

**Group:** Planning Environment & Development Group  
**Section:** Building & Compliance Services

**Attachments:**

1. SDCP 2014 Chapter G9: Generic controls - High Hazard Floodway [↓](#)
2. SDCP 204 Chapter G9: Legend for the flood development controls matrix [↓](#)
3. SDCP 2014 Chapter G9: Riverview Road Area controls [↓](#)
4. Draft conditions of approval (under separate cover) [↓](#)
5. Council Resolution - MIN9.459 [↓](#)
6. Development & Environment Report 2/7/19 - DA18/2175 - 38 Lyebird Drive Nowra (under separate cover) [↓](#)

**Description of Development:** Attached dual occupancy

**Owner:** AM Showell  
**Applicant:** Hotondo South Coast

**Notification Dates:** 30 October to 14 November 2018

**No. of Submissions:** No submissions received

### **Purpose / Reason for consideration by Council**

This report provides recommended conditions of consent for this application which was considered at the Development and Environment Committee meeting held on 2 July 2019.

At that meeting the Committee resolved to approve Development Application DA18/2175 for the erection of an attached dual occupancy at Lot 74 DP 1108691, 38 Lyrebird Drive Nowra, and requested a further report be provided to Council with suitable conditions for consent (MIN19.459). **Attachment 5.**

### **Recommendation (Item to be determined under delegated authority)**

That Council consider the conditions of consent as shown in Attachment 4.

### **Options**

1. Council can resolve to grant consent to the application in accordance with the conditions set out in **Attachment 4.**

Implications: The application can proceed in accordance with those conditions of consent.

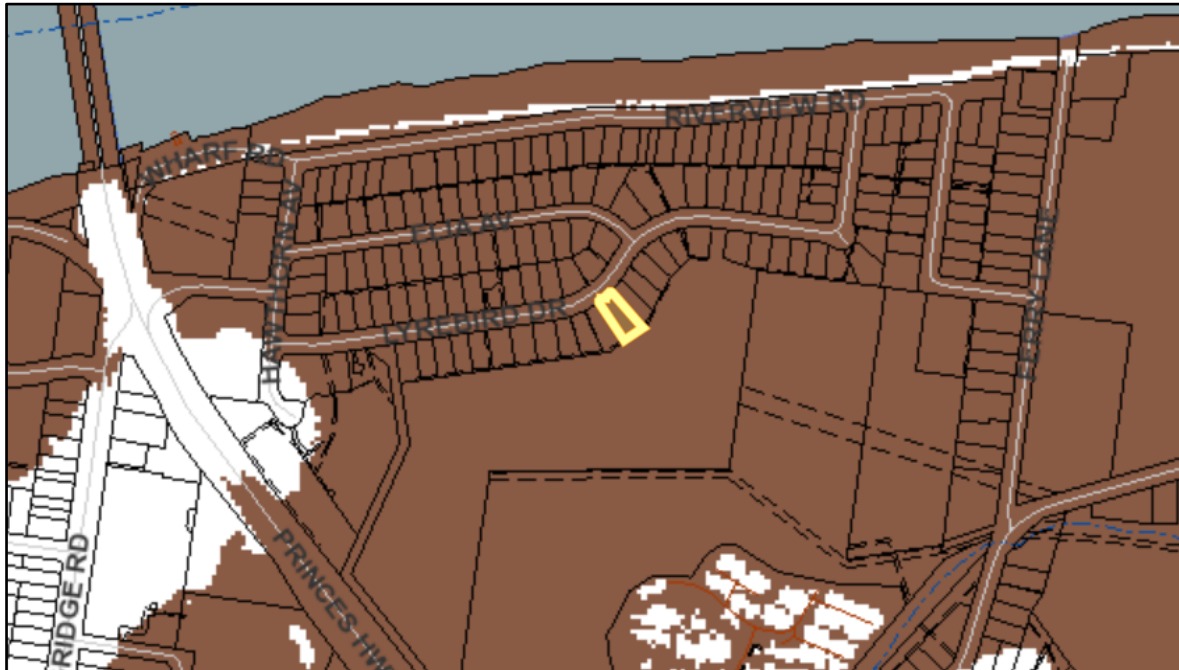
2. Council could resolve to grant consent subject to alternative conditions of consent.

Implications: Council would need to determine the alternative conditions and the development could then proceed in accordance with those alternative conditions.

DE19.65



## Location Map



**Figure 1 – Location map with subject site shown outlined in yellow**

DE19.65

## Background

The report to the 2 July 2019 meeting of the Development and Environment Committee provided an assessment of the development application for the proposed attached dual occupancy. That report recommended that the application be refused due to the flood hazard on the land.

The application was called in by Councillor White at the meeting of the Development and Environment Committee held on 4 June 2019.

At the Committee's meeting held on 2 July 2019, it resolved that (MIN19.459 – **Attachment 5**):

1. Council accept Development Application DA18/2175 for the erection of an attached dual occupancy at Lot 74 DP 1108691, 38 Lyrebird Drive Nowra, a further report be provided to Council with suitable conditions for consent.
2. The next Housekeeping Amendment seek to consider inserting provisions in the Shoalhaven LEP to rule out dual occupancy development in the vicinity of Riverview Road and Lyrebird Drive, Nowra.

The conditions in the draft notice of determination at **Attachment 4** consist mainly of standard conditions that will apply to dual occupancies generally. There are a number of special conditions which arise from the consideration in relation to SDCP 2014 Chapter G9 (Development on Flood Prone Land) and in particular:

- the flood related development controls applying to land in the High Hazard Floodway (see copy of matrix at **Attachment 1** and legend for matrix at **Attachment 2**); and
- the specific development controls applying to land in the Riverview Road Area (see copy at **Attachment 3**).

These conditions are condition numbers 5 (Engineer's reports – flood hazard), 26 (Flooding – minimum floor level), 27 (Flood compatible building components), 46 (Engineer's Certification), 47 (Self evacuation measures) and 49 (Use of sub floor area).

### **Policy Implications**

Policy implications associated with a decision to approve the application were detailed in the report to the Committee's meeting held on 2 July 2019.

There are no policy implications associated with the determination of conditions for this application.

### **Consultation and Community Engagement:**

Community consultation was detailed in the report (**Attachment 6**) presented to the Committee on 2 July 2019. The application was notified in accordance with Council's Community Consultation Policy and no submissions were received.

### **Financial Implications:**

Financial implications were detailed in the report to the Committee's meeting held on 2 July 2019.

### **Legal Implications**

Legal implications were detailed in the report to the Committee's meeting held on 2 July 2019.

### **Summary and Conclusion**

If Council determines to grant consent to this application the conditions in **Attachment 4** are recommended.

Shoalhaven Development Control Plan 2014

**Chapter G9: Development on Flood Prone Land**

**Schedule 2 – Flood Related Development Controls – Generic**

Hazard/Hydraulic Category	High Hazard Floodway													
Land Use Category (As per schedule 1)	Single Residential / Habitable Buildings	Single Residential / Habitable Buildings	Other Residential / Habitable	Carparks	Commercial / Industrial / Agricultural Buildings / Retail	Commercial / Industrial / Agricultural Buildings / Retail Existing Use Rights Only	Subdivision	Earthworks	Resources Management / Agriculture / Recreational Activities	Critical Infrastructure Assets / Potentially Polluting Activities	Buildings and activities requiring special evacuation consideration	Minor Development	Ancillary Structures	Events
	A(I)	A(I)*	A(II)	B	C	C(I)*	D	E	F	G	H	I	J	K
FLOOR LEVEL*		1				1						1 or 4**		
BUILDING COMPONENTS		1, 2				1, 2			1, 2			1, 2	1, 2	
STRUCTURAL SOUNDNESS		2, 4				2, 4			3			2	3	
HYDRAULIC IMPACT		1				1			1, 2				1	
ACCESS		1, 2				1,2						3		
FLOOD EVACUATION PLAN		1				1						1		2
MANAGEMENT & DESIGN		1, 3				1, 2, 3			1, 2				1	



Not suitable for development



Not required

Note: For definitions of Land Use Categories refer to Schedule 1.

\* This type of development is not suitable within the risk category - however, if existing use rights (as defined in the *Environmental Planning and Assessment Act 1979*) can be established and there is no other option, the conditions as per Schedule 2 will apply.

\*\* Control no. 1 is desirable however if this cannot be achieved control no. 4 is acceptable.  
Numbers in columns are described in the Development Controls Matrix Legend.

Shoalhaven Development Control Plan 2014

**Chapter G9: Development on Flood Prone Land**

**Development Controls Matrix Legend**

\*Note: for new **building** applications **flood** levels for the year 2050 are to be used. For applications for subdivision or changes of land use **flood** levels for the year 2100 are to be used.

**Floor Level:**

1. 1% **AEP flood** level + 0.50M **freeboard**;
2. **Probable maximum flood** level;
3. 5% **AEP flood** level;
4. Existing **habitable floor level** or higher as practical; and
5. High enough to ensure a velocity - depth product of less than 0.3 m<sup>2</sup>/s for a 1% **AEP flood** event.

**Building Components:**

1. Any portion of the **building** or **structure** below the **FPL** to be built from **flood compatible materials** (being those materials used in **building** that are resistant to damage when inundated); and
2. All electrical installations to be above the **FPL**.

**Structural Soundness:**

1. Appropriate consulting engineer's report – the **building** can withstand forces of floodwaters including debris and buoyancy forces up to the **PMF** scenario;
2. Appropriate consulting engineer's report – the **building** can withstand forces of floodwaters including debris and buoyancy forces up to the 0.2% **AEP flooding** scenario;
3. Appropriate consulting engineer's report – the **building** can withstand forces of floodwaters including debris and buoyancy forces up to a 1% **AEP flooding** scenario;
4. Appropriate consulting engineer's report – the **structure** will not become floating debris during a 1% **AEP flooding** scenario; and
5. Certification of **building** foundations by a chartered geotechnical practitioner.

**Hydraulic Impact:**

1. Appropriate consulting engineer's report for **building** footprint areas over 250 square metres, a footprint length of more than 20 metres or any **development** that in the view of **Council** has the potential to significantly impact on others. The report is to prove that the **development** will not increase **flood hazard** or **flood** damage to other properties or adversely affect **flood** behaviour for a 5% **AEP** up to the **PMF** scenario.  
No **hydraulic impact report** is required if the proposed **building** is raised on piers allowing free **flood** flow for a 1% **AEP flood** event.
2. Appropriate consulting engineers report for **earthworks** of volumes exceeding 250 cubic metres or with a length of more than 20 metres. The report is to prove that the **earthworks** will not increase **flood hazard**, **flood** damage or adversely affect other properties for a 5% **AEP** up to the **PMF** scenario.

**Access:**

1. Reliable emergency vehicle access is required for ambulance, SES, fire brigade, police and other **emergency services** during a 1% **AEP** flood event;
2. **Reliable access** for pedestrians is required during a 1% **AEP flood** event; and
3. **Reliable access** for pedestrians is desirable during a 1% **AEP flood** event.

**Flood evacuation plan:**

1. **Appropriate engineers** report demonstrating that permanent, fail-safe, maintenance-free measures are incorporated in the **development** to ensure that the timely, orderly and safe evacuation of people is possible from the area and that it will not add significant cost and disruption to the **community** or the SES.

Shoalhaven Development Control Plan 2014

**Chapter G9: Development on Flood Prone Land**

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**Management and design:**

1. Applicant to demonstrate that there is an area where hazardous and valuable goods can be stored above the 1% **AEP Flood** Level;
2. Bunding to the **FPL** to be installed around hazardous chemical storage areas or the like; and
3. Applicant to demonstrate that there is an area where animals can find refuge above the 1% **AEP Flood** Level

DE19.65 - Attachment 2

Shoalhaven Development Control Plan 2014

**Chapter G9: Development on Flood Prone Land**

	<a href="#">soils</a> . Local landowner modifications to the existing mitigation drains will require <a href="#">Council's</a> written approval.
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**5.4.5 Riverview Road Area**

The Riverview Road Area [Floodplain Risk Management Plan](#) was adopted in 2002. Please refer to Supporting Map 5.

Site specific [flood](#) related development controls:

Location / Type of Development	Specific Controls
All of Riverview Road Area FRMP Study Area	<ul style="list-style-type: none"> <li>No new subdivision approvals will be granted as it would increase the demand on the rescue services and the <a href="#">risk</a> to life.</li> <li>The minimum required floor level for <a href="#">infill development</a> and reconstruction is the 1 in 100 year <a href="#">pre levee flood</a> level plus a <a href="#">freeboard</a> of 0.5m for <a href="#">habitable rooms</a>.</li> </ul>
New residential <a href="#">buildings</a> where approved in accordance with the zoning requirements	<ul style="list-style-type: none"> <li>Structural soundness of completed works to withstand water and debris damage up to the 0.2% <a href="#">AEP</a> (1 in 500 year) event is to be certified by a suitably qualified structural engineer.</li> <li><a href="#">Owners</a> must have measures in place to enable them to self evacuate to not place additional burden on <a href="#">Emergency Services</a></li> </ul>
New residential <a href="#">buildings</a> within: <ul style="list-style-type: none"> <li>Riverview Road,</li> <li>Elia Avenue</li> <li>Lyrebird Drive subdivision</li> </ul> Lot 7 DP809132 Lot 1 DP1053438 Lot 2 DP1053438 Lot 6 DP538956 Lot 1 DP449102 All vacant land not already subdivided.	<ul style="list-style-type: none"> <li>No Dual Occupancies or subdivisions will be permitted.</li> </ul>



## FOR ACTION

### DEVELOPMENT & ENVIRONMENT COMMITTEE

**02/07/2019**

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**Subject:** Development Application – Lot 74 DP 1198691 38 Lyrebird Drive Nowra - Report request - Consent Conditions - Shoalhaven LEP Amendment - Dual Occupancy - Lyrebird / Riverview Rd  
**Target Date:** 01/08/2019  
**Notes:**  
**HPERM Reference** DA18/2175  
**Related Report** D19/189185  
**Item Number** DE19.60

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**RESOLVED** (Clr Wells / Clr Proudfoot)

MIN19.459

That:

1. Council accept Development Application DA18/2175 for the erection of an attached dual occupancy at Lot 74 DP 1108691, 38 Lyrebird Drive Nowra, a further report be provided to Council with suitable conditions for consent.
2. The next Housekeeping Amendment seek to consider inserting provisions in the Shoalhaven LEP to rule out dual occupancy development in the vicinity of Riverview Road and Lyrebird Drive, Nowra.

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

**AGAINST:** Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner and Stephen Dunshea

**CARRIED**

**DE19.65 - Attachment 5**

## DE19.66 Moss Vale Road North Urban Release Area - Detailed Supporting Plans

**HPERM Ref:** D19/214378

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

### Purpose / Summary

Present the Moss Vale Road North (MVRN) package of information submitted by the MVRN Owners Group (the proponent group) to Council for consideration and to obtain direction in this regard.

Council also needs to formally resolve to prepare an adjusting Planning Proposal (PP) and draft Development Control Plan (DCP) Chapter and Contributions Plan (CP) Amendment for the URA consistent with Part 6 of Shoalhaven Local Environmental Plan (LEP) 2014.

### Recommendation (Item to be determined under delegated authority)

That Council

1. Acknowledge the work undertaken by the proponent group and give 'in-principle' support to the current package of information for the Moss Vale Road North Urban Release Area being used as the basis for the detailed supporting plans, including the Planning Proposal Background Report being used as the basis for preparing a Planning Proposal to amend Shoalhaven Local Environmental Plan 2014.
2. Prepare and submit the Planning Proposal to the NSW Department of Planning, Industry and Environment for Gateway determination and if necessary, receive a further report following receipt of the Gateway determination.
3. Formally commence the preparation of a Development Control Plan Chapter and Contributions Plan for the Moss Vale Road North Urban Release Area as required by Part 6 of Shoalhaven Local Environmental Plan 2014.
4. Continue to work with the Moss Vale Road North Owners Group to discuss opportunities highlighted in the report and resolve the issues identified in this report and through initial staff referrals as the Planning Proposal, Development Control Plan Chapter and Contributions Plan are advanced and prepared.
5. Investigate biodiversity certification for the Urban Release Area with a further report to be provided to Council in due course.
6. Investigate the preparation of an affordable housing contribution scheme under the SEPP 70 Affordable Housing (Revised Schemes) for the Urban Release Area and opportunities more generally to ensure affordable housing outcomes in the area.
7. Investigate and report back on potential suburb naming options for the Moss Vale Road North and Moss Vale Road South Urban Release Areas.

### Options

1. Support the recommendation.

Implications: This is preferred as it will enable Council staff to continue working with the proponent group to efficiently progress the planning work required to enable the 'release' and development of this URA.

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The associated technical studies, indicative layout plan, proposed PP justification and draft DCP Chapter are a crucial package in guiding the future development of this new URA, achieving the desired outcome in this location and potentially an exemplar residential development.

2. Not support the recommendation.

Implications: This option is not preferred given the work that has already been done to date and the commitment that has been established with the proponent group and landowners in the area.

The draft package of plans will ultimately encourage a mix of lot sizes, housing types and densities in the URA, facilitate the desired development outcome and enable Council to levy local contributions to assist in the provision of community facilities or infrastructure to meet the demand created by this new development.

### Background

The MVRN URA was originally identified as a 'New Living Area' in the Nowra-Bomaderry Structure Plan which was adopted by Council in 2006 and endorsed by the NSW Government in 2008.

The site was rezoned under Shoalhaven LEP 2014 to predominantly R1 General Residential with parts rezoned RE1 Public Recreation, B1 Neighbourhood Centre, E2 Environmental Protection and E3 Environmental Management. The current URA covers 266.1ha of land and is subject to provisions of Part 6 of Shoalhaven LEP 2014. This requires a DCP and infrastructure plans to be in place before development can be considered.

The detailed planning for the MVRN area was brought forward from originally Phase 5 to Phase 2 following a Notice of Motion on 28 March 2017. Council subsequently resolved to formally commence the process required under Part 6 of Shoalhaven LEP 2014 for the MVRN URA on 22 August 2017 (MIN17.738).

A Project Control Group (PCG) was established to facilitate the progression of the planning for the URA, and Council have been working with the proponent group as the relevant technical studies and draft supporting documentation have been prepared. An initial landowner meeting for all landowners in the URA was held on 25 September 2017 and progress updates have been provided where possible through the dedicated 'Get Involved' Page.

A package of planning information including detailed technical investigations, a possible draft DCP and justification for a proposed adjusting PP has now been provided to Council from the proponent group.

Councillors were given an initial overview briefing on the submitted planning package by representatives of the MVRN Owner's Group on 30 May 2019. Council staff also outlined the proposed next steps in this regard. The detailed planning work for this URA is now at a point where formal Council consideration is required and direction on how to take it forward.

This report provides Council with the first formal opportunity to consider the package of submitted information and resolve to commence the preparation of a PP, DCP Chapter, and a CP Amendment for the area.

### MVRN Planning Package

The MVRN Owners Group (note: do not represent all landowners within the URA) have submitted the following documents as part of the planning package, except for the Integrated Water Cycle Assessment (IWCA) which was managed by Council.

- Draft Indicative Layout Plan (see **Figure 1**)
- Draft Zoning Boundary Adjustment (see **Figure 2**)
- Draft Proposed Zones Map (see **Figure 3**)
- [Draft Development Control Plan](#) (see note below)
- Bushfire constraints advice for Masterplan and DCP
- Infrastructure Report
- Visual Impact Assessment
- Flora & Fauna Assessment
- Fauna Survey
- Stage 1 Contamination Assessment
- Dam Stability Assessment
- Landscape Study
- Flood Study & Riparian Lands Concept Design and Assessment
- Aboriginal Archaeological Study
- Traffic & Transport Report
- [Planning Report & Masterplan](#) (see note below)
- Integrated Water Cycle Assessment

**Note:** To minimise printing, the two key overview documents, the Planning Report & Masterplan and Draft Development Control Plan, are not provided as attachments, but are available via direct embedded links above or via the general link below.

The complete package of information is extensive and is currently available on Council's internet site at:

<https://shoalhaven.nsw.gov.au/Planning-and-Building/Strategic-planning/Planning-Proposals/Pre-Gateway/Moss-Vale-Rd-North-URA>

Staff from relevant sections of Council have reviewed the submitted information and provided initial comments on the relevant technical studies which will be forwarded to the proponent group for consideration and further refinement where necessary. Commentary on any significant issues identified are discussed later in this report.

Based on the proponent's submitted draft Indicative Layout Plan (ILP) shown in **Figure 1**, the site has the capacity to accommodate some 2,500–3,000 dwellings. The ILP provides a higher-level overview of the proponent group's aspirations for the URA.

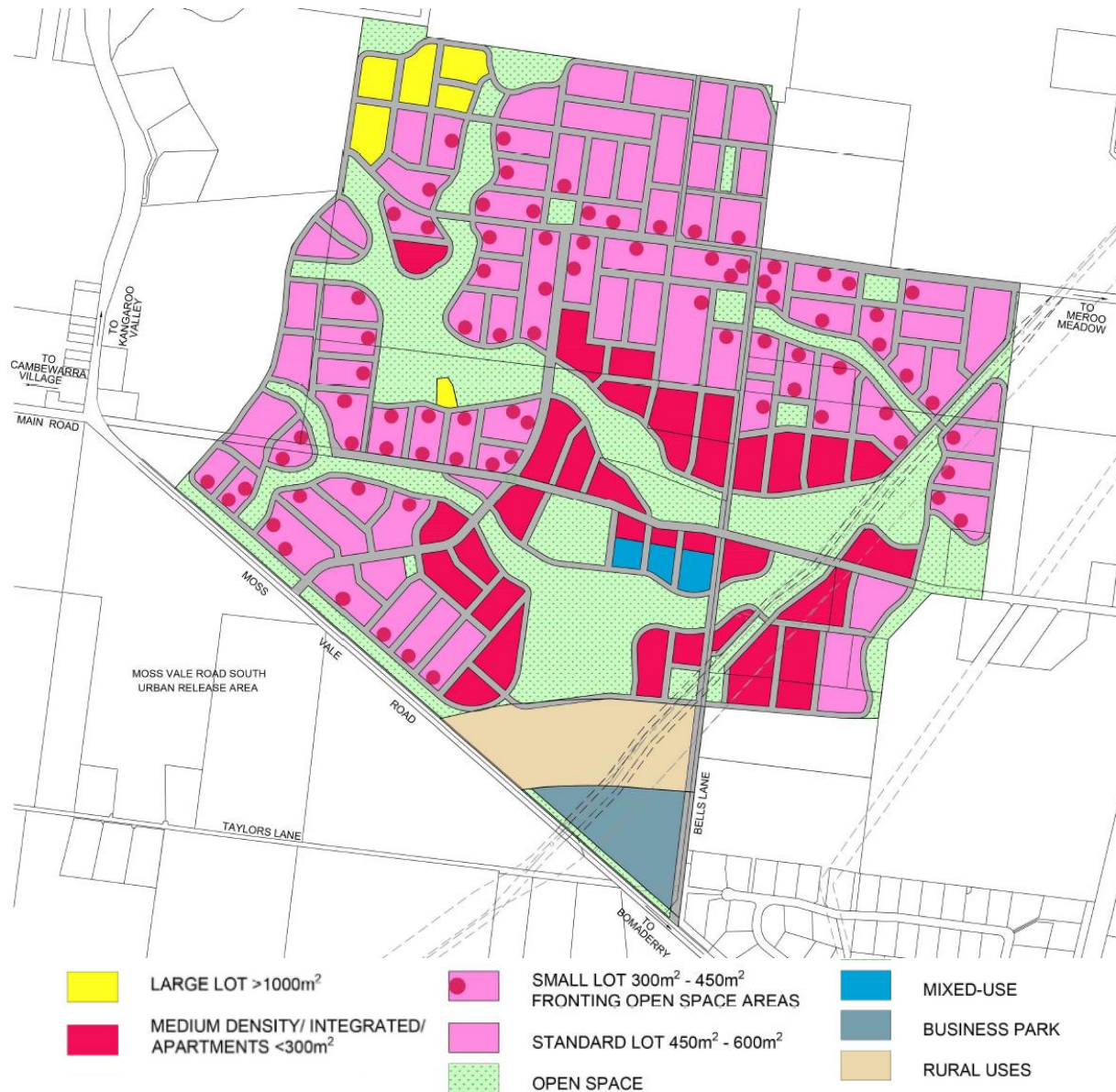


Figure 1 – Draft Indicative Layout Plan

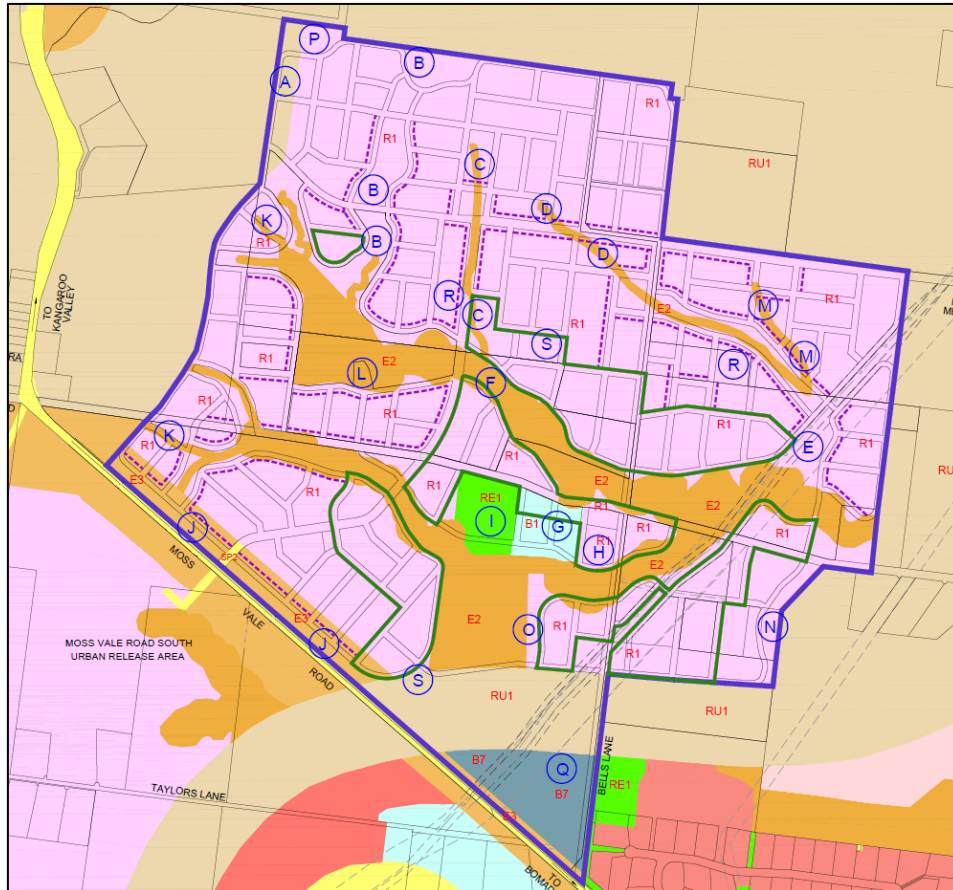
### Proposed Planning Proposal

Following the completion of the above technical studies, the proponent has also prepared and submitted a 'Planning Proposal Background Report to Support Rezoning' which could be used as the basis for a future PP should Council resolve to also initiate this process.

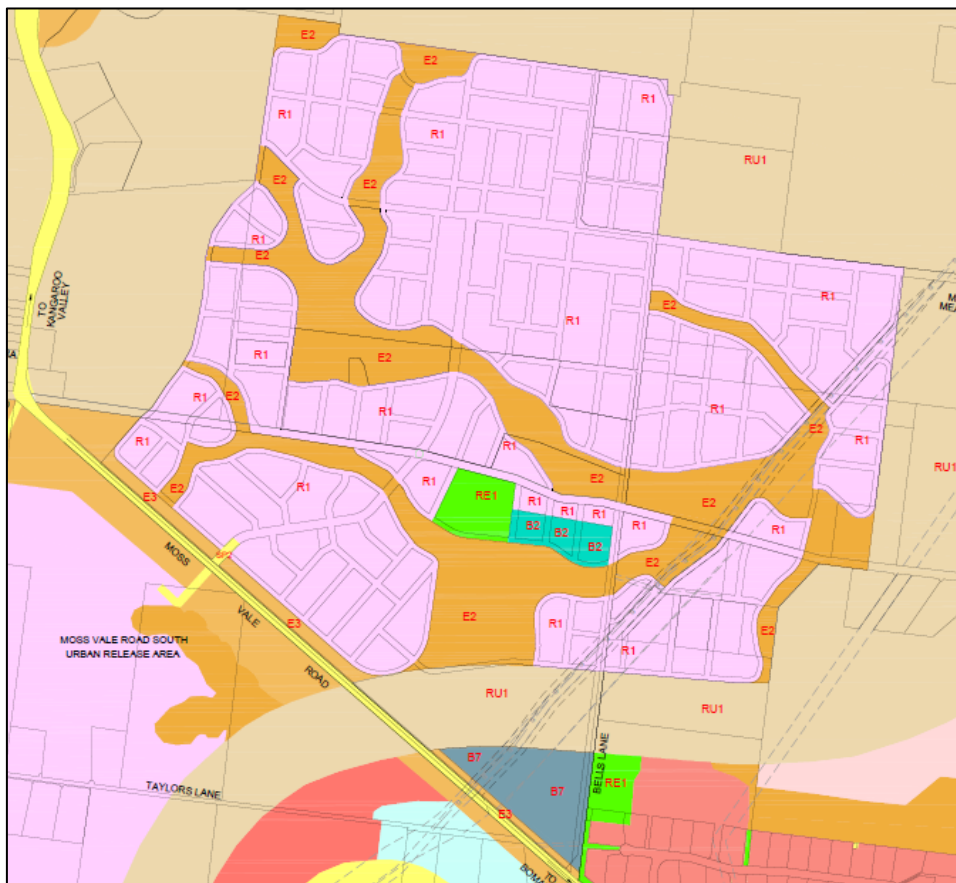
The main objective of the PP would be to resolve several inconsistencies in land zoning mapping which have been identified through the detailed technical investigations, including a number of locations where zone boundaries do not currently correlate with the current physical state of the land. A copy of the draft Zoning Boundary Adjustment and draft Proposed Zones Map is provided in **Figure 2** and **Figure 3** respectively. The below table related to Figure 2 gives an overview of potential changes and initial Council staff comment on them.

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**Figure 2 – Draft Zoning Boundary Adjustment Map**



**Figure 3 – Draft Proposed Zones Map**

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Figure 2 Key	Proposed LEP Amendment	Staff Comment
(A)	Rezone approximately 2ha of land from RU1 Primary Production to R1 General Residential.	Support in principle – further discussion below.
(B) (E) (N) (O) (P)	Rezone areas of R1 General Residential to E2 Environmental Conservation.	Support. The PP request will result in an overall increase of E2 land from 39.93 ha to 47.93 ha.
(C) (D) (K) (M)	Rezone areas of E2 Environmental Conservation to R1 General Residential.	Support in principle – further discussion below.
(F)	Adjust E2 and R1 zone to suit landform.	Supported.
(G)	Reduce the size of the business zoned area from approximately 2.31ha to approximately 2.24ha and rezone it from B1 Neighbourhood Centre to B2 Local Centre or B4 Mixed Use.	Support in principle – further discussion below.
(H)	Rezone R1 General Residential to the adjoining Business zone.	Support in principle – further discussion below.
(I)	Adjust the RE1 boundary to fit with the proposed Indicative Layout Plan.	Support. The adjustment results in a slight increase in RE1 land from 2.58 ha to 2.6 ha.
(J)	Reduce the size of the E3 Environmental Management buffer along Moss Vale Road from 75m to 30m and rezone the additional 45m to R1 General Residential.	Reservations – further discussion below.
(L)	Introduce provisions to enable the subdivision of the existing dwelling with a 2,000m <sup>2</sup> minimum area around it.	Support – this is currently being resolved through a separate PP to generally amend LEP Clause 6.5.
(Q)	Remove the Scenic Protection Area from B7 Business Park land.	Support in principle – further discussion below.
(R)	Introduce provisions to enable the provision of small lots (300-450m <sup>2</sup> ) in close proximity to open space and or on main traffic ‘spine’ roads.	Support in principle – further discussion below.
(S)	Introduce provisions to encourage medium density development in close proximity to open space and business zoned land.	Reservations – further discussion below.

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#### Discussion on Proposed LEP Amendments

(A). *Rezone approximately 2 ha of land from RU1 Primary Production to R1 General Residential.*

Extending the URA to line up with cadastral / property boundaries in this location is logical and supported. In addition to an R1 zoning, the minimum lot size map should also possibly be used to reflect the intended future use which is shown as ‘Large Lot >1,000m<sup>2</sup>’ development on the submitted Indicative Layout Plan – this would see a 1,000m<sup>2</sup> minimum lot size applied to the land.

(C) (D) (K) (M). *Rezone areas of E2 Environmental Conservation to R1 General Residential.*

Internal referral comments received have requested that the proposed change from E2 to R1 for some of the ephemeral watercourses be reviewed carefully given the potential for erosion of the soil types existing on the site.

This will be further discussed with the proponent and relevant Government Departments as part of the PP process.

(G). *Reduce the size of the business zoned area and rezone it from B1 Neighbourhood Centre to either B2 Local Centre or B4 Mixed Use and (H) Rezone R1 General Residential to the adjoining Business zone.*

The proponent group are seeking to rezone the current B1 Neighbourhood Centre zone to B2 Local Centre or B4 Mixed Use. Based on the recent Nowra-Bomaderry Retail Centres Hierarchy Review, B2 is preferred/supported over a B4 zone which is referenced in the draft DCP.

The recent Retail Centres Hierarchy Review also recommended that the two B1 Neighbourhood Centre areas currently zoned to service MVRN and MVRS should be subject to a strategic analysis and “*be combined in a single centre that is relevant and accessible for the two growth areas north and south of Moss Vale Road.*” The Review recommended that the resultant business centre should be a maximum size of 1.2–1.5 ha providing for a centre of a maximum of 5,000 m<sup>2</sup> Gross Lettable Area (GLA).

The Retail Centres Hierarchy Review was exhibited for comment and will shortly be reported back to Council to consider how to take it or relevant components forward. It is also noted that a separate strategic analysis of the existing R3 Medium Density/B1 Neighbourhood Centre/SP2 Educational Establishment zonings adjacent to the MVRS area probably also needs to be undertaken given what is now known about likely development in this location.

Dependent on the decisions made regarding the overall Retail Centres Hierarchy Review and any work on the area adjacent to MVRS, the need to consider reducing the size of the MVRN business zone to 1.5ha and including an additional clause in the LEP to ensure the centre does not exceed 5,000m<sup>2</sup> can be considered as part of the PP process.

The proponent’s Proposed PP Justification Report also seeks the insertion of an Additional Local Provision to permit the “*temporary residential use of ground floor shop top housing areas (i.e. use of shop area) until surrounding development and viability is achieved to support the shop top use. This outcome will avoid the Business centre having vacant land / shops in its initial development period.*” Again, the actual need for this will be considered as part of the PP process.

(J). *Reduce the size of the E3 Environmental Management buffer from 75m to 30m and rezone the additional 45m buffer area to R1 General Residential.*

The Scenic Protection Area buffer was first identified along Moss Vale Road in the Nowra-Bomaderry Structure Plan 2008. Its width was however reduced through the Citywide LEP process based on submissions. Given the topography of the land, the original intent of this buffer in the Structure Plan was to lessen the visual impact of the future development looking north when travelling along Moss Vale Road. The original proposed buffer provided the opportunity to site dwellings below the level of the road, assisted with road noise management and also acknowledged the size of the existing trees that are located on that side of the road.

The proponent group’s justification for further reducing the E3 buffer from its current 75m to 30m is that the current width is excessive for the purposes of providing a dense landscape

screen planting and visual buffer from Moss Vale Road. They propose that suitable screening can be provided within a 25m/30m width (Note: conflicting widths in multiple documents) including an added landscaped earth mound for noise attenuation and a further 5m wide 'share way' abutting the perimeter road.

The proponents draw a comparison between the 20m buffer further east along Moss Vale Road that separates lots in Bomaderry along Tartarian Crescent, however an important distinction is that these lots average 4,000m<sup>2</sup> and are significantly larger than what the draft Indicative Layout Plan proposes for MVRN (Small Lots 300–450 m<sup>2</sup>). Based on traffic forecasts for Moss Vale Road to 2041, there is concern that a 2-4m vegetated earth mound will do little to attenuate against existing and future traffic noise especially if dwellings in this location are built to the maximum permissible height of 11m (3 storeys).

Some of the staff comment raised concerns that this requested change may have a significant visual/scenic impact.

This requested change is not necessarily supported completely as submitted, but requires more detailed and careful consideration in discussion with the proponents and others (e.g. NSW Department of Planning, Industry & Environment) as the PP advances. Specific things that need to be considered and/or further investigated include:

- Appropriate noise attenuation
- Whether small lots of 300–450 m<sup>2</sup> should be encouraged in this location
- Whether building heights needs to be controlled given that it is an elevated ridge
- Should the Scenic Protection Layer be retained to ensure that adverse visual impacts from Moss Vale Road can be considered.

(Q). *Remove the Scenic Protection Area from B7 Business Park land.*

This Scenic Protection Area was carried over into Shoalhaven LEP 2014 from the Nowra-Bomaderry Structure Plan 2008, when this area was originally identified as a 'Possible Future Living Area' (long term). As such in the original versions of the then draft LEP this area was shown as a 'rural' zone with the 'scenic protection area' hatching. The area was however ultimately zoned B7 Business Park through the Citywide LEP process based on submissions.

Given the objectives of the B7 Business Park zone to provide a range of office and light industrial uses, the original scenic protection purpose is highly compromised and should be removed as it is now inconsistent with the zoning of the land that envisages development of a more intensive nature.

The land directly east of the B7 zone is currently shown incorrectly in the proponent group's proposed zoning plan as being zoned RE1 Public Recreation when it is actually zoned E2 Environmental Conservation. This will be rectified in the PP.

(R). *Introduce provisions to enable the subdivision of small lots (300-450m<sup>2</sup>) in close proximity to open space and main traffic 'spine' roads.*

The introduction of the potential for small lots will hopefully help facilitate a mix of housing types and lot sizes to support a wide/diverse range of residents at various life stages. Small lots are also more likely to be priced more affordably than larger lots and may contribute to increased future housing affordability in the area.

Small lots should only be considered and permissible in higher amenity locations close to main traffic roads and future public transport routes and with direct street frontage to open space, not necessarily just "in close proximity to open space". This will ensure that future small lots enjoy a superior amenity to justify any trade-offs as a result of reduced land area.

Some areas identified on the draft Indicative Layout Plan as being “Small Lot 300–450 m<sup>2</sup>” should possibly be removed moving forward where they do not front onto open space areas as these may not ultimately be considered suitable high amenity locations.

The facilitation of Small Lots (300-450 m<sup>2</sup>) will be achieved via a similar provision to Clause 4.1H that was inserted into the LEP to enable the subdivision of small lots in the MVRs URA below the set minimum lot size in higher amenity locations.

(S). *Introduce provisions to encourage medium density development in close proximity to open space and business zoned land.*

The current R1 zoning already permits a range of medium density housing types including multi dwelling housing (3 or more dwellings on one lot) and residential flat buildings within the URA.

The proponent has clarified they are actually seeking for areas marked as “Medium Density / Integrated Apartments <300m<sup>2</sup>” on their draft Indicative Layout Plan to be rezoned from R1 General Residential to R3 Medium Density Residential. This is however not currently reflected in Figure 3 – Draft Proposed Zones Map. The justification for this is to provide the opportunity to increase the range of housing and facilitate opportunities for increased affordable housing supply. This justification is not clear as the outcome (and possibly a better one) can already be achieved through the existing R1 zone.

The main differences between the R1 and R3 zone are shown in the table below:

	R1 General Residential	R3 Medium Density Residential
Dwelling houses	✓	✗
Dual occupancies	✓	✓
Semi-detached dwellings	✓	✗
Multi dwelling housing	✓	✓
Residential flat buildings	✓	✓

There is also some concern over the scale of the proposed rezoning of all the “Medium Density / Integrated Apartments <300m<sup>2</sup>” areas shown on the draft Indicative Layout Plan to R3. It is specifically noted that the R3 zone is not as flexible as R1 zone and for example prohibits standalone dwelling houses and semi-detached dwellings.

Thus, to enable future development to respond flexibly to market demand, it is recommended that any areas to be rezoned to R3 Medium Density Residential must be within 400m walking distance of the proposed business centre and also have direct frontage onto connected open space areas. Areas which do not meet these criteria should be left as R1 to enable medium density development to be flexibly applied should there be market demand for this, not mandated.

#### Other Possible LEP Amendments

The proponent group’s draft DCP also refers to possible maximum building heights of up to 16m (4 storeys) in the business centre and R3 Medium Density areas. This is in excess of the current maximum permissible height of 11m under Clause 4.3(2A) of the LEP and no explanation or justification has been provided in the PP justification report.

This issue needs further clarification before being included in any PP for the area. Subject to further discussion, increasing the maximum height from 11m to 16m is generally not favoured as it could result in an overdevelopment of the URA that is not compatible with the location and its high scenic and pastoral landscape setting.

The draft DCP also states that height in other residential zones will be a maximum of 10m (2 storeys), however it is unclear whether this is being sought as a mapped LEP adjustment

below the current maximum height of 11m as it has also been excluded from the PP Justification Report. Further clarification is required in this regard.

Also, as a minor housekeeping amendment, the PP should also amend the current URA mapping to exclude Lot 10 DP 1105201, which has approximately 2.67m<sup>2</sup> currently mapped within the URA. This is not a viable area; however, the current mapping would still trigger Part 6 of the LEP before any development consent can be granted on that land. To avoid this issue in the future, the Draft Proposed Zones Map should follow the boundaries of the ILP to avoid small 'left over' pieces of land.

## Other Considerations

### Biodiversity Certification

Council Environmental Services staff have flagged the potential opportunity for the URA to be also be biodiversity certified under the NSW Biodiversity Conservation Act 2016.

This is given that a significant amount of work has already been done by the applicant's environmental consultant (JB Enviro) which could be used in the Biodiversity Certification (BC) assessment process. BC would avoid the requirement for individual Biodiversity Development Assessment Reports (BDAR) to be required at the future development application stage and would result in a streamlined biodiversity assessment process for future developments. This would then result in greater certainty for developers and the community on the development and conservation outcomes for the URA.

BC can be either 'Standard' (available to landholders and planning authorities) or 'Strategic' (available only to planning authorities to support significant regional development and planning processes). The Biodiversity Conservation Trust may also provide loans and financial assistance to planning authorities undertaking BC.

At this stage, it is recommended that Council endorse the principle to biodiversity certify the URA and that this be discussed in further detail with the proponent and landowners with a further report to be provided to Council. The ability for expenses associated with the BC process to be recouped through the Contributions Plan system or similar will also be investigated.

### Affordable Housing

One of the reasons that Council brought forward the phasing of this URA at the request of the proponent group was the potential to help with affordable housing opportunities in the Nowra-Bomaderry area given the issues being experienced. This has also been discussed with and raised by the proponent group.

The adopted Shoalhaven Affordable Housing Strategy contains various 'strategies' that are particularly relevant regarding the URA that is currently under consideration given its significant size. The relevant strategies include:

- Short Term: Strategy 4 - Council will investigate the potential for development of small lot housing on a privately-owned Greenfield site, and appropriate mechanisms, funding and legal agreements to implement an appropriate model or demonstration project including opportunities for shared equity approaches.
- Short Term: Strategy 6 - Advocate for the NSW Government to revise SEPP 70 Affordable Housing (Revised Schemes) to include Shoalhaven to effectively mandate provision of contributions for affordable housing where appropriate/required.

- Medium Term: Strategy 9 - Council will ensure that there is sufficient developable land zoned R1 in future greenfield release areas to provide market opportunities for development of residential flat buildings and multi dwelling housing.
- Long Term: Strategy 24 - Council will develop a Masterplan DCP approach to Greenfield developments in accordance with Part 6 of Shoalhaven Local Environmental Plan 2014, potentially including the following types of requirements:
  - A proportion of lots to be allocated to multi dwelling housing (for example, 10% of lots), with mandatory provisions for smaller 2-bedroom stock (i.e. 2-bedroom, 1-bathroom dwellings with a maximum floor area of 70 or 75 m<sup>2</sup>);
  - A proportion of lots be allocated as smaller lots (for example, 10% of lots or 5% of the masterplan area as 350 m<sup>2</sup> lots);
  - A proportion of separate houses of a specified size (for example, 2 and 3 bedroom dwellings with 1 bathroom and a maximum floor area of 110 m<sup>2</sup>).
- Long Term: Strategy 25 - Council will develop a performance criteria-based approach in an early stage of new release areas, with criteria related to housing type and affordability benchmarks.

It is acknowledged that the proponent group's current package of plans does seek to provide a range of lot size and housing opportunities – this approach is consistent with the intent of some of the above strategies and will hopefully assist with affordability. Given the above strategies and Council's commitment to taking positive planning steps to assist with the provision of affordable housing opportunities, the possibilities in this regard should be further explored in consultation with the proponent group, and if possible/practical, implemented through the detailed plans that will be prepared for this URA.

In regard to Strategy 6 it is relevant to note that SEPP 70 Affordable Housing (Revised Schemes) was amended in early 2019 to enable its provisions to be used in all regional areas, including Shoalhaven. These provisions enable an affordable housing contribution scheme to be established in appropriate areas and enable contributions to be collected by councils for affordable housing. Given that the planning package effectively involves a new LEP for this URA, the opportunity now exists to consider and test the possible establishment of an affordable housing contribution scheme in this location. This involves following a set process to determine whether such a scheme is viable in this URA.

Thus, it is recommended that Council, in supporting taking the overall proposal forward, investigate the preparation of an affordable housing contribution scheme under the SEPP 70 for this URA.

#### Bushfire / Asset Protection Zones

The URA is partially mapped as bushfire prone. The Bushfire Assessment Report dated March 2018 references the outdated NSW Planning for Bushfire Protection (PBP) 2006 document. Revised asset protection zones (APZs) are needed with PBP 2018 dimensions. The bushfire assessment area also falls short of Moss Vale Road and does not include the land proposed to be extended in the north west section (as does the Biodiversity Report). Future development will also be assessed under PBP 2018.

The report maps the (possibly outdated) indicative APZs which will be required. It is recommended that APZs are contained within the residential zoned land and do not include E2 zoned land via a mechanism such as the DCP. For example, areas identified for 'Small Lots 300–450 m<sup>2</sup> next to 35m APZs may need to be reconsidered. Where APZs widths cannot be achieved, the level of construction of the dwelling will have to be increased as a result. This issue will be discussed in further detail with the proponent as part of the further development of the supporting plans (e.g. the DCP Chapter). This discussion will also cover



comments raised by staff in the Development Services Section regarding the need to ensure that APZs, bushfire etc. are properly resolved with access arrangements.

#### Contamination

The site has previously been used for agricultural purposes and there is the potential for isolated contamination. The Preliminary Site Investigation submitted is satisfactory and further individual geotechnical assessment at the development application stage should be undertaken. This can be covered in the DCP Chapter.

#### Flooding

The initial staff review of the Flood Study and Riparian Lands Assessment has shown it to be comprehensive in assessing the flood scenario at the pre-development condition. Initial comments from Council's flooding technical staff have provided some additional information to be considered at the development application stage. This will be forwarded to the proponent group for future reference and may also be considered in the development of the DCP Chapter.

#### Riparian Zones

It is not entirely clear from the documents provided whether or not the proposed zoning boundaries include the required riparian buffers which were previously discussed with the proponent group on site. Guidance on riparian corridor widths is provided by the NSW Office of Water using the Strahler System of ordering watercourses. Riparian zone widths will be further discussed and clarified with the proponent prior to proceeding with the PP preparation.

Some concern was also raised in the initial Council staff consultation over the width of the riparian corridor in the northern E2 portion along Abernethy's Creek. Further clarification will be sought from the proponent group as well as requesting that the width be increased in this section to ensure it is a practical corridor for wildlife movements in the future.

#### Infrastructure – Traffic & Transport

An assessment of the functionality of the proposed internal road network has been difficult at this stage as the package of plans do not include traffic volume forecasts. Similar forecasts were used to determine the adequacy of the indicative MVRN layout and should also be provided for the MVRN area to confirm that the proposed road types (local or collector roads) and road cross sections (including road widths and number of lanes) are appropriate.

Inconsistencies with the Nowra-Bomaderry Structure Plan Preferred Road Network should also be considered/addressed, as well as considering external strategic road links for future longer-term development to the north (Meroo Meadow Future Long Term Living Area). It is noted that external traffic modelling requested by RMS is still outstanding.

Greater consistency will also be required in terms of road widths between the MVRN and MVRN DCP Chapters. In addition to these high-level comments, Council's Traffic and Transport staff have raised a number of detailed issues which will be further discussed and worked through with the proponent group and their traffic consultant.

#### Infrastructure – Water and Sewerage

Sewerage infrastructure for MVRN is expected to be delivered in 2019/2020 (not 2018/2019 as indicated in the Infrastructure Report) and MVRN is expected to be delivered in 2021/2022 (not 2019/2020 as indicated in the Infrastructure Report).

Water infrastructure for MVRN is expected to be delivered between 2019/2020 and 2022/2023 (not between 2018/2019 and 2021/2022 as indicated in the Infrastructure Report).

Development contributions payable will be in accordance with the Development Servicing Plans current at time of payment.

Shoalhaven Water are currently advancing their planning to potentially service both MVRS and MVRN.

### Natural Resources

At this stage the package of plans does not clearly distinguish which areas will be landscaped for open space areas and which areas will be protected/conserved and rehabilitated. It is expected that the proponent group will work towards full restoration and function of the riparian system, particularly Abernethy's Creek which is severely degraded in its present form. This has been achieved in other areas within the City such as Dolphin Point and will be further discussed with the proponent group moving forward.

### Open Space

The draft ILP meets the open space requirements for passive recreation of 12 m<sup>2</sup> per person (1.2 ha/1000 people) set out in Council's adopted Community Infrastructure Strategic Plan (CISP). However, some areas of 'Open Space' shown on the draft ILP are not shown on the Draft Proposed Zones Map and are instead shown as R1. This will be clarified with the proponent group.

Council also does not generally support the development of any new 'pocket parks', of which there are six (6) proposed on the draft ILP. This directly contradicts the adopted CISP and Council's current approach of rationalising all pocket parks in the City with the focus on developing district and regional hubs for active recreation. It is recommended these be removed from the draft ILP or alternatively connected to the wider open space network.

Further emphasis on ensuring open spaces are accessible should also be made in the draft DCP.

Council's Social Infrastructure Planning Unit also made a range of more detailed comments which will be forwarded to the proponent for consideration.

### Stormwater Management and Water Quality

Prior to construction, background water quality sampling will be required to establish the water quality of Abernethy's Creek. This should capture upstream locations (from the escarpment) through to locations where detention basins are proposed in order to establish background data that can then be used to determine future water quality parameters as well as any development impacts on water quality.

Water treatment devices will need to be of a proven design to protect the receiving E2 zoned areas/riparian areas and be contained within residential zoned land. This will be specified in the DCP Chapter.

### **Draft Development Control Plan Chapter and Draft Contributions Plan Amendment**

Under Part 6 of Shoalhaven LEP 2014, development consent cannot be granted for subdivision etc. in a URA unless a DCP has been prepared for the site and arrangements made for public utility infrastructure (generally via a CP and other mechanisms).

To assist in the preparation of the DCP Chapter, the proponent group have prepared a set of potential draft controls.

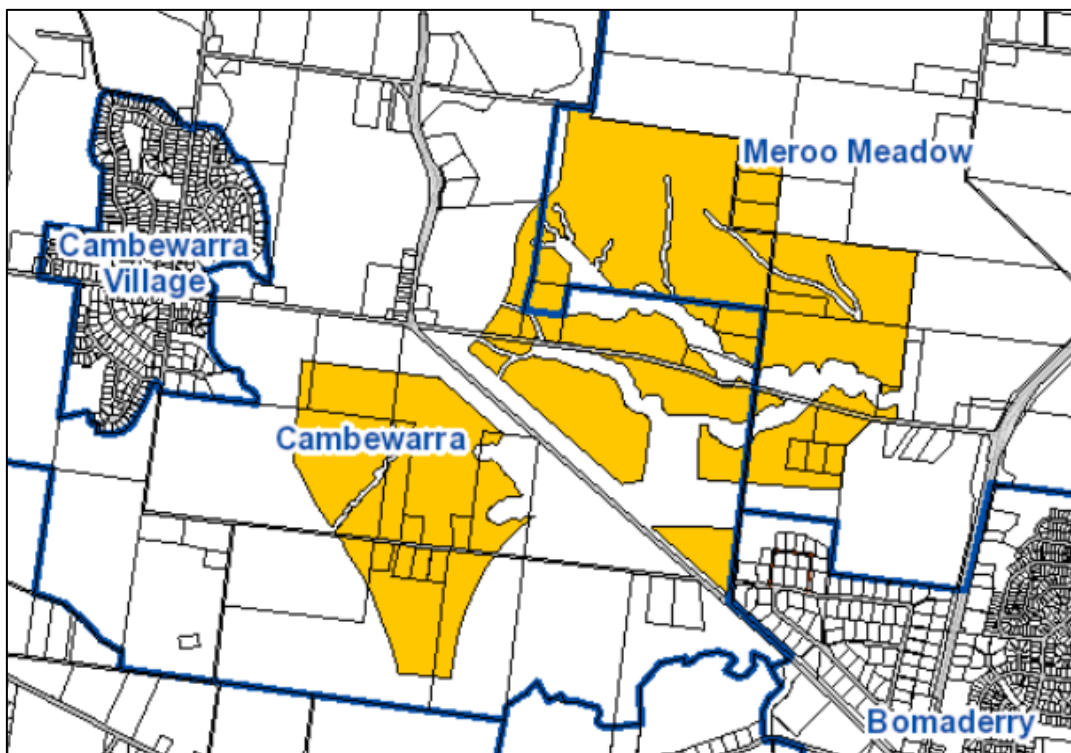
A preliminary review of this draft DCP document has identified some areas which need to be worked through with the proponent group to potentially achieve consistency with the PP and resolve issues with the suggested staging plan, desired future character chapter and other detailed comments received from Council staff during the initial internal consultation period.

Preliminary preparatory work has also commenced on the CP. At time of writing the State Infrastructure Contribution (SIC) approach has however not yet been resolved or clarified by the NSW Government.

This report seeks the required formal resolution to commence the preparation of the required plans. It is intended that the draft DCP Chapter and CP will be placed on exhibition with the PP at the appropriate point and a further report will be provided prior to exhibition, so that the detail of these draft plans can be reviewed and considered by Council.

### Suburb Naming

The MVRN URA is currently split by the boundary of two suburbs – Meroo Meadow and Cambewarra, as shown in **Figure 4**.



**Figure 4 – Current Suburb Boundaries of Cambewarra and Meroo Meadow**

As development of the URA progresses, it is expected this delineation could cause a number of issues and confusion in terms of street addressing, way finding for emergency and postal services, and community cohesion within the URA.

Council staff have been researched potential naming options for both the Moss Vale Road URAs (North and South) using historic lands title maps and knowledge of the Aboriginal and European history of the area; however, these investigations have not uncovered any clearly suitable naming options that would conform with the naming principles of the Geographical Names Board of NSW (GNB).

In order to avoid confusion as the URAs develops, it is recommended that Council formally commence the process to investigate and resolve potential naming options for the URAs.

DE19.66

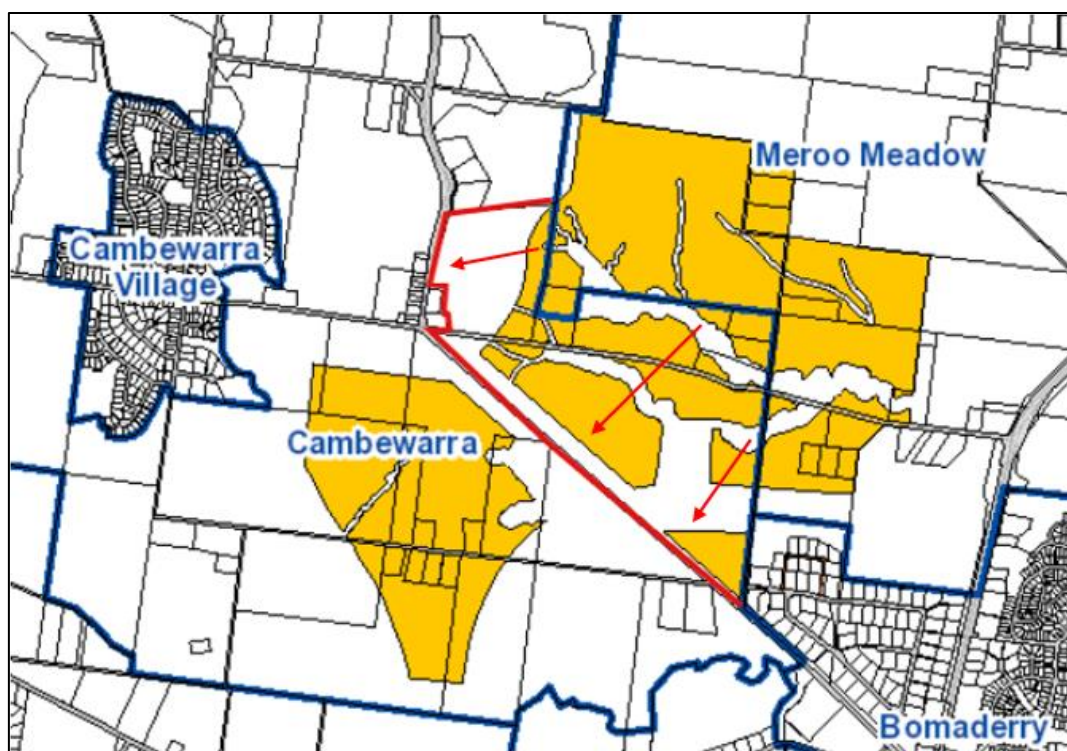
The naming process is not managed by Council and all options will ultimately require an application to the GNB. Council could undertake community consultation prior to submitting the final naming request to the GNB.

Options which could be considered, including the number of affected properties, are outlined in the table below:

Suburb Naming Option	No. of Affected Properties
1. Adjust the current Cambewarra / Meroo Meadow suburb boundary to run along Moss Vale Road instead of through the middle of the MVRN URA (as shown in <b>Figure 5</b> ).	6
2. Assign new suburb names individually to both the MVRN and South URAs.	33+
3. Assign a single new suburb name for the two URAs combined.	33+

Option 1, as shown in **Figure 5** below, will have the least impact on landowners, would result in less contention among owners in choosing a new name, and is more likely to be supported by the GNB.

However, depending on feedback received from Council, landowners, community groups, etc, Options 2 and 3 should also possibly be considered. These options also have the benefit of establishing a new identity for these substantial new residential area/s.



**Figure 5 – Option 1 Suburb Name Boundary Adjustment (preferred option)**

## Conclusion

A significant body of work has now been prepared for the MVRN URA, including the proposed justification for a future adjusting PP and draft DCP Chapter. The considerable work undertaken by the proponent group in this regard is duly acknowledged.

Council's endorsement of the work to date and formal resolution to prepare the necessary PP, DCP Chapter and CP Amendment as outlined in this report will enable the planning of

MVRN URA to enable its 'release' to continue to progress. Further reports will be presented to Council as these plans advance and at key future points.

### **Community Engagement**

In acknowledgement that not all landowners within the MVRN URA are part of the proponent group, an initial landowner meeting was held on 25 September 2017 following Council's decision to revise the staging plan for the URA. Further updates have subsequently been provided to all owners through an online 'Get Involved' page for the Nowra-Bomaderry URAs.

Letters were also sent to all landowners in the URA advising of receipt of the package of plans from the proponent group and how to view them. No early comments have been received at this stage from landowners or the public

Another meeting with all landowners will be arranged once Council has formally considered the plans that are subject to this report to discuss the next steps etc.

The proposed PP, DCP Chapter and CP Amendment will ultimately be publicly exhibited as a package following the Gateway determination for a minimum period of 28 days.

### **Policy Implications**

This is a 'high priority' project on the 2019-2020 Strategic Planning Works Program that was adopted by Council in June 2019.

Preparation of a PP, a DCP Chapter, and a CP Amendment will set the policy direction for future development and 'release' of the URA.

### **Financial Implications**

Work being undertaken by Council staff to progress the MVRN URA release planning is currently being managed within the existing Strategic Planning budget.

The majority of the technical studies for the URA have so far been funded by the proponent group, with the exception of the Integrated Water Cycle Assessment (IWCA) which was prepared for Council and will be considered for recoupment via Section 7.11 contributions levied from future development within the URA.

There are likely to be a range of more detailed financial and longer-term resourcing implications for Council associated with the ultimate development of this URA and these will be discussed in more detail at the appropriate points in the release process. This includes possibly funding mechanisms or management regimes for the extensive open space and riparian areas and other required infrastructure (e.g. Stormwater controls). In the discussions with the proponent group their desire to consider different or innovative approaches in this regard have been highlighted, with the aim of providing a higher standard of maintenance/presentation, employment opportunities and the like.

## **DE19.67 Update - Planning Proposal - Inyadda Drive, Manyana**

**HPERM Ref:** D19/234274

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:** 1. Gateway determination 22/6/2015 Inyadda Drive, Manyana [↓](#)  
2. Inyadda Drive Proponents' Revised Footprint June 2019 [↓](#)

### **Purpose / Summary**

Update Council and the community on progress of the Planning Proposal (PP) for land formerly owned by Kylor Pty Ltd that is located off Inyadda Drive, Manyana given ongoing community interest.

### **Recommendation (Item to be determined under delegated authority)**

That Council receive the report on the Planning Proposal – Inyadda Drive, Manyana, for information.

### **Options**

1. Receive the report for information.

Implications: Work will continue to address the requirements of the Gateway determination and refining the PP.

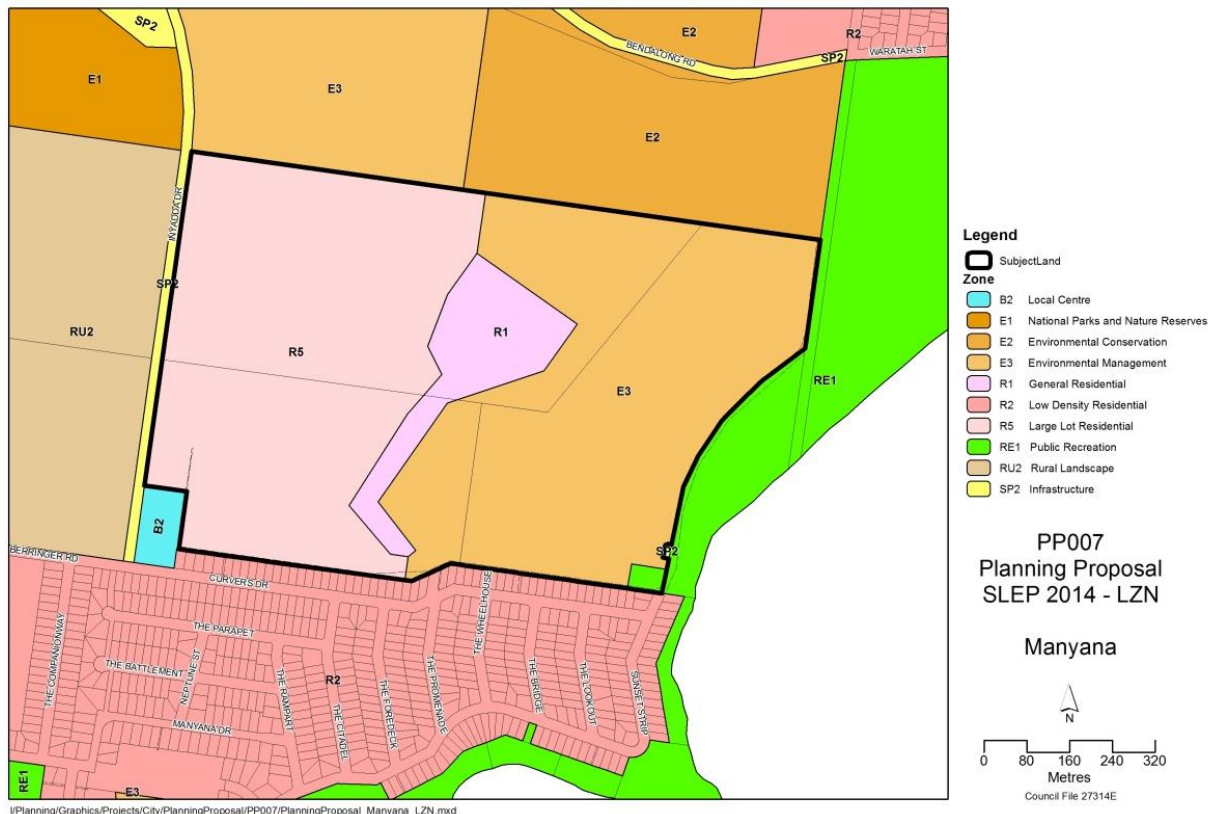
2. Adopt an alternative approach.

Implications: Advice can be provided should an alternative approach be considered. However, any alternative approach that delays potential resolution of this longstanding matter is not recommended.

### **Background**

There has been strong community interest in the PP for land located to the east of Inyadda Drive at Manyana, particularly since the land changed ownership in 2018. The subject land is located on Inyadda Drive, Manyana, and consists of Lot 106 DP 755923 (Por 106), Lot 2 DP 1161638 and Lot 2 DP 1121854 (see Figure 1 below).





**Figure 1 – Subject Land and Current Zoning**

A brief history of this PP is provided below, followed by an update on the status of the investigations that need to be undertaken before the PP can proceed to be publicly exhibited.

### Brief history

The subject land has a long and complex planning history dating back to the 1980s. Various development outcomes have been considered over a long period and the local community has maintained a keen interest in the site and its potential development.

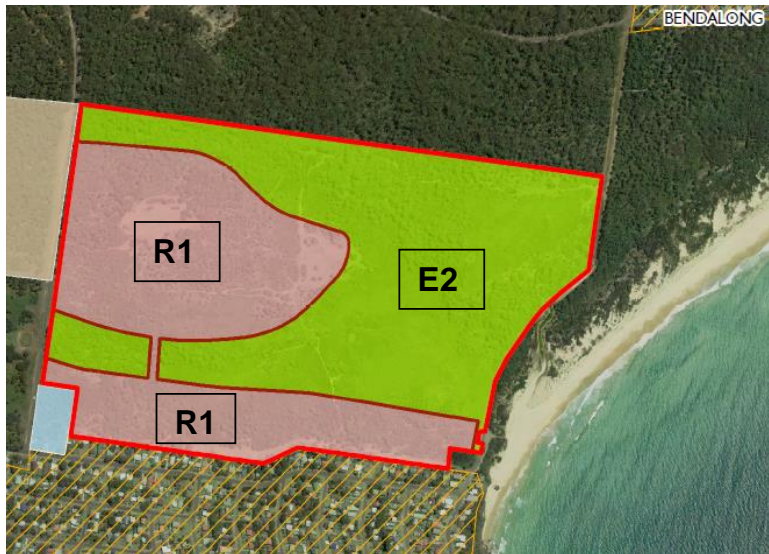
Under Shoalhaven Local Environmental Plan (LEP) 2014, the land is currently zoned a mix of:

- R5 - Large Lot Residential
- R1 - General Residential
- E3 - Environmental Management
- RE1 - Public Recreation

The current minimum lot size requirements in the LEP are 2,000 m<sup>2</sup> (R5) and 500 m<sup>2</sup> (R1).

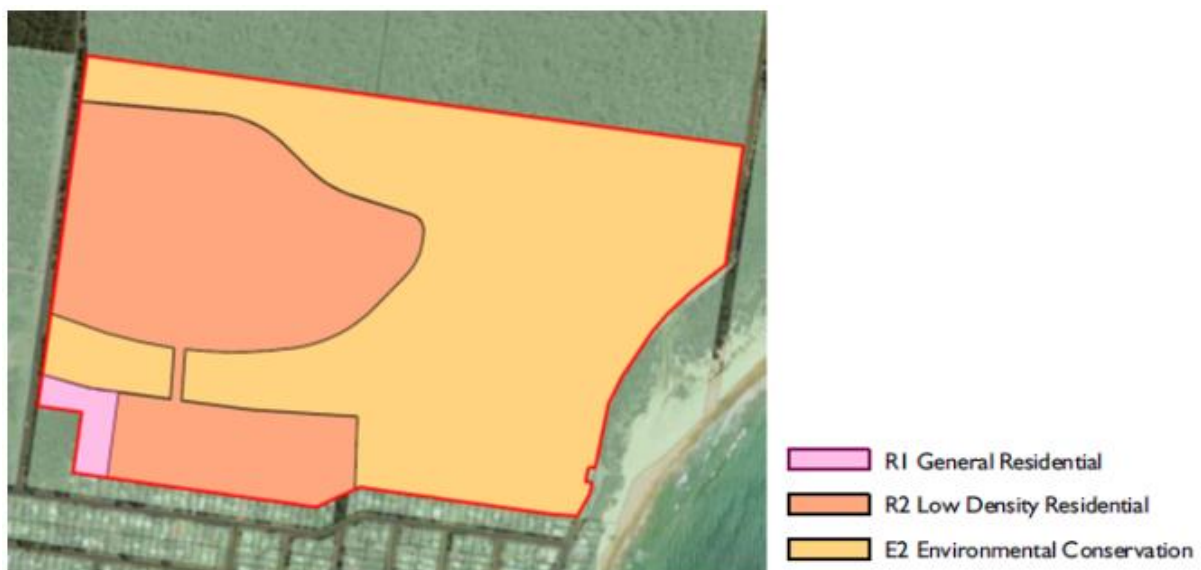
On 20 February 2013, Council received a proponent-initiated PP on behalf of the then owner (Kylor) to rezone the land to enable a denser residential development and provide environmental protection for the remaining land. The zoning proposed by Kylor in 2013 is shown in Figure 2 below.

DE19.67



**Figure 2 – Kylor's proposed zoning submitted to Council in February 2013**

After considering detailed reports and community feedback, Council resolved in January 2014 to adopt an amended version of Kylor's proposed zoning as the basis for taking a PP forward – refer to Figure 3 below.



**Figure 3: Proposed zoning adopted by Council as basis for Planning Proposal**

The Council resolution made on 20 January 2014 was to:

- a) *Support the Planning Proposal for North Manyana with the following changes:*
  - i) *The residential development area be primarily zoned R2 Low Density Residential with an area of R1 General Residential zoned land surrounding the proposed Manyana neighbourhood centre.*
  - ii) *An increase in minimum lot size to 600m<sup>2</sup> for the R2 Low Density*
  - iii) *The residential zoned land be identified as an 'Urban Release Area' and be subject to Part 6 of the Shoalhaven Local Environmental Plan 2013.*
- b) *Submit the Planning Proposal to the Department of Planning and Infrastructure requesting 'Gateway' determination.*

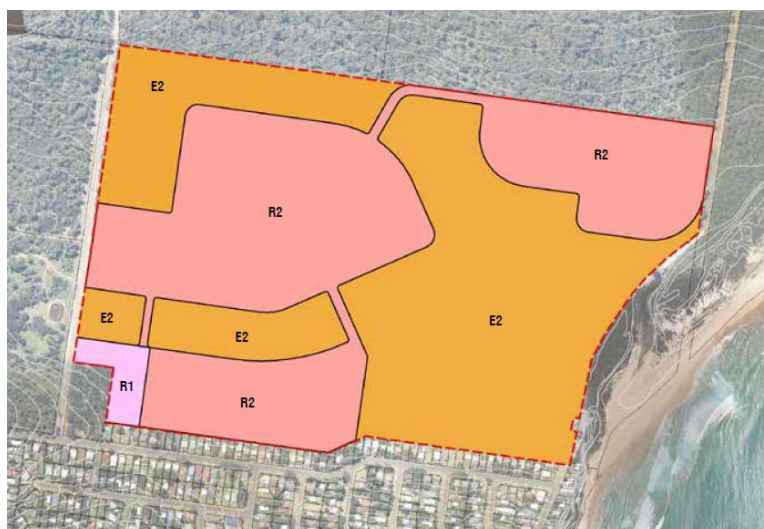
- c) *Request the Department of Planning and Infrastructure to include the following studies as a requirement of the 'Gateway' determination:*
- i) *A detailed assessment of the Bendalong Waste Water Treatment Plant to ascertain/confirm hydraulic loading limits.*
  - ii) *An assessment using an accredited methodology (e.g. biobanking) to come up with a consistent and valid biodiversity offset.*

In March 2014, the landowner (Kylor) submitted a pre-gateway review request to the NSW Government, essentially seeking to review Council's decision to remove the proposed residential zone in the south-eastern corner, only to withdraw their request in July 2014.

The PP ([PP007](#)) was subsequently prepared by staff and submitted to the NSW Government for Gateway determination.

Gateway determination was issued by the NSW Department of Planning and Environment on 22 June 2015, a copy of which is provided in **Attachment 1**. The Gateway determination details a range of assessments that need to be completed before the PP can be publicly exhibited, including a biodiversity assessment and offset strategy.

The land subsequently changed ownership in 2018 and the new owners commenced new biodiversity investigations. They subsequently indicated a desire to re-visit the footprint adopted by Council (Figure 3). They submitted documentation including a proposed revised footprint and zoning plan (refer to Figure 4) which represented a substantial variation to Council's adopted footprint.



**Figure 4 – Excerpt from proponents' submission, December 2018**

To enable Council to consider community feedback on this proposed footprint variation, feedback was sought via Council's 'Get Involved' page. More than 400 responses were received.

A redacted copy of the responses (i.e. personal details redacted) was provided to the proponents in May 2019. The proponents considered this feedback and submitted a new footprint in June 2019. A copy of the revised footprint is provided in **Attachment 2**.

The most controversial element; a possible new development precinct in the north east of the site, has been removed. The revised proposal is now very similar to the original investigation footprint adopted by Council in January 2014 (Figure 3) and is considered to be within the scope of the Gateway determination. The proponent has advised that this revised footprint responds to the findings of their biodiversity assessment (nearing completion) as well as community concerns about the possible extent of development.

Council Staff are continuing to liaise with the proponents to ensure the assessments required to satisfy the Gateway determination are completed to the required standards to enable the PP to move forward. In this regard, the Aboriginal Cultural Heritage Assessment will be directly managed by Council in accordance with Council's Planning Proposal Guidelines.

Council is yet to receive the proponents' biodiversity offset strategy and a number of other assessments have not commenced. The proposal will be refined (and footprint possibly reduced) as the investigations are completed and further information becomes known.

The land will also be identified as an Urban Release Area (URA) under Part 6 of the Shoalhaven LEP 2014 to ensure that arrangements are in place to provide appropriate public utility infrastructure before the land can be subdivided. At this stage, it is intended that a draft Development Control Plan (DCP) Chapter will be prepared for exhibition at the same time as the PP, along with a Contributions Plan and/or Planning Agreement.

In summary, a substantial body of work now needs to be completed/undertaken before this PP will be ready for public exhibition. Council staff are liaising with the proponents in this regard.

### **Timeframe**

The finalisation date stipulated in the original Gateway determination 22 December 2016, but this has been extended and is now due to expire on 22 December 2019. A further extension will most likely be required to enable completion of the necessary assessments.

### **Community Engagement**

The PP and supporting documents will be formally exhibited once the requirements of the Gateway determination have been satisfied. Council's 'Get Involved' page has been utilised to keep the community informed on the progress on this project, and this will continue.

The proponents and their consultants have also had a number of meetings with representatives of the Red Head Villages Association (CCB) and have expressed a desire to work with the community as the process continues and the proposal is refined.

### **Financial Implications**

This is a proponent-initiated PP, the cost of which is fully funded by the proponent in accordance with Council's planning proposal guidelines and fees and charges.





Planning &  
Environment

Mr Russ Pigg  
General Manager  
Shoalhaven City Council  
PO Box 42  
Nowra NSW 2541

Shoalhaven City Council

Received

15/08516

24 JUN 2015

File No. JD064E

Referred to: D. Abern

Dear Mr Pigg

**Planning Proposal to amend Shoalhaven Local Environmental Plan 2014**

I am writing in response to Council's request for a Gateway determination under Section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) for a planning proposal to rezone land in Manyana for future residential development and environmental protection.

As delegate of the Minister for Planning, I have determined that the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistencies with section 117 Direction 3.4 Integrating Land Use and Transport is justified by the site's current zoning and its identification in the Shoalhaven Growth Management Strategy for urban development. No further approval is required in relation to this Direction.

It is noted that various environmental and land capability studies have been undertaken and significant progress has been made on reaching agreement with relevant government agencies on appropriate levels of development and suitable environmental outcomes.

Council will need to undertake consultation with the NSW Rural Fire Service and further consultation with the Office of Environment and Heritage on the suitability of the land for residential development and how existing constraints can be managed and/or mitigated. Council should also consult with Shoalhaven Water concerning the current capacity of the existing treatment plant and the impact future residential areas may have on servicing. The Department is available to work with Council in this regard and suggests that this consultation is undertaken early in the process.

Council is to address inconsistencies with section 117 Direction 2.3 Heritage Conservation and *State Environmental Planning Policy No. 55 - Remediation of Land* following consultation with relevant public agencies and prior to the commencement of public exhibition. Further, Council is to consult with the NSW Rural Fire Service prior to undertaking community consultation in order to satisfy section 117 Direction 4.4 Planning for Bushfire Protection and update the planning proposal accordingly.

The amending Local Environmental Plan is to be finalised within **18 months** of the week following the date of the Gateway determination. Council's request for the Department of Planning and Environment to draft and finalise the Local Environmental Plan should be made 6 weeks prior to the projected publication date.

Should you have any queries in regard to this matter, please contact Mr Brett Whitworth, General Manager, Southern Region, at the Department on (02) 4224 9455.

Yours sincerely



**Marcus Ray**  
**Deputy Secretary**  
**Planning Services**  
*22/06/2015*  
Encl: Gateway Determination





**Planning &  
Environment**

### Gateway Determination

**Planning proposal (Department Ref: PP\_2015\_SHOAL\_003\_00):** to rezone 76 hectares of land located on the north-east edge of Manyana Village, to enable future residential development and environmental protection.

I, the Deputy Secretary, Planning Services, at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Shoalhaven Local Environmental Plan 2014* to:

- rezone land at Inyadda Drive and Sunset Strip, Manyana from R5 Large Lot Residential, R1 General Residential, E3 Environmental Management and RE1 Public Recreation to R1 General Residential, R2 Low Density Residential and E2 Environmental Conservation;
- establish a minimum lot size of 600sqm for land zoned R2 Low Density Residential;
- update the Urban Release Area Map to include the land as an urban release area; and
- remove the land from the Clause Map and delete the additional use under Schedule 1 Clause 6 Use of certain land at Manyana,

should proceed subject to the following conditions:

1. Prior to undertaking public exhibition, the following studies are to be prepared:
  - (a) a biodiversity offset strategy that includes assessment of flora and fauna, and credit requirements in accordance with the Office of Environment and Heritage (OEH) biobanking and/or biocertification methodology. The study is to be undertaken by a biobank accredited assessor in consultation with OEH. The strategy should outline the proposed sources of credit offsets, and the proposed method to secure and manage offsets;  
Note: To enable the use of biocertification, written advice from Shoalhaven City Council, or other relevant planning authority, will be required to indicate 'in principle' support to act as the planning authority for a formal biocertification application.
  - (b) an assessment of the capacity of the Bendalong Waste Water Treatment Plant to accommodate the proposed level of development;
  - (c) bushfire hazard study;
  - (d) water quality study to achieve a neutral or beneficial effect on water quality of coastal waterbodies;
  - (e) a Stage 1 Preliminary Contamination Investigation for lands identified for development undertaken in accordance with the State Environmental Planning Policy No. 55 - Remediation of Land 'Managing Land Contamination' Guidelines;
  - (f) an acid sulfate soils (ASS) report to clarify potential ASS management options for areas identified for development; and
  - (g) an electricity infrastructure report to confirm the availability of electricity.

2. Following the completion of the required studies, the planning proposal is to be updated to confirm the explanation of provisions, including proposed zoning and other mapping and development controls prior to its public exhibition. A copy of the updated proposal is to be provided to the Department for review prior to exhibition of the proposal.
3. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Environment 2013)*.
4. Consultation is required with the following Government agencies prior to exhibition, in accordance with the Act and to comply with requirements of relevant section 117 Directions:
  - NSW Rural Fire Service;
  - Office of Environment and Heritage;
  - Endeavour Energy;
  - Shoalhaven Water; and
  - Roads and Maritime Services.

The agencies are to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal. Any agency advice received and Council's proposed response to this advice should be placed on public exhibition with the planning proposal.
5. Council is to update its consideration of section 117 Directions 2.3 Heritage Conservation and 4.4 Planning for Bushfire Protection following consultation with the Office of Environment and Heritage and the NSW Rural Fire Service. Council is to update the planning proposal accordingly prior to the commencement of public exhibition.
6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

7. The timeframe for completing the Local Environmental Plan is to be **18 months** from the week following the date of the Gateway determination.

Dated 22nd day of June 2015.



Marcus Ray  
Deputy Secretary  
Planning Services

Delegate of the Minister for Planning

DE19.67 - Attachment 1





DE19.67 - Attachment 2



## DE19.68 Update - Halloran Trust Lands Planning Proposal - Biodiversity Certification

**HPERM Ref:** D19/208445

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:**

1. Planning Proposal PP006 - Halloran Trust Lands - Potential Biodiversity Certification Application - Development Committee - 11 April 2017 [↓](#)
2. OEH letter to proponent - deadline for saved biocertification proposals [↓](#)
3. Excerpt of Culburra Beach - Proponents BCA Report (under separate cover) [⇒](#)
4. Excerpt of Callala Bay - Proponent BCA Report (under separate cover) [⇒](#)

### Purpose / Summary

Provide an update on the progress of the biodiversity certification for the land covered by the Halloran Trust Lands Planning Proposals (PP).

### Recommendation (Item to be determined under delegated authority)

That Council receive this report on the progress of bio-certifying the Halloran Trust Lands Planning Proposals for information, noting that the biodiversity certification reports will be submitted to the NSW Office of Environment and Heritage by 25 August 2019.

### Options

1. Receive this report for information

Implications: Council resolved to proceed to bio-certify the Halloran Trust Lands PP in August 2017. This report is provided for information and no action is required from Council for the matter to proceed as outlined in this report.

2. Other action

Implications: Further advice can be provided if another approach is considered or resolved.

### Background

Council is currently progressing two PPs to resolve the zoning of land owned by the Halloran Trust which is 'deferred' from the Shoalhaven Local Environmental Plan (LEP) 2014. This matter has been reported to Council on several occasions since the PP process commenced in 2014.

The Halloran Trust PP was split into two separate PPs in 2017. Prior to that, all the 'deferred' Halloran Trust land was covered by one PP. The larger PP covers land at Culburra Beach and the smaller one covers land at Callala Bay and Kinghorne Point.

In April 2017, the Development Committee considered a report (**Attachment 1**) recommending that the Halloran Trust PP be biodiversity certified. This is a process where the impacts of the proposal on terrestrial ecology are considered and offsets secured at the PP or zoning stage.

The Committee resolved under delegation to ***support in principle the preparation of a Biodiversity Certification Application for the Planning Proposal for the Halloran Trust Lands at Culburra Beach, Callala Bay and Kinghorne*** (MIN17.288).

The proponent's assessment for the biodiversity certification was initiated prior to commencement of the NSW Biodiversity Conservation Act on 25 August 2017. The subject land, however, is subject of an Order issued by the NSW Office of Environment & Heritage (OEH) under Clause 37 (2) of the NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017, extending the transitional period to 25 August 2019 (two years). The 'reminder' letter from OEH to the proponent in this regard, dated 7 September 2018, is provided as **Attachment 2**.

The required work has progressed, and Council has now received two biodiversity certification reports, one for each of the PPs. Due to the length of these reports (approx. 400 pages total) only excerpts are provided as **Attachments 3** and **4** (under separate cover). The full reports will be available in the **Councillor's Room** prior to the meeting. Due to the timeframe from the NSW Government, the biodiversity certification application must now be lodged with OEH by 25 August 2019. The implication of not meeting this deadline is that the biodiversity certification assessment work would need to be redone in accordance with the NSW Biodiversity Conservation Act, *i.e.* the Biodiversity Assessment Methodology (BAM).

It should be noted that the biodiversity certification process does not address water quality or aquatic ecology. These matters are being investigated separately as part of progressing the PPs. The investigation of water quality and aquatic ecology will not be complete for Culburra Beach when the biodiversity certification application is lodged. It is possible that the water quality investigations will require the development footprint for Culburra Beach to be reduced further. If this occurs the biodiversity certification will need to be amended to reflect the reduced footprint. Issuing (approval) biodiversity certification will not enable development that is otherwise unsatisfactory from a water quality or aquatic ecology perspective. In other words, lodging the biodiversity certification application now will not create any issues that cannot be easily addressed should the development footprint need to be reduced in response to the water quality and other investigations that are ongoing.

### Community Engagement

The biodiversity certification applications will be exhibited for review and comment along with the PPs at the appropriate time in the process.

### Financial Implications

In accordance with Council's adopted guidelines and fees and charges, these PPs are being funded on a 100% cost recovery basis by the proponent.



## **DE17.24 Planning Proposal PP006 - Halloran Trust Lands - Potential Biodiversity Certification Application**

**HPERM Ref:** D17/5761

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

### **Purpose / Summary**

Seek in principle endorsement to commence the process to potentially enable the Biodiversity Certification of land associated with the Halloran Trust Planning Proposal (PP) at Culburra Beach, Callala Bay and Kinghorne (near Currarong).

### **Recommendation (Item to be determined under delegated authority)**

That the Committee support in principle the preparation of a Biodiversity Certification Application for the Planning Proposal for the Halloran Trust Lands at Culburra Beach, Callala Bay and Kinghorne.

### **Options**

1. Adopt the recommendation to support (in principle) Council being the applicant of a Biodiversity Certification Application associated with the Halloran Trust PP.

Implications: This will provide certainty in ensuring adequate land is conserved for biodiversity protection and management in association with and whilst moving forward with the PP. This also potentially provides a revenue stream for the ongoing management of the lands ultimately identified for conservation purposes.

2. Adopt an alternative recommendation.

Implications: The other alternative mechanism in this regard is BioBanking. Whilst this process is relatively similar procedurally, BioBanking does not guarantee land biodiversity protection and management at the strategic planning stage. Further approvals are required at the Development Approvals stage which can cause delays with the eventual development of the subject lands.

### **Background**

Council received a PP request for land at Culburra Beach, Callala Bay and Kinghorne (near Currarong) known as the Halloran Trust Lands from Allen Price & Skarratts Pty Ltd on 4 August 2014. The PP relates to the land that has been deferred from the Shoalhaven Local Environmental Plan (LEP) 2014 and proposes to resolve/determine the zoning of the land.

Since receiving the PP request, Council supported the proposal in principle and submitted it to the NSW Government for Gateway determination in October 2014. The Gateway determination enabling the PP to proceed further was received on 16 November 2015.

Council staff in association with a Project Control Group (PCG), established by the NSW Government to assist with this significant project, have been working through the various aspects of the Gateway determination. Work has commenced on the detailed stage 1 assessments that are required to consider strategic biodiversity and water quality

requirements. This report deals with an aspect of the biodiversity work that requires a decision by Council.

The Gateway determination required that a flora and fauna assessment and biodiversity offset strategy be prepared and to comply with the BioBanking Assessment Methodology or Biodiversity Certification Assessment Methodology.

Since receiving the Gateway determination the proponent has proceeded with engaging EcoLogical Pty Ltd to commence the field surveys and subsequent offset strategy in accordance with the Biodiversity Certification method. As part of this process, the proponent has requested that Council undertake the role of lodging the application that will be prepared and this requires a resolution of Council to initiate.

#### *Biodiversity Certification Process*

Biodiversity Certification is a mechanism that allows integration of planning for biodiversity conservation and proposed land use intensification at the strategic planning level. It is intended to run alongside and compliment/support the PP or rezoning process.

During the certification process the Planning Authority (in this case Council) must identify:

- Areas of high biodiversity value to be protected from development; and
- Other areas of lower biodiversity value, including cleared land that is suitable for development purposes.

An application for Biodiversity Certification is made to the NSW Office of Environment and Heritage (OEH) and may be granted by the NSW Minister for Environment. An application must demonstrate that a conferral will result in an 'improve or maintain' outcome of biodiversity values. The application also sets out the land that is proposed for Biodiversity Certification (for development), proposed conservation measures (including financial contribution to fund conservation measures that improve biodiversity values) and the parties required to implement the conservation measures.

Biodiversity Certification of land provides certainty that a positive conservation outcome can be achieved by identifying land for biodiversity protection and management in perpetuity. In addition, it identifies a funding mechanism for the ongoing conservation and management. These key aspects are 'locked in' at the strategic planning stage and remove the requirement for further flora and fauna investigations at the subsequent Development Approval stage.

An application for Biodiversity Certification is generally developed in conjunction with a PP. Only a Planning Authority may apply to the NSW Minister for the Environment to have Biodiversity Certification conferred on specified land.

As indicated, the proponent of the Halloran Trust PP have requested that Council undertake the role of lodging the application.

#### **Community Engagement**

Biodiversity Certification applications must be publicly exhibited for a minimum period 30 days in accordance with the relevant legislation. Where the Biodiversity Certification application is associated with a current PP, the application is to be publicly exhibited concurrently with the PP where possible.

#### **Financial Implications**

The preparation of the necessary flora and fauna studies, including Biodiversity Certification Assessment and the Biodiversity Certification Strategy as required by OEH has been

commissioned and funded by the proponent. However the work is being guided by the PCG for this overall project.

Council will be responsible for the management of the application (including advertising and exhibition, preparing a submissions report and staff attendance at meetings) and the associated costs will be funded by the proponent through payment of the relevant PP fees and charges.



Office of  
Environment  
& Heritage

Date: 7 September 2018  
Our reference: DOC18/657622  
Contact: Dan Robson  
4224 4185

Matt Philpott  
Allen Price & Scarratts Pty. Ltd.  
PO Box 73  
NOWRA NSW 2541  
E-mail: [mattphilpott@allenprice.com.au](mailto:mattphilpott@allenprice.com.au)

Dear Matt,

**Transitional biodiversity certification proposals**

I write to you to in regard to the transitional arrangements for proposed biodiversity certification applications saved under the *Biodiversity Conservation (Savings and Transitional) Regulation 2018*. Under Clause 37 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2018*, applications for those identified proposals need to be made within 2 years on the date of the commencement of the new act.

The purpose of my letter is to advise you that there is now just under one year remaining to submit an application under the provisions of Part 7AA of the *TSC Act* for the biodiversity certification application of the Halloran Lands, located within the Shoalhaven Local Government Area. The final date for submission is set at **25 August 2019**.

If we can be of any assistance with progressing your application, please do not hesitate to contact Dan Robson on 4224 4185 or via e-mail on [daniel.robson@environment.nsw.gov.au](mailto:daniel.robson@environment.nsw.gov.au).

Yours sincerely

**CHRIS PAGE**  
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## DE19.69 Public Hearing Outcome and Proposed Finalisation - Planning Proposal (PP023) - Anson Street, St. Georges Basin

**HPERM Ref:** D19/219918

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:**

1. Public Hearing Report - Planning Proposal PP023 (under separate cover) [⇒](#)
2. Public Exhibition - Submissions Summary - Planning Proposal PP023 (under separate cover) [⇒](#)
3. Previous Council Report - May 2019 - PP023 Exhibition Outcomes (under separate cover) [⇒](#)
4. Submission - On behalf of Mr De Battista - Dated 14 March 2019 [↓](#)

### Purpose / Summary

Detail the outcome of the Public Hearing held regarding this Planning Proposal (PP) and consider the next steps to possibly finalise this PP.

### Recommendation (Item to be determined under delegated authority)

That Council

1. Receive the Independent Chairperson's Report on the Public Hearing held on 1 July 2019 regarding Planning Proposal PP023 for information.
2. Adopt and finalise Planning Proposal PP023 as exhibited.
3. Forward PP023 to the NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven Local Environmental Plan 2014.
4. Give effect to the decision by making the resulting amendment to the Shoalhaven Local Environmental Plan 2014 using Council's delegation, through arranging for the instrument to be notified on the NSW Legislation Website.
5. Write to the affected landowner, relevant community groups/individuals and advise them of this decision.
6. Proceed to separately review the building height controls for the adjacent B4 and R1 zoned land to the north and south of the subject land to consider establishing a consistent outcome (8.5 metre maximum mapped height) and advise the affected landowners in this regard.

### Options

1. Adopt the PP as exhibited, exercise the Council's delegation to make a Local Environment Plan consistent with the PP, and arrangements be made for the drafting of the plan and notification of the plan on the NSW Legislation Website, and separately review and set a consistent mapped height of buildings (8.5m) for the adjacent B4 and R1 zones.

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Implications: This option is open to Council and will enable the PP to be finalised by Council as exhibited.

Council should also decide whether, as either a standalone PP or as part of the regular Housekeeping PPs, to consider establishing a consistent mapped height of buildings (8.5m) for the other B4 and R1 zoned land to the north and south of the subject land. This is flagged in the letter from the NSW Department of Planning, Industry and Environment (DPIE) that accompanied the Gateway determination and was also raised in the landowner's submission to the PP. It is also likely to have broader community support given the concerns that have arisen with the potential development of the subject land. This additional step is also recommended to ensure a consistent outcome.

2. Adopt the PP as exhibited, but not exercise the Council's delegation to make a plan consistent with the PP, write to the NSW Department of Planning, Industry & Environment advising them of this decision and request that the Minister makes a Local Environmental Plan consistent with the PP and notifies the resulting plan on NSW Legislation Website to give effect to the PP, and separately review and set a consistent mapped height of buildings (8.5m) for the adjacent B4 and R1 zones.

Implications: This option is also open to Council and would also enable the PP to be finalised by the Minister. Given the contentious nature of this PP, the Council could opt not to use its delegations to make the Plan and write to DPIE and advise them of this decision. This would essentially mean that Council finally adopts the PP and then requests DPIE to consider and make the resulting Plan.

Again, the additional step of reviewing the zoning of the adjacent B4 and R1 zone is also recommended to ensure a consistent outcome.

3. Either Option 1 or 2, without the separate building heights review of the adjacent B4 and R1 zones.

Implications: This option involves adopting the PP as exhibited and proceeding to either make the local environmental plan under delegation or ask the Minister to make the plan, but not resolving to undertake a separate review of the B4 and R1 zones. This option is not recommended given the need to also clarify/set the desired height outcome on the adjacent similarly zoned land given community concerns associated with the subject land and the need for a consistent outcome in this location as suggested by DPIE in the Gateway determination.

4. Proceed with an amended PP.

Implications: Depending on the nature of any amendments, for example changing the proposed height from 8.5m to another height, the PP may require an amended Gateway determination and need to be re-exhibited to enable the community and landowner to comment.

5. Discontinue the PP process.

Implications: This would see the existing height limit of 13m remain in place contrary to the Council's original intent when it proposed the PP and contrary to community opposition.



## Background

The outcomes of the recent public exhibition (February to March 2019) of this PP were considered by Council in May 2019, see **Attachment 1**. As a result, Council resolved on 7 May 2019 to:

1. *Proceed to organise a Public Hearing for Planning Proposal No. PP023 that applies to part of Lot 1 and Lot 6 DP 1082382, Anson Street, St Georges Basin.*
2. *Consider a further report on this matter and its possible finalisation following the Public Hearing.*

The report to the Development & Environment Committee dated 7 May 2019 (**Attachment 1**) details the submissions received during the exhibition of the PP and presents options for Council to consider regarding the finalisation of the PP.

This report presents that outcome of the Public Hearing that was held on 1 July 2019 regarding the PP in accordance with the Council resolution.

The report also presents the options that are available to Council to consider in finalising this PP.

## Public Hearing – Overview

The Public Hearing was held on 1 July 2019 in the Council Chambers, City Administrative Centre, Nowra commencing at 5.30pm. It was chaired by an independent Chairperson and attended by 30-40 people. Eight (8) people gave oral submissions at the hearing in support of the exhibited PP.

The directly affected landowner who requested the hearing elected not to give an oral submission, but at his request a copy of his submission to the PP was provided to the Chairperson. A copy of this submission is provided at **Attachment 4**. The Chairperson also provided a verbal summary of the submission at the commencement of the hearing.

The report on the Public Hearing provided by the Independent Chairperson is provided as **Attachment 2**. This report was made publicly available once received via Council's website.

The report concludes that "The public hearing did not reveal any reasons why the planning proposal should not proceed. To the contrary, there is clear community support for the planning proposal."

## Public Exhibition Outcome – Recap

The PP was publicly exhibited from 27 February until 29 March 2019 and the exhibition material is still available on Council's internet site at the following link under the heading "Planning documents on exhibition":

<http://www.shoalhaven.nsw.gov.au/My-Council/Public-exhibition/Documents-on-exhibition>

The report that was considered by the Development & Environment Committee on 7 May 2019 provides a detailed overview of the outcomes of the public exhibition – see **Attachment 1**.

The summary of the submissions which were received is also provided as **Attachment 3**. The following is an overview of the submissions:

Total of 217 submissions received:

- Support: 167 (includes 3 community petitions containing 483 signatures)
- Comment: 49
- Oppose: 1

Those supporting or commenting on the PP covered the following main themes:

- 8.5m is better overall outcome
- Basis of previous decision
- Character
- Amenity
- Visual Impact
- Environment
- Infrastructure/services
- Viability/land values
- Social Impact

The local Community Consultative Body, the Basin Villages Forum, also provided a submission in support of the PP that covered many of the above items.

The one (1) submission that was received in opposition to the exhibited PP, on behalf of the directly affected landowner Mr D DeBattista, raised the following reasons for objection:

- PP is ad-hoc
- Inconsistency with Section 117 Directions
- Inconsistency with broader strategic planning framework
- Desired character of development
- Feasibility analysis
- Insufficient strategic planning merit to justify the change. Should not proceed and be supported by Council. If Council decides to proceed, public hearing requested, with the results to be considered before Council decides whether to make the plan.

Each point raised in opposition to the PP is commented on in detail in the report dated 7 May 2019.

## Conclusions

As outlined in the earlier report, there is community interest in the subject land and the PP that has been exhibited as shown by the number of submissions that supported or commented on the proposal.

Given that the requested Public Hearing has now been held Council needs to consider the next steps that it wishes to take regarding the PP and its possible finalisation.

The basic options outlined in the earlier report are still valid in this regard, noting that a Public Hearing has now been held, namely:

- Adopt the PP as exhibited and exercise delegation to make the resultant Plan.
- Adopt the PP as exhibited, but not exercise the delegation to make the Plan.
- Proceed with an amended PP
- Discontinue the PP process

Also, as discussed elsewhere in the report, should Council ultimately decide to adopt the PP, it would also be appropriate to consider applying a consistent mapped height of buildings (e.g. 8.5m) to the other adjacent B4 and R1 zones in this location – further commentary on this aspect is provided below.

## Community Engagement

The PP was formally public exhibited in accordance with the Gateway determination from 27 February until 29 March 2019 (31 days) inclusive. The report to Council dated 7 May 2019 detailed the submissions received as a result of the public exhibition.

The requested Public Hearing was held on 1 July 2019, the details and outcomes of which are covered in this report.

### **Policy Implications**

Given that similar zones exist to the north and south of the subject land, Council needs to decide whether to also adjust the height of buildings provision for this similarly zoned land to reflect the outcome of this PP when determined.

This will ensure that a consistent height control also applies to the adjacent B4 and R1 zones, that are currently unmapped and rely on the general 11m height provision. This could be done as a standalone PP or as part of a future Housekeeping PP. The priority of this additional project needs to be considered in the context of the overall Strategic Planning Works Program.

It is noted that most of the remaining B4 zoned land is vegetated and undeveloped. The R1 zone is however already partially developed as 1 to 2 storey developments, with the remainder undeveloped and vegetated. There is the potential that applying a lesser height control (e.g. 8.5m) may be resisted by the affected landowners but may also be supported by the broader community given the issues that have arisen with the proposed development of the subject land.

### **Financial Implications**

This PP is currently being managed within the existing Strategic Planning budget.

### **Risk Implications**

The December 2018 Land & Environment Court Judgement regarding this PP is the subject of an appeal to the NSW Court of Appeal, the outcome of which is unknown at this point.

Town Planning, Agricultural & Environmental Consultants



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14 March, 2019

Our ref: 11/70

Your ref: 54893E

The General Manager  
Shoalhaven City Council  
PO BOX 42  
NOWRA NSW 2541

Dear Sir,

**RE: COUNCIL REFERENCE: 54893E  
REVISED PLANNING PROPOSAL (PP023) – RE-EXHIBITION  
ISLAND POINT ROAD (ANSON STREET) ST GEORGES BASIN  
LOTS 1 and 6 DP 1082382**

I refer to the re-exhibition of the above Revised Planning Proposal (RPP). The RPP concerns Lots 1 and 6 DP 1082382, Anson Street St Georges Basin (the "subject land"). The subject land is owned by Mr David DeBattista. The RPP therefore only applies to lands owned by Mr DeBattista. Mr DeBattista has instructed me to prepare this submission in relation to this RPP on his behalf. The submission raises objection to the RPP.

At the outset I would like to confirm that neither Mr. DeBattista nor we have made any reportable political donations or gifts pursuant to Section 10.4 of the Environmental Planning & Assessment Act.

**1.0 THE REVISED PLANNING PROPOSAL(RPP) PP023**

The RPP is essentially the same as the Planning Proposal that was previously exhibited between 20 December 2017 and 2<sup>nd</sup> February 2018. Our firm previously made a submission during the earlier public exhibition period on behalf of our client. Many of the issues raised in our previous submission are still relevant with respect to the RPP.

The public exhibition of the earlier version of Planning Proposal was found by the Land and Environment Court (*DeBattista v Minister for Planning and Environment [2018] NSWLEC 202*) to be inconsistent with the NSW Department of Planning & Environment's Gateway Determination and was thus 'significantly materially misleading'. As a consequence, the Court

declared that the community consultation process was void and of no effect. As a result, Council has elected to revise the Planning Proposal in an attempt to address the issues identified by the Court and to undertake a new exhibition of the RPP.

The RPP still seeks to amend the Maximum Building Height control that applies to the subject land. As with the original Planning Proposal it does not seek to amend or change the height controls on any other lands other than the specific lands owned by Mr. DeBattista.

The RPP seeks to retain the current 8 metre height control over the western part of Lot 1 DP 1082382, however amend the maximum building height control over the remainder of Lot 1 and the whole of Lot 6 DP 1082382 and remove the current 13 metre height limit that applies to these lands and replace with an 8.5 metre mapped height limit.

## 2.0 REASONS FOR OBJECTION TO PLANNING PROPOSAL

### 2.1 PLANNING PROPOSAL IS AD-HOC

My client is still concerned that the Council is not pursuing the RPP for proper planning purposes, but rather to thwart a development proposal that has been submitted for the subject land that is currently before the Land and Environment Court. The proposed height reduction will have the effect of prohibiting the proposed development.

Our client has made financial decisions to invest significant money in the development of his land based on the planning controls that existed at the time.

Whilst we acknowledge that Council can amend its planning controls, that power should be exercised strategically and not on an individual site by site basis, but rather in accordance with due legal process. If the Council truly intended to review building height limits in St Georges Basin, it would commission the preparation of a study that looked at height limits on all land in the Bay and Basin area and not just isolate our client's land for such a significant amendment.

In this regard we note that the Gateway Determination issued by the delegate of the Minister for Planning in relation to this PP includes the following statement:

*"It is noted that the proposed building height control for the subject lots is less than the 11 metre height control that applies to the adjoining B4 and R1 zoned land located to the north and south respectively. It is recommended that Council consider reviewing the adjoining 11 metre building height controls to ensure that there is a consistent approach to building height controls in the St Georges Basin area."*

Council however have failed to undertake any review of the building height limits on other B4 and R1 land as recommended by the Gateway Determination. It is concerning that this RPP seeks to impose a more stringent building height limit on the subject land when compared to similar zoned R1 and B4 zoned lands immediately to the north and south of the subject land – without any strategic planning justification.

I also note that Council on the 6<sup>th</sup> December 2016 when considering its strategic planning projects program resolved to undertake *an assessment of the urban areas in the Bay and Basin area*. Such an exercise would, one would think, include a review of building height limits throughout this area. However, Council has not undertaken any further action in response to this resolution. A review for instance of the adopted Strategic Planning Works Program adopted by Council on the 17<sup>th</sup> July 2017 failed to include any reference to this specific project. This would suggest that Council do not consider that there is a high



priority or need to review the existing planning provisions including building height limits within the urban areas within this locality.

Considering Council's failure to review building height limits on other B4 and R1 zoned land as recommended by the Gateway Determination; and its failure to even consider this approach as part of its Strategic Planning Works Program, this reinforces the view that the current PP is not only premature, but also the PP is a device to specifically thwart our client's development proposal that is currently before the Land and Environment Court.

Given these circumstances there is clearly no strategic planning basis that underpins this RPP. Such a RPP should be the result of a broader planning study that examines the future intended density and building heights for urban areas with the St Georges Basin area as recommended by both the Gateway Determination as well as Council's resolution of the 6<sup>th</sup> December 2016. This RPP however has not been the subject of such an assessment and is premature.

## 2.2 INCONSISTENCY WITH S.117 MINISTERIAL DIRECTIONS

A Planning Proposal must also demonstrate that it is consistent with Ministerial Directions issued pursuant to S.9.1 of the Environmental Planning & Assessment Act.

These Directions include Direction 1.1 Business and Industrial Zones. This Direction states:

*(1) The objectives of this direction are to:*

- (a) encourage employment growth in suitable locations,*
- (b) protect employment land in business and industrial zones, and*
- (c) support the viability of identified centres.*

### **Where this direction applies**

*(2) This direction applies to all relevant planning authorities.*

### **When this direction applies**

- (3) This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).*

### **What a relevant planning authority must do if this direction applies**

*(4) A planning proposal must:*

- (a) give effect to the objectives of this direction,*
- (b) retain the areas and locations of existing business and industrial zones,*
- (c) not reduce the total potential floor space area for employment uses and related public services in business zones,*



*(d) not reduce the total potential floor space area for industrial uses in industrial zones, and*

*(e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Secretary of the Department of Planning and Environment.*

These Directions also include Direction 3.1 Residential Zones. This Direction states:

- (4) A planning proposal must include provisions that encourage the provision of housing that will:*
  - (a) broaden the choice of building types and locations available in the housing market, and*
  - (b) make more efficient use of existing infrastructure and services, and*
  - (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and*
  - (d) be of good design.*
- (5) A planning proposal must, in relation to land to which this direction applies:*
  - (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and*
  - (b) not contain provisions which will reduce the permissible residential density of land.*

The main area where the RPP has been amended is in an attempt to address the inconsistency between the RPP and this Direction 3.1.

Clauses 5 and 6 of these Directions respectively, outline those circumstances where a PP may be inconsistent with this Direction but only if the planning authority can satisfy the Department that the inconsistencies are:

- (a) justified by a strategy which:*
  - (i) gives consideration to the objective of this direction, and*
  - (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
  - (iii) is approved by the Director-General of the Department of Planning, or*
- (b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*
- (c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
- (d) of minor significance.*

The RPP justifies the inconsistency between the RPP and Directions 1.1 and 3.1 on the basis that the RPP is of minor significance because:

- *the PP relates to a small defined area at St. Georges Basin and does not propose to change the zoning of the subject land;*
- *the existing zones applicable to the subject land (R1 Residential and B4 Mixed Use) will still provide for a variety of housing types and choices;*
- *the PP affects only a portion (1.97 hectares) of the R1 zoned land in this location (approximately 19%); and*
- *the subject land comprises a small portion (0.14%) of the total land zoned R1 within the local government area;*
- *the part of the subject land which is within a business zone (B4 Mixed Use) comprises a small portion (0.92 %) of the total available business B4 zoned land within the local government area; and*
- *the proposed height is more consistent with the existing provisions that apply to other parts of the B4 zone within the St. Georges Basin town centre that are currently mapped in the LEP at 8.0 metres.*

Contrary to Council's position in this regard, It is our view that the RPP cannot be considered as having minor significance.

Section 6 of Council's own guideline document "*Planning Proposal (Rezoning) Guidelines*" dated 6<sup>th</sup> November 2018 defines a "minor" planning proposal as one:

*"for which no more than one (1) specialist study is required. This includes 'housekeeping' PPs (prepared by Council to address minor anomalies etc) and other minor impact PPs.*

Council's RPP however relies upon two specialist studies namely:

1. "*Feasibility Analysis*" prepared by Walsh & Monaghan; and
2. "*Character Assess and Urban Design Review*" prepared by Atlas Urban Design & Strategy Pty Ltd.

Clearly based upon Council's own guidelines the RPP cannot be considered a "minor" PP as it relies upon more than one specialist study for its justification. On this basis alone, Council cannot consider the RPP will be of minor significance.

Whilst the RPP concerns only specific parcels of land, which may comprise a relatively small proportion of the overall similarly zoned lands within both the St Georges Basin and the Shoalhaven generally, this alone should not form the justification as to the significance of a RPP.

Such an approach could set a dangerous precedent for Planning Proposals which seek to 'rezone' individual parcels of land in manner that will not be supported by broader planning strategies and therefore unable to be justified as having strategic planning merit. Such has the potential to result in multiple ad hoc small "rezoning" proposals that could undermine the broader strategic planning framework for the Shoalhaven.

No consideration has been given as part of the RPP as to the likely impacts arising from the RPP in terms of the potential loss of yield in housing opportunities by reducing the building height limit that applies to the site. Reducing opportunities for housing on the subject site will have the potential for instance in increasing housing demand on the urban fringe. This is contrary to the stated objectives of Direction 3.1.

The RPP makes no assessment of:

- the likely loss of housing yield associated with a reduction in building height on the subject site;
- the potential for increased demand as a result of loss of housing yield on the subject site on the consumption of land for housing development on the urban fringe;
- the environmental impacts that could arise from such increased pressures for housing development on the urban fringe; and
- The servicing and infrastructure implications for additional housing development on urban fringe areas.

Council justifies in part that the proposed change in height envisaged by the RPP will be more consistent with the 8.0 m height limit that applies to the St Georges Basin town centre. Firstly, it should be pointed out that the subject land does not form part of the St Georges Basin town centre and therefore this justification is irrelevant. Secondly, large areas of both B4 zoned land adjoining the St George's Basin town centre and R1 zoned land adjoining the subject land have not had an 8.5 metre building height limit imposed on them.

In this regard the Department of Planning & Environment's covering letter to the Gateway Determination as outlined in Section 2.1 above, specifically recommended that Council review the building height limits on all B4 and R1 zoned land to ensure that there is a consistent approach to building height controls in St Georges Basin. The RPP however fails to address this specific recommendation of the Department.

Given the above circumstances it is our view that the RPP fails to provide sufficient justification that it is of minor significance.

Under these circumstances the RPP, in the absence of justification that the RPP is of minor significance, is required to be justified by a broader strategic planning strategy or study. In the absence of such justification the RPP should not proceed on the basis that it will be inconsistent with Ministerial Directions 1.1 and 3.1.

### 2.3 INCONSISTENCY WITH BROADER STRATEGIC PLANNING FRAMEWORK

The RPP is unable to demonstrate consistency with broader planning strategies:

- As detailed in Sections 3.1 and 4.1 of the "*Character Assessment and Urban Design Review*" prepared by Atlas Design & Strategy in support of the RPP, the Illawarra Shoalhaven Regional Plan seeks to provide a mix of housing and to support housing opportunities close to existing centres.
- Sections 3.3 and 4.1 of the "*Character Assessment and Urban Design Review*" outlines the Jervis Bay Settlement Strategy seeks to provide alternative development forms and that infill development is investigated to meet future settlement needs for the region.



- Sections 3.4 and 4.1 of the "Character Assessment and Urban Design Review" addresses the objectives of the Coastal Design Guidelines for NSW which outlines how growth should be accommodated within existing boundaries; with a wider range of appropriate residential building types and with height limits up to four storeys in town centres.

Neither the RPP or the "Character Assessment and Urban Design Review" however clearly articulate how by reducing building height on the subject land, and thereby reducing the residential density on the subject site, how the above objectives of these planning strategies will be achieved. The RPP is clearly not consistent with the above objectives of these planning strategies.

The "Character Assessment and Urban Design Review" states that the objectives of these planning strategies have strong themes around recognising existing character. This is not correct. The objectives referred to rather generally seek to make provisions for a mixture of housing types to meet changing demand, with the character of development to meet either existing or desired future character (including development up to 4 storeys in height).

## 2.4 DESIRED CHARACTER OF DEVELOPMENT

The RPP and in particular the "Character Assessment and Urban Design Review" document appear to justify the reduction of the building height limit as it applies to the subject land based on the prevailing height of surrounding development and in particular that associated with residential areas to the east and west of the subject land.

The examples chosen by the "Character Assessment and Urban Design Review" namely the "Lakeside Residential Character Area" (to the east) and the "Inland Residential Character Area" (to the west) are both areas that are zoned R2 Low Density Residential. This point is not clearly articulated in this assessment.

The objectives of the R2 zone are:

- To provide for the housing needs of the community within a **low density residential environment**.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide an environment **primarily for detached housing** and to ensure that other development is compatible with that environment.

Clearly the objectives of the R2 zone seek a low-density form of development primarily for detached housing.

The objectives of the R1 zone that applies to the southern part of the subject site include:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.

The objectives of the B4 zone that applies to the northern part of the subject land include:

- To provide a mixture of compatible land uses.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

There is no mention in the objectives of either the R1 or B4 zones that seek to encourage lower density housing. Indeed, a range of higher density housing forms including residential flat buildings are permissible within the R1 and B4 zones, and which are prohibited within the R2 zone.

Section 3.6 of the "Character Assessment and Urban Design Review" appears to try to justify reducing the building height limit on the subject site based upon the objectives and provisions of Chapter N23 of the Shoalhaven DCP which seeks to limit height of development within the Neighbourhood Centre to a bulk and scale of development that relates to the existing surrounding development and the natural attributes of the area. Apart from the fact that this is a DCP provision which is subservient to the provisions of the LEP, this report fails to recognise that the subject land does not form part of the Neighbourhood Centre to which this provision applies. The subject land adjoins the Neighbourhood Centre. Section 5.3.1 of this DCP identifies suitable land uses for this land including Higher Density Housing. This report however does not demonstrate how by reducing building height and density of development on the subject land would be consistent with encouraging higher density housing on the subject land.

Throughout the "Character Assessment and Urban Design Review" document reference is made to planning strategy objectives that seek to ensure building bulk is compatible with existing or desired future character of area. This assessment then relies upon justifying a reduction in building height on the subject land on the basis of the existing character of development on lands surrounding the site (notwithstanding the different zoning provisions that apply to these lands). This assessment however fails to interrogate what the desired future character of development on the subject land (and similar zoned lands that it adjoins) which are zoned differently to the areas it references. As detailed in this submission the R1 and B4 zones permit higher density forms of development when compared to the R1 zone, and it is not appropriate to prescribe the same building height limits to these areas that apply to areas which are zoned for a lower form of density. It is also inappropriate to impose a more restrictive building height limit on the subject lands on this basis, but not investigate a similar reduction in building height on adjoining lands which are zoned in a similar manner to the subject land.

Clearly comparing the urban character of land that is zoned R2 is inappropriate for a PP that concerns land that is zoned R1 / B4. This report fails to demonstrate that there is sufficient strategic planning merit to reduce the building height limit that applies to the subject land which is zoned in a different manner to those areas zoned R2 and which this assessment relies to justify a reduction in building height for the subject site.

## 2.5 FEASIBILITY ANALYSIS

The PP is also supported by a Feasibility Analysis prepared by Walsh & Monaghan Valuers. It is noted that at Section 7.62 of this report in part states "... *development approval consistent with the existing height limits may very well have the effect of 'sterilising' the land*". No justification is provided for this statement in this report.

The land in question is zoned R1 and B4. A range of land uses are permissible with consent within both zones. If the findings of this feasibility assessment are correct (and we do not make such an acknowledgement) a rational developer will be able to undertake an alternative form of development which will obtain a suitable return. The R1 zone for instance allows a range of development scenarios. The building height limit does not

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Island Point Road (Anson Street) St Georges Basin

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impose a requirement that a development has to build to that height limit. If a developer is unable to make a 13 m height development work financially they will do something else that would be permissible (ie. multi dwelling housing) and which would obtain a suitable return for them.

For the above reasons it is still our view that there is insufficient strategic planning merit to justify this RPP and it should not proceed further and should not be supported by Council. We therefore request that Council not proceed further with this RPP.

If Council does decide to proceed with the RPP, my client requests that a public hearing be held, and the results of that public hearing be considered by Council before Council decides whether to make the draft LEP.

If you require any further clarification concerning the matters raised in this submission, please do not hesitate to contact me.

Yours faithfully



Stephen Richardson  
COWMAN STODDART PTY LTD



## DE19.70     **Audit by NSW Planning Industry & Environment - use clause 4.6 of Shoalhaven Local Environmental Plan 2014**

**HPERM Ref:**     D19/242003

**Group:**             Planning Environment & Development Group  
**Section:**          Development Services

**Attachments:**    1. Planning Industry & Environment - Audit Report - Use of Clause 4.6  
                              (under separate cover) [↗](#)

### **Purpose / Summary**

This report attaches the Department of Planning Industry and Environment's (PIE) audit report in full for Council's information.

In summary, the audit involved the review of over 180 development application approvals across 18 councils. Shoalhaven City Council was included in the audit.

The audit was of Council's administrative and reporting procedures and policies related to the use of the Secretary's assumed concurrence and under clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (SILEP).

### **Recommendation (Item to be determined under delegated authority)**

That the report on the Department of Planning Industry and Environment's Audit be received for information.

### **Options**

1. Adopt the recommendation.

Implications: Nil.

2. Resolve alternatively.

Implications: this would be contingent on what the Committee of Council resolved.

### **Background**

#### ***Variations to Development Standards***

Council is required to consider variations to development standards (contained in an environmental planning instrument such as the Shoalhaven Local Environmental Plan) which exceed 10%, with lesser variations able to be dealt with by staff, under delegation.

Council is also required to report the variations to the full council and thereafter PIE.

SEPP 1 and clause 4.6 allow flexibility in the application of development standards by allowing the consideration of development proposals that meet the objective of a development standard but not its stated value.

SEPP 1 and clause 4.6 permit an applicant to object to development standards claiming they are unreasonable, unnecessary or would result in poor planning outcomes.

DE19.70

When the consent authority is satisfied the objection under SEPP 1 or clause 4.6 is well founded it may, with the concurrence of the Secretary of PIE, grant consent to that development application (DA) notwithstanding the subject development standard.

The Secretary has delegated to councils assumed concurrence to use SEPP 1 or clause 4.6 in respect of most types of development.

### **Monitoring of council use of SEPP 1 and clause 4.6**

Councils are required to monitor their use of the Secretary's assumed concurrence under SEPP 1 and clause 4.6 and report to PIE on that usage on a quarterly basis. PIE has been systematically monitoring council quarterly SEPP 1 and clause 4.6 returns since June 2008.

Monitoring and auditing councils' use of SEPP 1 and clause 4.6 enables PIE to check whether councils are keeping accurate records of the use of SEPP 1 and clause 4.6, to assess whether any development standards are being regularly varied by a council and may require review, and to detect anomalies (e.g. exceeding of delegations) if they are occurring.

### **Planning Circular PS18-003 Variations to development standards, dated 21 February 2018**

The Circular states:

- *"Applications for variations to development standards cannot be considered without a written application objecting to the applicable development standard and addressing the matters required to be addressed in the relevant instrument.*
- *A publicly available online register is to be established, and its currency maintained, of all variations to development standards approved by council or its delegates. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.*
- *A report of all variations approved, either by council or its delegates, must be submitted to [developmentstandards@planning.nsw.gov.au](mailto:developmentstandards@planning.nsw.gov.au) within 4 weeks of the end of each quarter (i.e. March, June, September and December). Such report must be on the form provided by the Department.*
- *A report of all variations approved under delegation by staff must be provided to a full council meeting at least once each quarter."*

The Circular concludes:

*"The Department will continue to carry out random audits to ensure the above monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy.*

*Should ongoing non-compliance be identified with one or more consent authorities, the Secretary will consider revoking the notice allowing concurrence to be assumed, either generally for a consent authority or for a specific type of development."*

## The Audit

### Result

PIE wrote to Council on 11 July 2019 commenting that:

*"I would like to congratulate Shoalhaven City Council for meeting the ongoing reporting and administrative obligations under the development standard variation regime."*

The audit outcome was that:

*"Shoalhaven City Council has complied with all requirements of clause 4.6, the relevant circular and the assumed concurrence."*

Further:

*"Shoalhaven City Council be advised that no issues were identified in the Department's audit of the above development applications involving variation of a development standard." (Refer to table in the attached report, page 28.)*

### Comparison with other Councils – Summary

Table 7 of the report is reproduced below. Shoalhaven and Newcastle City Councils do not require any further audit.

Council Audited	Audit Findings									Further Audit Required
	Variations >10% determined by staff	Inadequate internal delegation procedures	Staff variation decisions not reported to council	Late quarterly reports	Inaccurate quarterly reports	Inadequate assessment report	No online clause 4.6 register	Online register details inadequate	No/inadequate clause 4.6 application	
Ballina	X	X		X	X					X
Blacktown	X					X		X		X
Camden			X	X						X
Cumberland			X	X		X			X	X
Dubbo Regional	X	X					X		X	X
Forbes		X	X	X		X	X			X
Hilltops							X			X
Inner West	X		X	X		X			X	X
Kiama		X								X
Ku-ring-gai	X								X	X
Lane Cove	X		X	X						X
Mosman				X					X	X
Newcastle										
Northern Beaches	X					X		X	X	X
Port Stephens	X									X
Shoalhaven										
Snowy Valleys		X		X			X			X
Tweed				X		X		X	X	X
TOTAL	8	5	5	9	1	6	4	3	7	16

Table 7 extracted from Audit Report

### Risk Implications

If Council continues to adhere to the requirements specified by PIE, there should be no issue with compliance or warranting further immediate audit.

### Conclusion

Apart from the reporting regime, it is mandatory to ensure that all applications which are subject of a variation are accompanied by a written request addressing the specifics of that clause.

Staff have been ensuring that this occurs for the affected applications. It is noted however that clause 4.6 has been hotly contested in the Land and Environment Court which has set the bar high, to ensure that the integrity of the relevant planning controls and system are maintained.

DE19.70

## DE19.71 Home modifications to permit elderly and injured residents to return to their dwellings

**HPERM Ref:** D19/240753

**Group:** Planning Environment & Development Group  
**Section:** Building & Compliance Services

**Attachments:** 1. DRAFT Policy - Home modifications to allow elderly and injured residents to return to their dwellings [↓](#)

### Purpose / Summary

At Council's Development & Environment Committee meeting held on 2 July 2019, Council resolved'

"That:

1. Council approve an Interim Policy to give approval for residence modifications in response to Occupational Therapists and Doctors instructions to allow elderly people and those who are injured to return to their homes.
2. A further report be provided back to Council on a policy provision to address this issue."

This report provides an interim policy for Council's consideration and approval.

### Recommendation (Item to be determined under delegated authority)

That Council adopt the draft policy as presented as Attachment 1 to this report.

### Options

1. Council adopt the policy as printed

Implications: Staff will apply the policy so that elderly or injured occupants of dwellings can have them modified to permit their continued occupancy.

2. Council adopt an alternative recommendation

Implications: Council may wish to provide guidance on amendments to the draft policy or reject the policy.

### Background

Dwellings that are constructed over two or more levels pose manoeuvring difficulties for the elderly or injured residents. This can result in owners seeking alternative accommodation or prematurely transferring to a full-time care facility.

Wherever possible, it is an advantage to keep people within their existing homes. There are obvious social rewards as well as economic benefits by reducing the tension on already stretched nursing care resources.

Simple changes to the configuration may include the provision of access ramps, grab rails, minor internal alterations and additions of bathrooms, laundries and kitchens. It may also result in the provision of additional facilities on the lower level of multi-storey buildings.

DE19.71

Having two kitchens or laundries in a dwelling for instance is not a prohibited arrangement under the National Construction Code provided the building is still used as a single dwelling. It can present problems with a change of classification if they are separately tenanted and this is not the purpose of this policy.

Many alterations and additions can be completed under the State Environment Planning Policy (Exempt and Complying Development Codes) 2008. Some of these are listed in the draft policy and examples include the provision of ramps, grab rails, changes to the internal configuration of bathrooms and kitchens.

Where these standards cannot be satisfied, a development application will need to be submitted to Council for consideration.

If additional plumbing and drainage services are required, then Council will need to be involved in the inspection of these extended services. This would trigger a separate section 68 approval under the Local Government Act.

### **Community Engagement**

Nil

### **Policy Implications**

This would provide guidance to the public and Council staff.

### **Financial Implications**

Nil

### **Risk Implications**

Nil

DE19.71



*Shoalhaven City Council - Home Modifications – Elderly and Injured Residents – Medical Requirements*



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Website: [www.shoalhaven.nsw.gov.au](http://www.shoalhaven.nsw.gov.au)

For more information contact the Planning, Environment & Development Group

## Home modifications to allow elderly and injured residents to return to their dwellings

*Policy Number: POL19/XXXXX*

### 1. PURPOSE

To provide guidance to Council Officers when assessing and determining development applications for residential modifications to permit elderly people and those who are injured to return to their homes.

### 2. ISSUE

Dwellings that are constructed over two or more levels pose manoeuvring difficulties for the elderly or injured residents. This can result in owners seeking alternative accommodation or prematurely transferring to a full-time care facility.

Wherever possible, it is an advantage to keep people within their existing homes. There are obvious social rewards as well as economic benefits by reducing the tension on already stretched nursing care resources.

Simple changes to the configuration may include the provision of access ramps, grab rails, minor internal alterations and additions of bathrooms, laundries and kitchens. It may also result in the provision of additional facilities on the lower level of multi-storey buildings.

Having two kitchens or laundries in a dwelling for instance is not a prohibited arrangement under the National Construction Code provided the building is still used as a single dwelling. It can present problems with a change of classification if they are separately tenanted and this is not the purpose of this policy.

### 3. LEGISLATION

Certain residential home modifications can be completed without the need of a development application and these include the following:

- a) **Exempt Development** which does not requiring approval from a consent authority; and
- b) **Complying Development** which does require prior approval from Council or a private certifier.

*Shoalhaven City Council - Home Modifications – Elderly and Injured Residents – Medical Requirements*

For more details on the requirements of what can be constructed under Exempt or Complying Development provisions, reference should be made to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Examples of exempt development that may apply in these circumstances are as follows:

- Subdivision 1 - Access ramps.
- Subdivision 5 - Awnings, blinds and canopies.
- Subdivision 6 - Balconies, decks, patios, pergolas, terraces and verandahs.
- Subdivision 10 – Carports.
- Subdivision 14 – Driveways and hard stand spaces.
- Subdivision 26 - Minor building alterations (internal). This includes replacement of a bathroom or kitchen, built in fixtures such as a vanity, cupboard or a wardrobe, shelving and the like.
- Subdivision 27 – Minor building alterations (external). This includes the installation of a door and repair or replacement of a balustrade.
- Subdivision 28 – Pathways and paving.
- Subdivision 35 – Screen enclosures (of balconies, decks, patios, pergolas, terraces and verandahs).

If additional plumbing and drainage services are required, then Council will need to be involved in the inspection of these extended services. This would trigger a separate section 68 approval under the Local Government Act. Applications for a section 68 approval can be obtained by completing an application form and submitting it to Council together with a floor plan showing the fixtures.

If the exempt and complying development codes cannot be utilised, then a development application will need to be submitted to Council for consideration.

#### **4. DEVELOPMENT APPLICATION**

If a development application is submitted for consideration, Council has an obligation under the Environmental Planning & Assessment Act and Regulations to assess if the proposed change would result in the creation of two or more dwellings. This will not be permitted under this policy.

The applicant will need to demonstrate in the statement of environmental effects that the proposed works will not result in a change of building classification or the creation of a new dwelling. The application will also need to be supported by documentation from an Occupational Therapists and/or Doctors recommendation specifying why the building needs to be altered to accommodate the occupants. In some instances, the application will also be supported by a report from an accredited access consultant detailing the works required to be completed.

Where development applications are approved, Council will include a condition to the effect that the building shall remain as a single dwelling and must not be used as dual occupancy or for separate residential tenancy.

*Shoalhaven City Council - Home Modifications – Elderly and Injured Residents – Medical Requirements*

**5. IMPLEMENTATION**

This policy will be implemented by the Planning, Environment and Development Group in the assessment and determination of Development Applications for residential modifications in response to Occupational Therapists and Doctors instructions to allow elderly people and those who are injured to return to their homes.

**6. REVIEW**

This Policy shall be reviewed within 12 months of the election of the new Council.

**7. APPLICATION OF ESD PRINCIPLES**

This policy is in line with Council's adopted policy on integrating the principles of Ecologically Sustainable Development (ESD) into all Council's planning, decision-making and actions.

## DE19.72 Quarterly review for compliance matters

**HPERM Ref:** D19/219965

**Group:** Planning Environment & Development Group  
**Section:** Building & Compliance Services

**Attachments:** 1. List of penalties issued 1 April to 30 June 2019 [↓](#)

### Purpose / Summary

At Council's Ordinary meeting held on 13 November 2018 it was resolved to receive a detailed quarterly report on compliance activities (MIN18.907).

This report provides information on the period April – June 2019 (fourth quarter).

### Recommendation (Item to be determined under delegated authority)

That Council receive the quarterly report on compliance matters for information.

### Options

1. Council receive the report for information

Implications: Nil

2. Council receives the report and provides additional direction for future reports.

Implications: Any changes or additional matters can be added to future reports.

### Report

Compliance activities are completed by the following Teams within the Planning, Environment and Development Group:

- (a) Compliance Team: Development compliance matters including unauthorised development, development not in accordance with development consent, land and water pollution incidents (including building sites), land use management issues, fire safety and swimming pool safety issues.
- (b) Environmental Health: Pollution incidents (noise and water), environmental incidents, food shops and the operation of on-site sewage waste management facilities.
- (c) Parking: All parking offences.
- (d) Rangers: Animal control, littering, unauthorised camping, rubbish dumping and other environmental offences.

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

This report relates to April – June 2019 (fourth quarter).

### Penalties issued during the period

A combined total of 1840 penalty notices were issued by the Teams during the period. These penalties have a face value of \$542,533. Historically Council stands to receive

approximately 70% of this ticketed figure. A total of 344 cautions were also issued during the period. Attachment 1 to this report provides a breakdown of the penalties and cautions issued.

The following is a summary of the penalties issued for each team:

Team	Number Issued	Total Amount	% of total amount	Cautions issued
Compliance	29	\$93,910	17.3%	37
Compliance – Fire Safety	0	0		0
Compliance – Pools	0	0		0
Environmental Health	0	0		0
Rangers – Animal issues	659	\$213,285	39.3%	19
Rangers – Environmental issues	40	\$21,720	4%	12
Parking	1111	\$213,288	39.3%	276
Sewer Management Facility	1	\$330	0.1%	0
<b>Total</b>	<b>1840</b>	<b>\$542,533</b>	<b>100%</b>	<b>344</b>

There has been a considerable increase in animal related penalty notices for this quarter. This is due to Council's annual pet registration drive which resulted in 598 penalties issued for failing to comply with Council's notice to register. There has been a procedural change and this will be now be completed monthly rather than yearly.

#### Penalties related to Compliance issues

The following details are provided in relation to the 29 compliance penalty notices issued:

- Two penalty notices issued to one owner for unauthorised construction of an alfresco outdoor area and a detached habitable room – Development without development consent – class 1a or 10 building – Individual \$1500 (\$3000 total) – Merroo Meadow
- Two penalty notices issued to one owner for unauthorised construction of a large concrete bridge – Development without development consent – class 1a or 10 building – Individual \$1500, and converting a Class 10a structure into a habitable dwelling - Development not in accordance with consent - any other case – Individual – \$3000 (Total \$4500) – Parma.
- Two penalty notices issued to one owner for failing on two occasions to comply with a development control order relating to a dilapidated asbestos dwelling – Fail to comply with terms of development control order – Individual \$3000 (Total \$6000) – Mollymook.
- One penalty notice each issued to two owners for converting a shed in an industrial zone to a habitable dwelling – Development without development consent – any other case – Individual \$3000 (Total \$6000) – Ulladulla.
- Three penalty notices issued to one owner for unauthorised demolition of a dwelling and the subsequent construction of a new dwelling and shed. – Development without development consent – class 1a or 10 building – Individual \$1500 (\$4500 total).

Two penalty notices issued to the builder on this site for constructing the new dwelling and shed – Development without development consent – class 1a or 10 building – Individual \$1500 (\$3000 total). – Conjola.

- (f) Two penalty notices issued to one owner for failing on two occasions to comply with a development control order relating to works done on a heritage property – Fail to comply with terms of development control order – Individual \$3000 (Total \$6000) – Berry.
- (g) One penalty notice each issued to one owner for the unauthorised construction of a pergola – Development without development consent – class 1a or 10 building – Individual \$1500 (Total \$1500) – Sanctuary Point.
- (h) One penalty notice issued to a building company for failed sediment control measures at a new shopping centre under construction resulting in water pollution – Pollute waters – class 1 – Corporation \$8000 (Total \$8000) – Worrigea.
- (i) One penalty notice issued to a corporation for failing to comply with a development control order – Fail to comply with prevention notice – class 1 – Corporation \$8000.

Three penalty notices were issued to the same corporation for failed sediment control measures at a new shopping centre under construction resulting in water pollution – Pollute waters – class 1 – Corporation \$8000 (Total \$32000) – Bomaderry.

- (j) One penalty notice issued to one owner for the unauthorised installation of an effluent system – Development without development consent – any other case – Individual \$3000 (Total \$3000) – Tomerong.
- (k) One penalty notice issued to one owner for the unauthorised renovation of a heritage home – Development without development consent – class 1a or 10 building – Individual \$1500 (Total \$1500) – Berry.
- (l) One penalty notice issued to one owner for the unauthorised construction of a pergola – Development without development consent – class 1a or 10 building – Individual \$1500 (Total \$1500) – Parma.
- (m) One penalty notice issued to one owner for the unauthorised construction of earthworks – Development without development consent – any other case – Individual \$3000 (Total \$3000) – Ulladulla.
- (n) One penalty notice issued to one owner for failing to comply with a development control order relating to a clean-up notice – Fail to comply with terms of development control order – Individual \$3000 (Total \$3000) – Tomerong.
- (o) One penalty notice issued to one owner for failing to dispose of asbestos waste in an appropriate manner – Failure to ensure waste is stored in an environmentally safe manner – Individual \$750 (Total \$750) – Culburra Beach.
- (p) Two penalty notices issued to a builder for failing on two separate occasions to prevent waste from building site moving onto road – Expose article in/on/over road/let article be exposed at road without approval – Individual \$330 (Total \$660) – Sussex Inlet.

#### Penalties related to Rangers issues

- (a) Illegal dumping of asbestos and other materials at Woollamia

Following an eyewitness report, Rangers were able to track down an offender after their vehicle had been spotted in heavily vegetated vacant bushland. Rangers inspected the area and found a recent dumping of materials including asbestos cement sheeting. After an extensive investigation Rangers interviewed a suspect where admissions were made concerning the offence.

DE19.72



The offender was issued with a “clean up notice’ directing them to engage a qualified and licensed person to remove and correctly dispose of the asbestos and other material to a recognised waste disposal facility. At the completion of the work a validation certificate was submitted confirming that the site is free of any contaminants.

The total clean-up of this offence cost the offender \$5,940. Potential penalties relating to this offence totalled \$16,000; however, only one \$4000 penalty notice was issued for “transport asbestos waste to unlawful facility”. All other offences were dealt with by way of caution considering the cost to the offender for cleaning up the dump site.

(b) Eight dog attacks (each receive a \$1320 penalty)

Eight people have all received penalty notices for incidents relating to dog attacks. Each dog has also been declared dangerous to ensure owners provided adequate controls and housing to prevent such incidents recurring.

Council Rangers are stepping up patrols of public areas and discussing the importance of responsible dog ownership. This includes keeping dogs on leash and under effective control at all times.

Penalty infringement panel reviews

During the period, the review panel met on 4 April, 24 April, 9 May and 6 June 2019. The following eight penalty infringement appeals were considered during this period:

(a) Failure to comply with terms of development control order – Individual (\$3000).

Council had issued orders for the owner of the premises to cease occupation on the property and to demolish the dwelling and manufactured home. The site did not have a dwelling entitlement.

Council officers had also extended the time period to over one year for compliance to enable the owners to find alternative accommodation. The owners failed to comply with the order. The following additional information was provided:

- The structures were located on bushfire prone land and structures should be designed and constructed to Bushfire Attack Level Flame Zone (BAL FZ). The structures had no bushfire protection.
- The owners had not provided Council with confirmation that working smoke alarms were installed within either the dwelling or the manufactured home.
- A non-compliant onsite effluent disposal system. Effluent was flowing directly into an onsite trench. There was no formal section 68 approval nor an operational approval for the onsite effluent system.
- The owners were actively burning all the household waste as there is no weekly rubbish removal for the property.

The panel considered the matter on 4 April 2019 and agreed the penalty should stand. Council officers are seeking to have the structures removed and the land remediated.

(b) Development without development consent – Class 1a or 10 building – individual (four submissions each for \$1500).

There are four (4) owners of a property and each admitted to installing and altering four shipping containers to make them habitable and authorising the construction of timber decks to each shipping container. Each of the four owners has appealed against the penalties issued.

The panel considered that each owner could have been subject to nine (9) offences totalling \$19,800. Only one penalty notice of \$1500 was issued to each of the four owners.

The panel considered the matter on 24 April 2019 and agreed that each of the four penalty notices should stand. Further, it was considered that Council's Compliance Team should pursue demolition orders for the unauthorised works.

(c) Fail to comply with terms of development control order – individual (\$3000).

Compliance Officers became aware of the unauthorised works at a heritage significant property in Berry. The investigation identified the owners were aware of the need to obtain development approval and they indicated their needs to continue to complete the works. Penalty notices were issued for the initial unauthorised works and Council issued a development control order directing each owner to cease work.

The owners proceeded to complete the works and further penalty notices were issued. One of the two owners appealed against this subsequent penalty notice.

The panel considered the matter on 24 April 2019 and agreed that both owners were aware of the requirements to stop and they indicated they would continue. This was a deliberate act and the panel resolved that the penalty should stand.

(d) Development not in accordance with consent – Class 1a or 10 building – Corporation (\$3000).

This matter related to building waste, sediment controls and boundary encroachment of materials and site fencing onto Councils' reserve. A direction to take clean up action was issued under the Protection of the Environment Operations Act (PoEO) in relation to the waste. The waste included glass, metal framing brackets and masonry rubble. A show cause was sent to the building company identifying the multiple breaches of the development consent. A \$3000 penalty was subsequently issued to the company.

Council staff showed leniency for not issuing an \$8,000 penalty notice for sediment leaving the building site creating a pollution event and also not issue additional \$3,000 penalties for each of four other breaches of the development consent. This could have been a total of \$23,000.

The panel considered the matter on 9 May 2019 and agreed the penalty should stand.

(e) Development without development consent – any other case – individual (\$3000).

This matter related to extensive excavation and clearing of native vegetation on land adjoining the site owned by the perpetrator. The works were completed to construct bike tracks for his children. The owner of the adjoining land was unaware of this clearing event and they did not give permission for this to occur.

A significant number of trees were removed as part of these unauthorised works. Council officers issued only one penalty for the offences committed and have issued orders on the owner of the land to have it regenerated. The owner does not want the perpetrator back on their site. These works will take a number of years to complete.

The panel considered the matter on 6 June 2019 and agreed the penalty should stand.

Local or Land and Environment Court matters

(a) Jerberra Estate – Failure to comply with demolition.

An order was issued by Council to the owner of a premises directing them to demolish a building. The owner failed to complete the works and a \$1500 penalty notice was issued.

The owner elected to have the matter dealt with by the Local Court. The matter was heard in the Local Court on 15 April 2019. The owner was found guilty of the offence and fined \$1000 and ordered to pay Council's professional costs of \$750.

(b) Jerberra Estate – unauthorised works.

Unauthorised works were undertaken, and the owner had failed to comply. This matter was taken to the Land and Environment Court in 2014 where the Court issued orders for

the works to be completed. This is contempt of Court proceedings against the owner who has failed to comply with the Courts order to clean up the premises.

The matter was heard on 27 May 2019. The landowner attended Court on this occasion and entered a guilty plea to the contempt. Council indicated its intention to enter the land and execute the orders. The owner was allowed a further 4 weeks to remove any personal items.

On 28 June 2019 Council entered the land to conduct a safety assessment prior to executing the terms of the Court Order.

The matter was heard on 1 July 2019 where it was adjourned to 19 September 2019 to allow Council to execute the terms of the Court Order. Quotations are being sought for the works to be undertaken.

#### Other matters

##### (a) Shoalhaven Animal Shelter celebrates its first birthday

The Shoalhaven Animal Shelter celebrated its first birthday as a Council managed facility. The shelter has found new forever homes for 598 animals including dogs, cats, roosters, sheep, a goat, a horse and a bird.

The Shelter operations continue to be a good news story since Council took over its management.

## List of penalties issued from 1 April 2019 to 30 June 2019 via offence code

Team	Offence Code	Number	Amount	Total Amount
Compliance	Development not accord consent - any other case - Individual	2	3000	6000
Compliance	Development without development consent - any other case - Individual	2	3000	6000
Compliance	Development without development consent - class 1a or 10 building - Corporation	5	3000	15000
Compliance	Development without development consent - class 1a or 10 building - Individual	7	1500	10500
Compliance	Expose article in/on/over road/let article be exposed at road without approval	2	330	660
Compliance	Fail to comply with prevention notice - class 1 officer - Corporation	1	8000	8000
Compliance	Fail to comply with terms of development control order - Individual	5	3000	15000
Compliance	Fail to ensure waste stored in environmentally safe manner - Individual	1	750	750
Compliance	Pollute waters - class 1 officer - Corporation	4	8000	32000
Ranger Animal	Cause or permit animal to be unattended in public place	1	330	330
Ranger Animal	Companion animal (other) not registered as prescribed - first offence	3	330	990
Ranger Animal	Fail to comply with nuisance dog order - 1st offence	1	275	275
Ranger Animal	Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	11	220	2420
Ranger Animal	Former owner not notify change of ownership	1	180	180
Ranger Animal	In charge of dog in prohibited public place	2	330	660
Ranger Animal	In charge of dog not under control in public place	9	330	2970
Ranger Animal	In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	3	1320	3960
Ranger Animal	Not comply notice re registration (other) - first offence	494	305	150670
Ranger Animal	Not comply notice re registration (other) - prior offence	104	305	31720
Ranger Animal	Not comply with requirement under chapter 7 - Individual	1	750	750
Ranger Animal	Not notify change in registration or identification information - not dangerous/restricted dog	3	180	540
Ranger Animal	Owner not comply with restricted dog control requirements	1	1760	1760
Ranger Animal	Owner of dog in prohibited public place	7	330	2310
Ranger Animal	Owner of dog not under control in public place	11	330	3630
Ranger Animal	Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	5	1320	6600
Ranger Animal	Owner of menacing dog not under control in public place	1	1760	1760

Ranger Animal	Sell/advertise for sale restricted/proposed restricted dog	1	1760	1760
Ranger Environmental	Abandon a motor vehicle in a public place	4	550	2200
Ranger Environmental	Abandon an article (not motor vehicle or shared device) in a public place	1	220	220
Ranger Environmental	Carry out development forbidden on land - any other case - Individual	1	3000	3000
Ranger Environmental	Carry out specified development prohibited on land - any other case - Individual	1	3000	3000
Ranger Environmental	Change of building use no occupation certificate - other - Individual	1	3000	3000
Ranger Environmental	Deposit litter from vehicle no exclusions - Individual	4	250	1000
Ranger Environmental	Dispose of waste into council sewer without approval - item 4 of Part C	2	330	660
Ranger Environmental	Fail to comply with terms of notice erected by council	9	110	990
Ranger Environmental	Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	15	110	1650
Ranger Environmental	Owner transport etc waste to unlawful facility - class 1 officer - Individual	1	2000	2000
Ranger Environmental	Transport etc asbestos waste to unlawful facility - class 1 officer - Individual	1	4000	4000
Ranger Parking	Disobey motor bike parking sign	14	112	1568
Ranger Parking	Disobey no parking sign	11	112	1232
Ranger Parking	Disobey no parking sign (in school zone)	3	187	561
Ranger Parking	Disobey no stopping sign	90	263	23670
Ranger Parking	Disobey no stopping sign (in school zone)	23	337	7751
Ranger Parking	Double park	1	263	263
Ranger Parking	Not angle park as on parking control sign or road marking	5	112	560
Ranger Parking	Not parallel park in direction of travel	30	263	7890
Ranger Parking	Not parallel park in direction of travel (road related area)	1	112	112
Ranger Parking	Not parallel park near left	1	112	112
Ranger Parking	Not park wholly within parking bay	33	112	3696
Ranger Parking	Not position rear of vehicle correctly - 45 degree angle parking	109	112	12208
Ranger Parking	Not stand vehicle in marked parking space	34	112	3808
Ranger Parking	Obstruct access to ramp/path/passageway	1	263	263
Ranger Parking	Park continuously for longer than indicated	47	112	5264
Ranger Parking	Park vehicle for longer than maximum period allowed	427	112	47824
Ranger Parking	Stop at side of road with continuous yellow edge line	56	263	14728

Ranger Parking	Stop heavy/long vehicle longer than 1 hour	1	112	112
Ranger Parking	Stop in bus zone (clearway or transit/bus lane)	3	263	789
Ranger Parking	Stop in bus zone (in school zone)	30	337	10110
Ranger Parking	Stop in bus zone (not clearway or transit/bus lane)	7	263	1841
Ranger Parking	Stop in disabled parking area without current permit displayed	70	561	39270
Ranger Parking	Stop in loading zone longer than 30 minutes	3	187	561
Ranger Parking	Stop in taxi zone	12	187	2244
Ranger Parking	Stop on path/strip in built-up area	45	263	11835
Ranger Parking	Stop on/across driveway etc to/from land (in school zone)	2	337	674
Ranger Parking	Stop on/across driveway/other access to/from land	46	263	12098
Ranger Parking	Stop on/near children's crossing (in school zone)	2	448	896
Ranger Parking	Stop within 10 metres of an intersection (no traffic lights)	4	337	1348
SMF Team	Operate sewage management system without approval	1	330	330
	<b>TOTAL</b>	<b>1840</b>		<b>\$542,533</b>



**Summary via Team**

<b>Team</b>	<b>Number Issued</b>	<b>Total Amount</b>	<b>% of total amount</b>
Compliance	29	\$93,910	17.3%
Compliance – Fire Safety	0	\$0	0%
Compliance – Pools	0	\$0	0%
Environmental Health	0	\$0	0%
Rangers – Animal issues	659	\$213,285	39.3%
Rangers – Environmental issues	40	\$21,720	4.0%
Parking	1111	\$213,288	39.3%
+Sewer Management Facility	1	\$330	0.1%
<b>Total</b>	<b>0</b>	<b>\$542,533</b>	<b>100%</b>

**Cautions issued**

Category	Offence Code	Number
Compliance	Designated etc development not accord consent - by council etc - not 1a/10 building - Corporation	1
Compliance	Development not accord consent - any other case - Corporation	1
Compliance	Development not accord consent - any other case - Individual	2
Compliance	Development not accord consent - class 1a or 10 building - Corporation	12
Compliance	Development without development consent - any other case - Corporation	1
Compliance	Development without development consent - any other case - Individual	3
Compliance	Development without development consent - class 1a or 10 building - Corporation	3
Compliance	Development without development consent - class 1a or 10 building - Individual	8
Compliance	Do plumbing and drainage work when not authorised	1
Compliance	Fail to comply with clean-up notice - class 1 officer - Individual	1
Compliance	Fail to pay fee within time provided under section - Individual	1
Compliance	Not give fire safety statement - 1 week overdue - Corporation	1
Compliance	Pollute waters - class 1 officer - Corporation	1
Compliance	Unlawfully use etc place as waste facility - class 1 officer - Corporation	1
Ranger Animal	Cause or permit animal to be unattended in public place	0
Ranger Animal	Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	4
Ranger Animal	In charge of dog in prohibited public place	1
Ranger Animal	In charge of dog not under control in public place	5
Ranger Animal	In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	1
Ranger Animal	Owner of dog in prohibited public place	2
Ranger Animal	Owner of dog not under control in public place	3
Ranger Animal	Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	3
Ranger Environmental	Deposit litter from vehicle no exclusions - Individual	5
Ranger Environmental	Fail to comply with terms of notice erected by council	1
Ranger Environmental	Owner transport etc waste to unlawful facility - class 1 officer - Individual	2
Ranger Environmental	Pollute land - class 1 officer - Individual	1

Ranger Environmental	Transport asbestos waste vehicle not covered/leak-proof - class 1 officer - Individual	1
Ranger Environmental	Transport bonded asbestos material not securely packaged - class 1 officer - Individual	1
Ranger Environmental	Transport etc waste to unlawful waste facility - class 1 officer - Individual	1
Ranger Parking	Disobey motor bike parking sign	5
Ranger Parking	Disobey no parking sign	3
Ranger Parking	Disobey no stopping sign	9
Ranger Parking	Disobey no stopping sign (in school zone)	2
Ranger Parking	Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	1
Ranger Parking	Not angle park as on parking control sign or road marking	1
Ranger Parking	Not parallel park in direction of travel	5
Ranger Parking	Not parallel park in direction of travel (road related area)	1
Ranger Parking	Not park wholly within parking bay	12
Ranger Parking	Not position rear of vehicle correctly - 45 degree angle parking	17
Ranger Parking	Not stand vehicle in marked parking space	11
Ranger Parking	Park continuously for longer than indicated	7
Ranger Parking	Park vehicle for longer than maximum period allowed	79
Ranger Parking	Stop at side of road with continuous yellow edge line	4
Ranger Parking	Stop in bus zone (not clearway or transit/bus lane)	1
Ranger Parking	Stop in disabled parking area without current permit displayed	43
Ranger Parking	Stop in taxi zone	2
Ranger Parking	Stop on path/strip in built-up area	69
Ranger Parking	Stop on path/strip in built-up area (in school zone)	2
Ranger Parking	Stop on/across driveway/other access to/from land	2
	<b>TOTAL</b>	<b>344</b>

## DE19.73 Bomaderry Grey-headed Flying Fox Community Education Grant from Local Government NSW

**HPERM Ref:** D19/214637

**Group:** Planning Environment & Development Group  
**Section:** Environmental Services

**Attachments:** 1. Legal Document Grant [↓](#)

### Purpose / Summary

To advise Council that the NSW Office of Environment and Heritage (OEH) and Local Government NSW, have provided Shoalhaven City Council with a \$10,000 grant to be used for a community education project based around inappropriate netting and its use in gardens and commercial activities and its risk to the Grey-headed Flying-fox:

### Recommendation (Item to be determined under delegated authority)

That Council

1. Receive the report for information regarding the \$10,000 grant (excl. GST) received from NSW Office of Environment and Heritage and Local Government NSW for the Bomaderry Grey-headed Flying-fox Community Education project; and
2. Write to the NSW Office of Environment and Heritage and Local Government NSW thanking them for the grant and their support of the project.

### Options

1. As recommended.

Implications: The grant from the NSW Office of Environment (OEH) and Heritage and Local Government NSW (LGNSW ) will allow Council's Environmental Services officers to contact and educate retail suppliers/residents of inappropriate netting types and about safer alternatives and therefore reduce the number of Grey-headed Flying-foxes (GHFF) maimed or killed following entanglement in inappropriate netting, as well as reduce the incidents of stress and injury to residents and commercial operators who discover GHFF tangled in inappropriate 'garden' netting. The education project should also reduce the need for local wildlife carers to rescue entangled GHFF and help protect the numbers of these vital forest pollinators.

2. Council returns the grant of \$10,000.

Implications: Without the grant Council staff will not to be able to develop an education portfolio to engage with local business owners and local residents that informs them about Grey-headed Flying-fox friendly tree netting. The use of inappropriate netting will continue to adversely impact this threatened species, putting GHFF, residents, wildlife rescuers and commercial growers at risk.

Council has previously received a grant to the value of \$55,000 (with council contributing matching funds) to fund emergency actions to alleviate the impacts to residents living within close proximity to flying foxes at Bomaderry.

3. Adopt an alternative recommendation.

Implications: Unknown.

### Background

Grey-headed Flying-foxes (GHFF) are a threatened species listed as vulnerable to extinction under both the *NSW Biodiversity Conservation Act 2016* (BC Act) and *Commonwealth Environment Protection & Biodiversity Conservation Act 1999* (EPBC Act). Actions related to the species, such as removal of roosting trees, requires a licence from the NSW Office of Environment & Heritage (OEH) and potentially approval from the Federal Environment Minister.

GHFF are increasingly becoming displaced from their natural habitat because of land clearing and extreme weather events and are having to resort to commercial orchards and flowering and fruiting trees in residential backyards as a food source. Tree netting is a popular way to protect fruit from the Grey-headed Flying-fox and other native animals. Certain types of netting easily entangle these native animals in mesh sizes greater than 1cm square, where many perish or require long term care prior to release.

The South Coast Wildlife Rescue GHFF volunteers have identified GHFF entanglement in garden netting as a significant problem in the Shoalhaven that can be avoided through education and the use of appropriate netting types and installation.

It is a condition of the grant that Council acknowledge the NSW Government and LG NSW assistance in all publications, reports, signage and promotional material relating to the project.

### Community Engagement

South Coast Wildlife Rescue volunteers and the NSW Office of Environment & Heritage have been working with and assisting Environmental Services officers to work with the community to manage GHFF issues. The grant will allow a Council Environmental Services Officer to;

- Identify and contact local businesses who currently sell tree/fruit netting;
- Create and deliver information/education material to local businesses about Grey-headed Flying-fox friendly tree/fruit netting, with a poster to be displayed on product shelves etc;
- Identify hot spot areas of the Shoalhaven where large aperture fruit netting is currently or potentially in use; and
- Create and distribute flyers to raise awareness regarding flying fox friendly tree netting to be letter dropped in residential hot spot areas and for distribution by Grey-headed Flying-fox rescuers.

### Financial Implications

The grant will cover the financial cost of Council staff time to achieve the grant outcomes.

### Risk Implications

OEH recommend the use of wildlife-friendly netting that is well secured and has a gap size of less than five millimetres. In 2017, there were 1,076 flying fox rescues over a two-month period from backyards across NSW, with most rescues associated with netting incidents. The greatest concern to Shoalhaven residents is the potential health risks associated with flying

foxes such as Lyssavirus. Only trained and inoculated wildlife carers should come in contact with animals that are caught in netting. Without the grant, Council will not be able to develop a community education program about these risks and it is likely that there will be further losses of GHFF.





## GRANT AGREEMENT

### Flying-Fox Grants Program - 2019

**GRANT NUMBER:** 783  
**COUNCIL:** Shoalhaven City Council  
**CONTACT:** Mr Michael Smith  
**PROJECT:** Bomaderry Grey-headed Flying-Fox Community Education

This Agreement consists of 2 parts:

- Part 1: Agreement
- Part 2: Schedules

#### **Part 1: Agreement**

Local Government NSW ('LGNSW') agrees to provide **Shoalhaven City Council** ("you") an amount of **\$10,000** ("the grant") subject to the following conditions.

#### **CONDITIONS**

##### Acceptance of Grant

- 1) You must accept the conditions of the grant by signing this Agreement and delivering it to LGNSW within 30 working days of receiving this document. The following supporting documentation must also be completed and returned along with the signed Grant Agreement:
  - Tax Invoice – made out to the Local Government New South Wales for the amount of the first instalment (see **Schedule A**).

##### General

- 2) You must carry out the project and spend the grant in accordance with your application and in accordance with these conditions.
- 3) You must complete the project according to the timetable set out in **Schedule A** or such other date as is approved in writing by LGNSW.
- 4) You must complete your final report by 13 December 2019 or such other date as is approved in writing by LGNSW.
- 5) You must provide any information in relation to the project within 14 days (unless otherwise specified) of it being requested in writing by LGNSW.
- 6) Subject to the terms and conditions of this Agreement, LGNSW will make grant payments in accordance with the amounts and timetable set out in **Schedule A**.
- 7) The amounts set out in **Schedule A** are GST exclusive. A Tax Invoice for each amount of the grant funds plus GST must be submitted to LGNSW.

- 8) LGNSW may amend the Schedules in writing during the term of the grant. LGNSW will send you a copy of the revised Schedules.
- 9) You must ensure that all procurement and employment is undertaken in line with Council's internal policies and guidelines.
- 10) It is your responsibility to obtain all necessary approvals and licences to undertake the work in accordance with your application.
- 11) You will have ownership of any works and assets constructed as a result of this agreement and maintain any such works or assets in good order and condition at your own expense.

#### Reporting

- 12) You must provide LGNSW with reports in accordance with the timetable in **Schedule A**. A reporting template will be available for councils to complete. The template will enable reporting on measures provided in **Schedule B** and the project planning schedule of your application.

Changes to your project planning schedule should be negotiated within 30 working days of receiving this Agreement.

- 13) The final report must include a financial report certified by the Chief Financial Officer or certifying accountant.

#### Intellectual Property

- 14) All copyright in the reports, documents and any other materials produced with these funds you grant LGNSW and NSW Office of Environment and Heritage (OEH) a permanent, irrevocable royalty-free, non-exclusive licence to make these reports, documents and any other materials publicly available and to otherwise communicate, reproduce, adapt and publicise them on a non-profit basis. This includes the use and reproduction of photographs for LGNSW and OEH purposes.
- 15) Intellectual Property, which includes all statutory, legal, equitable and other proprietary rights and interests, including without limit, in copyright, patents, registered and unregistered trademarks, registered designs, circuit layouts and trade secrets, will not be infringed by this agreement. All intellectual property created as part of the project will be owned by you, and you shall grant OEH and LGNSW a royalty free licence to use any such intellectual property for their purposes, to the extent that such use is not for commercialisation.
- 16) The final report, excluding the financial report component, may be made publicly available by LGNSW or OEH once the project is completed.

#### Variation, Transfer and Revocation of Grant

- 17) You must seek and obtain the prior written approval of LGNSW before varying any of the following:
  - a) The nature and purpose of the project;
  - b) The way in which the project is to be carried out and completed, as outlined in your application;
  - c) The approved project budget. LGNSW's approval is **not required** to make variations to the project budget of up to 10% of the total grant amount, but there will be no increases granted in the total amount awarded by LGNSW. **Note** that Administration costs can still not exceed 10% of the total direct project costs; and
  - d) The conditions of grant.

Note: LGNSW may impose additional conditions on this grant when approving a variation.

18) The grant may be revoked by notice given to you in writing by LGNSW if you:

- a) At any time give LGNSW misleading or false information;
- b) Are, in the opinion of LGNSW, not carrying out the project with competence and diligence or in conformity with the timetable and work plan specified in your application; and
- c) Do not comply with the conditions of the grant.

19) If the grant is revoked:

- a) You must not spend any further grant monies nor commit any such monies for expenditure; and
- b) You must, within 7 working days, repay to LGNSW all grant monies which have not been spent or committed for expenditure at the time you receive the written notification of the revocation and provide a financial report to LGNSW on the proportion of the grant already spent.

#### Publications, Promotional Material and Events

20) You shall not issue or cause the publication of any press release or public announcement in respect of this Agreement until such time as an official announcement from the NSW Government or until LGNSW advises in writing that you may announce the grant.

21) You must acknowledge the NSW Government and LGNSW assistance on all publications, reports, websites, signage and promotional material relating to the project with the statement, prominently displayed:

*'This project has been assisted by the New South Wales Government and supported by Local Government NSW.'*

22) You must also prominently display the logos of LGNSW and NSW Government on all material referred to in condition 21.

#### Indemnities

23) Except for the negligent actions of LGNSW causing death or physical injury, Council will indemnify and keep indemnified LGNSW for any loss, damage, injury or costs whatsoever rising out of this Agreement.

24) You must effect and maintain public liability insurance in relation to all premises and sites on which the project is carried out for all works and activities undertaken for this project. The insurance shall be for an amount of at least \$20,000,000 and provide evidence of the insurance at the request of LGNSW.

#### Grievance Mechanisms

25) In the event of a dispute relating to this Agreement or the Project, the parties agree that they will attempt to clearly define the nature of the dispute, and the parties will use their best endeavours in good faith to settle the dispute by negotiation with each other.

26) If within a reasonable period of time (not more than 21 days after the dispute has arisen) the parties have not been able to resolve the dispute it shall be referred to the Australian Commercial Disputes Centre for mediation or any other agreed venue, which conducts mediation. The costs of mediation are to be shared equally between the parties.

Execution

SIGNED for and on behalf of **Local Government New South Wales** by:

  
\_\_\_\_\_

**Kylie Yates**  
**Director- Advocacy**  
Local Government New South Wales  
// June 2019

**Shoalhaven City Council** accepts the conditions in this Grant Agreement.

\_\_\_\_\_  
(sign)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(position in council)

\_\_\_\_\_  
(date)

Note:

1. This Agreement should be signed by the General Manager.
2. All invoices requesting grant payments should be made out to the Local Government New South Wales. Invoices for Payment No. 1 (only) as per Schedule A should be submitted with the signed copy of this Agreement.
3. All correspondence should be addressed to:  
Strategy Manager – Flying-fox Grant Program  
Local Government NSW  
GPO Box 7003  
SYDNEY NSW 2001

## Part 2: Schedules

### Schedule A – Payment and Reporting Schedule

This Schedule forms part of the Agreement between Council and LGNSW.

Payment and reporting milestones	Date	Evidence of milestone achieved
First & final payment – \$10,000.00 ex. GST)	June 2019	<ul style="list-style-type: none"> <li>On receipt of signed funding agreement</li> </ul>
Project completion	13 December 2019	<ul style="list-style-type: none"> <li>On satisfactory completion of final report and statement of expenditure</li> </ul>
Final project report	20 December 2019	<ul style="list-style-type: none"> <li>On satisfactory completion of final report and statement of expenditure</li> </ul>

### Schedule B – Project Measures

You are required to submit Schedule B – Project Measures with your final report. It is a standardised list of measures and units that provide data on project outputs that allows you to demonstrate outputs delivered as part of your project. With this information LGNSW can build a broad picture of the achievements across the Flying-Fox Grant Program.

Measure	Explanation
Project Area (m <sup>2</sup> )	Total project area inclusive of the Flying-fox camp boundary such as total area of vegetation parcel and/or residential area affected
Area Treated (m <sup>2</sup> )	Total area where mitigation activities such as pruning, tree removal or other actions identified in a camp management plan have occurred
Area Rehabilitated (m <sup>2</sup> )	Total area where rehabilitation activities such as soil stabilisation, weeding and revegetation has occurred
Consultation and Awareness-Raising Activities	Number of activities held immediately prior, during and/or after the project (including workshops, community events, advertisement, mail drop, signage and/or information on council web page)
Individuals Engaged	Total number of individuals being members of the community or other interest group engaged through survey, correspondence, workshops, exhibition or other means immediately prior and during the project
Contractors or Consultants Engaged	Number of entities engaged for field based work or studies
Aboriginal Knowledge	Inclusion of Aboriginal knowledge in project delivery (yes/no)
Fatalities or Injuries to Flying-foxes during works	Number of Flying-fox fatalities or injury coinciding with and immediately following works attributable to the works undertaken

## DE19.74 Grant Application: Coastal & Estuary Grants Program 2018-19

**HPERM Ref:** D19/230517

**Group:** Planning Environment & Development Group  
**Section:** Environmental Services

**Attachments:** 1. Maps & Spreadsheet of sites included in the OEH Coast & Estuary Grant for Shoalhaven Wetlands & EECs 2019-2022 [↓](#)

### Purpose / Summary

To report the successful grant offer of \$105,000 from the NSW Department of Planning, Industry and Environment (DPIE) Coastal & Estuary Grants Program for Protecting and Enhancing Shoalhaven's Coastal Wetlands and Bushland Reserves project.

### Recommendation (Item to be determined under delegated authority)

That Council

1. Accept the grant offer of \$105,000 (ex GST) from NSW Department of Planning, Industry and Environment (DPIE) for Protecting and Enhancing the Shoalhaven's Coastal Wetlands and Bushland Reserves project, over 3 years.
2. Provide matching funding, from the existing operational budget (job #15817).
3. Write a letter of thanks to the Member for the South Coast and NSW Minister for Local Government, the Hon. Shelley Hancock, for the grant.

### Options

1. As recommended.

Implications: Council will be able to value add to its current resources for the restoration and management of key coastal wetlands that are listed under the Coastal Management SEPP 2018, and be able to value add to the work of 11 of Council's volunteer Bushcare Groups

2. Council not accept the grant offer from NSW DPIE.

Implications: Council will be unable, based on current resources, to restore key SEPP wetlands across the Shoalhaven and effectively provide a boost to the 11 volunteer Bushcare Groups

### Background

Council applied for funds under the Coastal & Estuary Grants Program in December 2018 to implement the following priority actions from the Shoalhaven Coastal Zone Management Plan.



Action No.	CZMP Actions
C4.3	Maintain and enhance ecological communities in coastal reserves (including dunes), considering appropriate ecological strategies for urban (foreshore recreation reserve) and non-urban areas
C4.5	Support bush regeneration programs in coastal reserves

The Protecting and Enhancing Shoalhaven's Coastal Wetlands and Bushland Reserves project will enable Council to achieve these actions over the next three years, whilst the Council transitions to a Coastal Management Program. Key outcomes of the project are:

- a. Improvement in the condition and resilience of 175 hectares of coastal vegetation classified as Endangered Ecological Communities and Coastal
- b. To support and improve the capacity of 11 Bushcare Groups to protect, restore and rehabilitate coastal Endangered Ecological Communities
- c. To raise community awareness of the importance of coastal vegetation in protecting foreshore and estuarine landscapes.

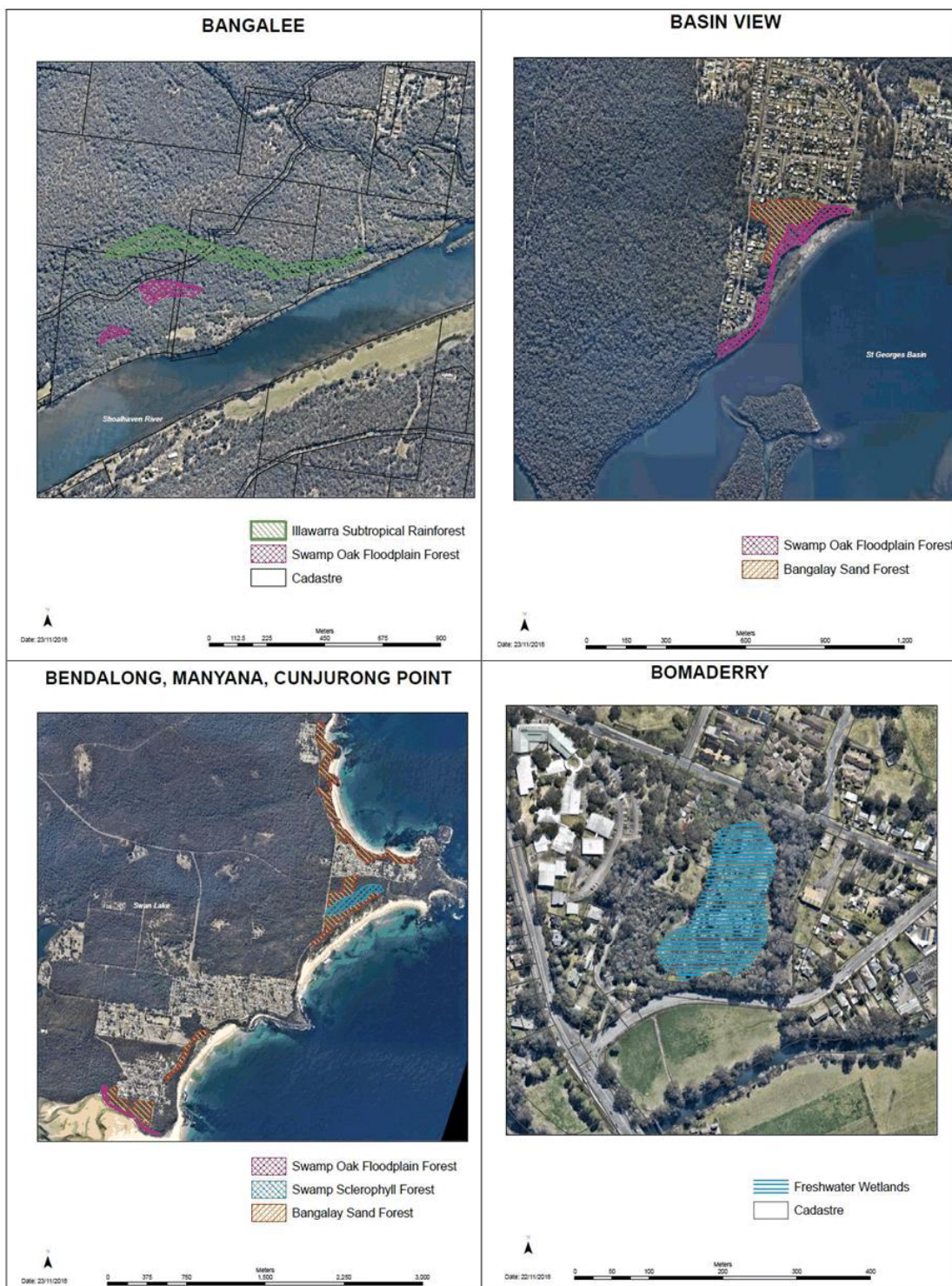
### Financial Implications

Under the grant agreement, Council has undertaken to provide matching funds of \$105,000 over three years using portions of existing operating budgets. In-kind, non-funded costs are estimated at \$38,500 over the 3-year period.

### Risk Implications

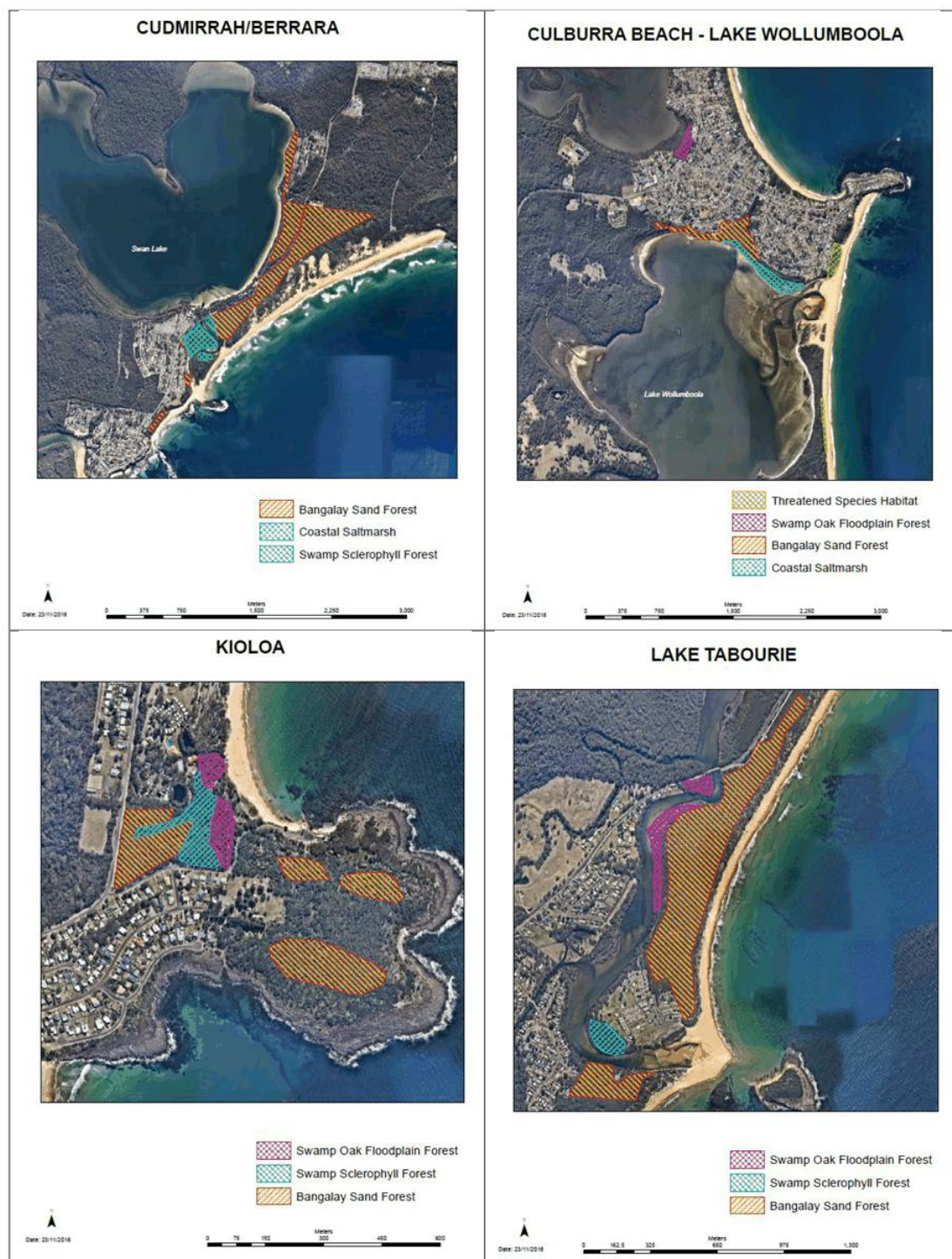
The above actions C4.3 and C4.5 in the Council's adopted and certified CZMP cannot be achieved without additional financial resources. Without the assistance from the DPIE grant, Council does not have the resources and capacity to achieve these actions.

Coastal Wetlands & EECs – OEH Coast & Estuary Program 2019-2022





Coastal Wetlands & EECs – OEH Coast & Estuary Program 2019-2022



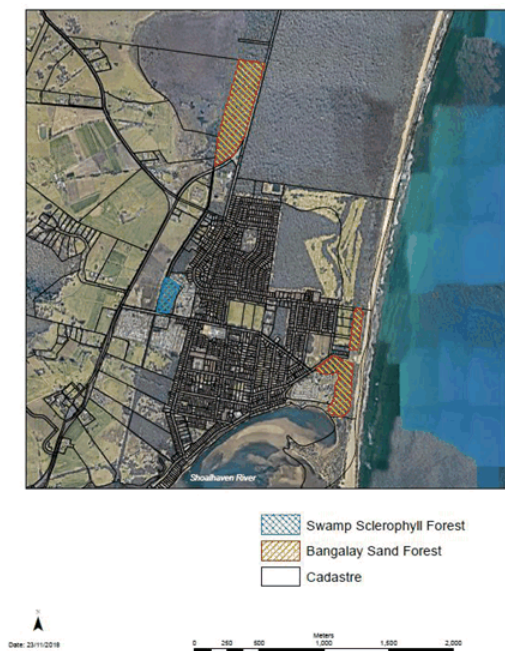
Coastal Wetlands & EECs – OEH Coast & Estuary Program 2019-2022





Coastal Wetlands & EECs – OEH Coast & Estuary Program 2019-2022

**SHOALHAVEN HEADS**



Coastal Wetlands & EECs – OEH Coast & Estuary Program 2019-2022

Locality	Endangered Ecological Community Type	ha	Condition	Comments
<b>Shoalhaven Heads</b>	Bangalay Sand Forest	18	fair, good	good in southern end
	Swamp Scerophyll Forest	2	poor	
<b>Orient Point</b>	Coastal Saltmarsh	3.2	fair	
<b>Bangalee</b>	Illawarra Subtropical Rainforest	5.5	fair, good	good in west end
	Swamp Oak Floodplain Forest	1.2	good	
<b>Bomaderry</b>	Freshwater Wetland	1.8	poor	surrounding veg poor
<b>Basin View</b>	Bangalay Sand Forest	2.5	fair	
	Swamp Oak Floodplain Forest	2.8	fair	
<b>Sanctuary Point</b>	Bangalay Sand Forest		fair	
	Swamp Oak Floodplain Forest		poor	
	Coastal Saltmarsh		fair	
<b>Culburra Beach &amp; Lake Wollumboola</b>	Threatened Species Habitat - Sand Spurge	4.4	very poor	
	Bangalay Sand Forest	6	poor	
	Swamp Oak Floodplain Forest	2.3	very poor	
	Coastal Saltmarsh	5.3	fair	
<b>Cudmirrah-Berrara</b>	Bangalay Sand Forest	22	fair, very poor	VP at north end
	Swamp Sclerophyll Forest	0.6	poor	
	Coastal Saltmarsh	5.5	good	
<b>Bendalong, Manyana, Cunjurong Point</b>	Bangalay Sand Forest	25	fair, poor, very poor	
	Swamp Oak Floodplain Forest	1.5	fair	
	Swamp Sclerophyll Forest	5	fair	
<b>Narrawallee</b>	Bangalay Sand Forest	8.5	good, poor	poor at southern end
<b>Mollymook</b>	Littoral Rainforest	2	fair, poor	poor at west, fair at east
	Bangalay Sand Forest	2.7	fair	
<b>Lake Tabourie</b>	Bangalay Sand Forest	31	fair	
	Swamp Oak Floodplain Forest	2.7	poor	
	Swamp Sclerophyll Forest	1.4	unknown	
<b>Kioloa</b>	Bangalay Sand Forest	6.6	fair, poor	poor in north-west
	Swamp Oak Floodplain Forest	1.8	poor	
	Swamp Sclerophyll Forest	1.5	poor	



## **DE19.75 Lake Conjola Entrance Opening and other Matters Relating to Mayoral Minute MIN19.143**

**HPERM Ref:** D19/246757

**Group:** Planning Environment & Development Group  
**Section:** Environmental Services

**Attachments:** 1. Executed Short Term Licence - Opening of Lake Conjola [↓](#)  
2. Response - Minister Lake Conjola ICOLL classification [↓](#)  
3. Response from Minister - Lake Conjola Fish Kills/Seagrass and Lead Contamination [↓](#)

### **Purpose / Summary**

To provide Council with an update on progress in response to the Mayoral Minute of 26 March 2019 (MIN19.143)

### **Recommendation (Item to be determined under delegated authority)**

That Council:

1. Write to The Honourable Melinda Pavey MP, Minister for Water, Property and Housing, to thank her for her assistance in the granting of a licence to carry out “Access and Environmental Protection Work” (Conjola Lake entrance opening works).
2. Write to The Honourable Shelley Hancock MP, Minister for Local Government, to thank her for her assistance and support in making representations for the Licence application for Lake Conjola entrance opening works.
3. Receive a briefing regarding the formulation of a “dry notch” management policy for Lake Conjola.

### **Options**

1. As per recommendation

Implications: Nil

2. Alternative recommendation

Implications: This would depend on the recommendation

### **Background**

On 26 March 2019 Council passed the following Mayoral Minute relating to the management of Lake Conjola entrance (MIN19.143):

*That Council:*

1. *Make further representations to the relevant agencies for approval to open the entrance of Lake Conjola on the following grounds: -*
  - a. *To minimise risk to public safety associated with excessive inundation of foreshores and infrastructure as a result of low-level flooding that has been affecting residents and foreshore areas for more than 3 months.*

DE19.75

- DE19.75

10. *Provide monthly update reports to Councillors on all issues concerning Lake Conjola.*
11. *Formally resolve as policy to continue to support and advocate for residents and community members at Lake Conjola on all issues pertaining to opening the entrance, flooding and erosion at Lake Conjola.*

The following is a summary of the progress to date relating to the nominated items from the above resolution.

## **1. Lake Conjola Entrance – Opening/Pilot Channel**

Part 2 of the Mayoral Minute stated the following.

*“Make further representations to the relevant agencies for approval to open the entrance of Lake Conjola”.*

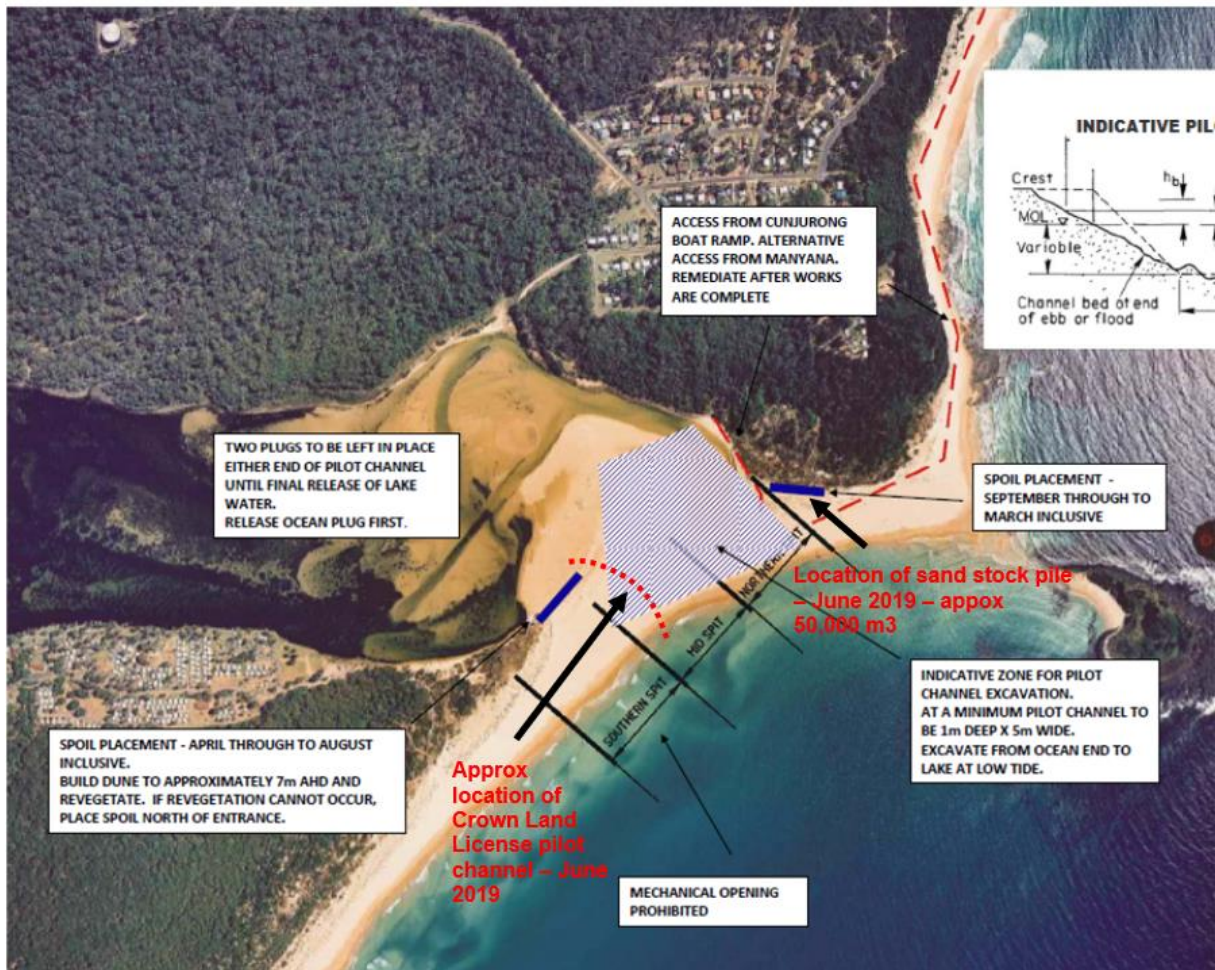
Council prepared and submitted a further Short-Term Licence application to NSW Department of Industry (DoI) – Crown Lands for the excavation of a pilot channel on 11 April 2019. A Review of Environmental Factors (REF) was prepared as an addendum to the Interim Lake Conjola Entrance Management Policy REF 2013, to accompany the Crown Land Licence.

On 6 June 2019 Council prepared a Ministerial brief for the NSW Minister for Water, Melinda Pavey MP, providing further information to support the short-term licence application.

On 7 June 2019 the NSW DoI – Crown Lands wrote to Council offering a licence to occupy the land, to excavate a pilot channel, with a set of conditions that Council must adhere to (Attachment 1). Council accepted the offer along with the licence conditions on 11 June 2019.

Council officers, Councillors and representatives from the Lake Conjola Community Association met to determine the location of the pilot channel and procedure that would be followed for the opening. It was agreed at this meeting that the pilot channel would be located on the central-southern side of the main entrance spit, as shown on the operating procedure of the Interim Lake Entrance Management Policy (see figure 1).

Works on the channel commenced on 16 June 2019 and concluded on 12 July 2019. Over 1500 truck loads (22,600cu.m) of sand were excavated and placed at an approved location to the north of the lake. The initial channel prior to plug removal was excavated to 10m wide and over 1m deep (0m AHD). The plugs were removed opening the lake to sea on 19 June 2019. Works were completed using Caterpillar 320CL excavator and two Volvo A25 dump trucks. The total cost of works was approx. \$140,000.



**Figure 1: Operational map showing location of pilot channel and sand spoil – REF Crown Lands Licence, June 2019.**

The excavated pilot channel will continue to be monitored on a weekly basis by staff, to assess changes in channel composition and dynamics until such a time as it ceases to function as a channel, or a rain event occurs that naturally facilitates a further lake opening.

The sand that was dredged from the entrance and lake was stockpiled on the northern side of the lake entrance, up against the base of Cunjurong Point, as per the operational procedures of the Interim Lake Entrance Management Policy.

Following completion of works, Council received an email request from Crown Lands, 15 July 2019, stating:

*The department is concerned that the current dredging operation at Lake Conjola has expanded beyond the parameters of the existing Crown Lands licence conditions.*

A number of additional questions were also contained in the email which brought the following response from Council's Director Planning, Environment and Development:

*There is nothing to suggest to me that Council's initial Review of Environmental Factors and subsequent addendum, prepared in June, did not address and cover all issues associated with the works recently completed by Council.*

*Whilst I have attended the site on one occasion during works, I have been informed by relevant staff as to the progress of the project, and am aware that required monitoring has taken place during the term of the works.. I am also aware that necessary advices*

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were provided to State Agencies who were welcome to attend the site at any stage during the course of the project.

The works associated with the opening of the Lake were completed on 12 July when it was considered that the objectives and community outcomes, clearly outlined in Council's addendum REF, were achieved. All required monitoring was carried out during the project and it is gratifying to note that there has been no adverse environmental effects and there have been very significant and positive outcomes in regard to the objectives of the Lake Conjola community relating to public safety and health and overarching community values. It is also positively noted that there is still, as of today, a healthy tidal interchange within the lake.

As you can appreciate, working within lines on a map, particularly in a waterway is not a straightforward proposition. Whilst Council has taken measures to define the "red line" within the issued licence, we have also been cognisant of meeting the overarching objectives of the project at hand. Thus, whilst Council did carry out initial survey work to establish various reference points and parameters, no final survey has been carried out to determine the actual extent of completed operations. If you feel that such survey is now necessary, please let me know. Also, if you require any further information in regard to the project, I am happy to meet at any time. If further information is required, I would suggest that the requesting agencies be involved in the meeting in order that we can address all issues.

## **2. Lake Conjola Flood Dry Notch**

Part 3 of the Mayoral Minute states the following:

*"Seek approval from the NSW Government Ministers of Crown Lands, Office Environment and Heritage and Department of Primary Industries (Fisheries) to immediately prepare and maintain a 'dry notch' at the entrance to Lake Conjola to allow 'break out' of the lake should flooding occur. This is to be maintained until a new Coastal Management Plan is approved by the Minister."*

Council staff have significantly advanced a draft Lake Conjola "Flood Dry Notch" proposal report based on the current available scientific data and current studies. The difficulty with such a report is it is not able to guarantee accuracy or completeness to the full extent of the subject matter, given the information gap. Any proposal, without being informed by relevant documentation and extensive study, can be prone to failure as coastal processes are a complex science.

Having regard to the above it is suggested that a briefing be provided to Councillors prior to tabling of the draft document.

## **3. Lake Conjola ICOLL Listing**

Part 4 of the Mayoral Minute stated the following:

*"Write to the Minister for Crown Lands & Office of Environment & Heritage requesting that an investigation be undertaken immediately to establish how and why Lake Conjola was listed as an 'ICOLL' and not a Wave Dominated Barrier Estuary (WDBE)."*

Following this Council wrote to the Minister of Energy and Environment, the Hon. Matt Kean, on 23 April 2019, asking why Lake Conjola was listed as an Intermittently Closed and Open Lake or Lagoon (ICOLL) and not a Wave Dominated Barrier Estuary (WDBE).

A reply from Michael Saxon, Director of South East Branch on behalf of the Minister, was received on 20 June 2019 (Attachment 2). The letter stated that Lake Conjola has a long history of closing for periods of time, dating back to 1909.

The ICOLL classification was used for estuaries across NSW based on a paper by Roy *et al.*, where the terminology of wave dominated barrier estuary is introduced as one of five classes of coastal water bodies for eastern Australia.

The response stated that Lake Conjola has a dual classification of ICOLL and WDBE.

#### 4. Lake Conjola Fish Kills/Seagrass and Lead Contamination

Part 5 of the Mayoral Minute stated the following:

*“Write to Department of Fisheries and request Fisheries to investigate:*

- a. All current, ongoing and future fish and marine life deaths/kills and sea grass kills in Lake Conjola*
- b. The amount of Lead in the Lake from lost lead from over a century of recreational fishing by testing water, fish and marine life species in Lake Conjola and the sands beds of the Lake with the lake closed and not being subject to two tidal interchanges per 24 hours, is this lead building up in the water column and the food chain.”*

Following the resolution, Council wrote to the Minister for Agriculture and Western NSW, the Hon. Adam Marshall MP, regarding marine life, seagrasses and lead contamination in Lake Conjola.

On 20 June 2019, Sarah Fairful, Deputy Director General for DPI Fisheries, responded stating the following in relation to the inquiry (Attachment 3):

- 1. Since 2014, according to the NSW DPI Fish Kill database, there had been three recorded incidents of marine life kills. All of which has been caused by natural events.*
- 2. According to aerial imagery, between 2012 and 2013, there had been reduction in seagrass coverage at Lake Conjola, this was consistent with other estuaries across SE NSW. Since 2013 to 2018 there had been an increase in seagrass coverage across Lake Conjola. They suggested that a more detailed analysis of aerial imagery was needed, and this could be an action of the Lake Conjola Coastal Management Program.*
- 3. DPI Fisheries is not aware of any health concerns relating to lead contamination.*

#### 5. Lake Conjola Coastal Management Plan (CMP)

On 26 April 2019 Council applied to the NSW Coast and Estuary Grants – Planning Stream for the preparation of a CMP for Lake Conjola, following the decision by the community in February to prepare a standalone CMP.

On 7 June 2019 Council received a letter of offer for \$140,000 to fund 50% of the preparation of CMP for Lake Conjola. A report was provided to the Council Ordinary meeting on 30 July 2019 which recommended that the grant offer be accepted.

It is important to note that, based on advice from NSW Department of Planning, Industry and Environment and the NSW Coastal Council, Council has decided to undertake the first phase of the CMP process, the preparation of the Scoping Study, across the whole of the City. This means that the Scoping Study will be prepared for the Shoalhaven's open coast and all estuaries.

This will give Council a prioritisation system for the future development of CMPs across the City and will allow Council to engage with all affected communities to gain an understanding on the priority issue for coast and estuary management across the City.

The preparation of the Lake Conjola CMP will begin once the citywide scoping study has been finalised, and all the coastal management issues identified in the community consultation phase of the scoping study for Lake Conjola have been identified.



The timeline for the preparation of the Lake Conjola CMP is summarised in the table below.

Grant Milestone	Activities	Outputs	Timeframe
Completion of Citywide Scoping Study for open coast and estuaries (including Lake Conjola)	Commence the preparation of tender and procurement for Lake Conjola CMP	Successful consultant selected for the preparation of the Lake Conjola CMP	Dec 2019
Additional Studies	Commence additional studies including: <ul style="list-style-type: none"> <li>- Update of Estuary Health Report Card</li> <li>- Review of Interim Entrance Management Policy</li> <li>- Update of Lake &amp; entrance process study</li> <li>- Final list of studies will emerge from the Scoping Study</li> </ul>	<ul style="list-style-type: none"> <li>- Working group established</li> <li>- Consultant engaged</li> <li>- Additional studies commenced</li> </ul>	April 2020
Draft CMP prepared	<ul style="list-style-type: none"> <li>- Implement community consultation</li> <li>- Additional studies completed</li> <li>- Preparation of draft CMP to meet mandatory requirements</li> </ul>	<ul style="list-style-type: none"> <li>- Draft CMP complete and on public exhibition</li> </ul>	Dec 2020
Final CMP report	<ul style="list-style-type: none"> <li>- Prepare final draft of CMP</li> <li>- Submissions in reply report and revised CMP</li> <li>- OEH review</li> <li>- Councillor and NRFMC briefings</li> <li>- CMP finalised for adoption</li> <li>- Send to State Government for certification</li> </ul>	<ul style="list-style-type: none"> <li>- Final CMP adopted by Council</li> <li>- Grant acquitted</li> </ul>	August 2021

### **Community Engagement**

Council have collaborated closely with both the Red Head Villages Association and Lake Conjola Community Associations, throughout the planning and implementation process of the recent lake opening.

The preparation of the citywide scoping study will hold focus workshops with communities in the south, which both Community Consultative Bodies (CCB) will be invited to, to gain a clear understanding of the coast and estuary management issues at Lake Conjola.

The development of the Lake Conjola CMP will be done in direct collaboration with both the CCB's and will also undertake targeted surveys of residents and visitors.

### **Policy Implications**

The community consultation and associated works will contribute to the production of updated coastal policy.

### **Financial Implications**

The total cost to Council for entrance management intervention and management of the lake from August 2018 to July 2019 is approx. \$330,000, this includes:

- Entrance management works;
- Water quality monitoring;
- Staff attendance at community meetings;
- Site inspections;
- Entrance monitoring;
- Surveys; and
- Administration.

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## L I C E N C E

### Crown Land Management Act 2016 – Section 2.20

The Minister administering the Crown Land Management Act 2016, (hereinafter referred to as the Minister) grants to **SHOALHAVEN CITY COUNCIL City Administration Centre Bridge St NOWRA NSW 2541** (licensee hereinafter referred to as You) a Licence pursuant to the provisions of Section 2.20 of the Crown Land Management Act 2016 in respect of the land described hereunder in Parts 1 and 2.

#### DESCRIPTION OF LANDS

##### PART 1

Local Govt. Area	SHOALHAVEN		
County	ST VINCENT		
Parish	CONJOLA		
Locality	LAKE CONJOLA,CUNJURONG POINT		
Status:	Lot	Section	DP
Crown land being part	7022		DP: 1031073
Crown land being part	7048		DP: 1094554
Crown land being part	487		DP: 861543

##### PART 2

Plan/diagram: Schedule 3	Area: 1.32ha
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**TEXT DESCRIPTION:** Crown Land being part Lot 7048 DP 1094554 (Reserve 755923 for Future Public Requirements notified 29 June 2007), Conjola Lake (Reserve 56146 from Sale or Lease Generally notified 11 May 1923 and Reserve 1011268 for Future Public Requirements notified 3 February 2006 and Regional Crown Reserve 1011528 for Access, Public Requirements, Tourism Purposes, Environmental and Heritage Conservation notified 9 June 2006 part Lot 487 DP 861543 (Reserve 62146 for Public Recreation 26 September 1930) and Part Lot 7022 DP 1031073 (Reserve 81601 for Public Recreation, 15 May 1959) as shown by red edge in Schedule 3 Diagram.

#### EXECUTION

Dated this 12

day of June 2019

#### THE MINISTER

  
as delegate of the Minister  
administering the Crown Land  
Management Act 2016

**Amanda Beetson**  
*A/Senior Group Leader Licences and Reserves*  
name and position

#### THE LICENSEE

In consideration of the grant of this Licence I / **We agree** to be bound by the terms, conditions and provisions of the Licence.

Certified on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

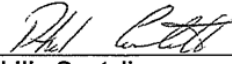
Corporation: SHOALHAVEN CITY COUNCIL ABN 59 855 182 344

Authority: Section 127 of the Corporation Act 2001

File reference: 19/04015

Licence: RN 606224

Signature of authorised  
person:



Name of authorised person: **Philip Costello**

**Director, Planning, Environment &  
Development – Shoalhaven City  
Council**

Office held:

Signature of authorised  
person:



Name of authorised person: **Stephen Dunshea**

**General Manager (Acting) -  
Shoalhaven City Council**

Office held:

File reference: 19/04015

Licence: RN 606224

The parties acknowledge and agree that the Licence is subject to Schedule 1, Schedule 2, and any additional Schedules or documents referred to in Schedule 1 and the following conditions;

1. This Licence is subject to the provisions of the Crown Land Management Act 2016.
2. You must pay Department of Industry - Lands & Water the licence fees specified in Item 6 of Schedule 1 on or prior to the date that this licence commences.
3. The Licence remains in force for the period specified in Item 5 of Schedule 1. The Minister may in his absolute discretion revoke this Licence at any time by serving on You a notice in writing revoking this Licence. You will not be entitled to any compensation costs or damages in respect of the revocation of this Licence.
4. You must not interfere with any other person authorised by the Minister to use the licensed area referred to in Item 4 of Schedule 1 ('licensed area') or any part thereof.
5. You must not use the land specified in the licensed area except for the purpose(s) authorised by this licence as set out in Item 4 of Schedule 1.
6. You shall comply with all the special conditions set out in Schedule 2.
7. Any notice provided for in this licence shall be deemed to be validly served on You if;
  - a. it is personally served on You or where You are a corporation or association, on an officer of the corporation or association; or
  - b. it is sent by prepaid ordinary mail addressed to You at the address shown in Item 1 of Schedule 1.
8. You acknowledge and agree that the Minister does not make or give any warranty, promise or covenant to You for quiet enjoyment of the licence area and does not grant You any interest in the land.
9. You shall keep the said licensed area and buildings on the licensed area clean and tidy and all papers and other rubbish shall be collected and removed. You shall control noxious weeds. You shall immediately repair and make good, damage occasioned by Your use of the licensed area.
10. You shall indemnify and keep indemnified the Minister against all actions, suits, claims, debts, obligations and other liabilities that may arise from the activities of You during the currency of the Licence. You release the Minister from all actions, suits, claims, debts, obligations and other liabilities by You or anyone claiming through You that may arise from the activities of the licensee under the Licence or in relation to the licensed area.
11. You shall effect and maintain for the term of this licence a public risk insurance policy (whereby the Minister must be noted on the policy as an interested party) for the amount specified in Item 7 of Schedule 1 for any one claim relating to liability for death or bodily injury or damage to property arising out of Your use and occupation of the licensed area and the matters referred to in clause 10. You shall provide evidence of such insurance whenever requested by any employee of the Department of Industry - Lands & Water.
12. You shall maintain all other insurances as may be required by the Workers' Compensation Act 1987 or any other Act or Acts of Parliament in regard to the conduct of activities of You on the licensed area.
13. You acknowledge and agree that no relationship of landlord and tenant is or is intended to be created between the parties hereto by virtue of this Licence or in any way whatsoever.
14. You must comply with the Work Health and Safety Act 2011 (NSW), the Work Health and Safety Regulation 2017 (NSW) and all other requirements of any other legislation or statutory authority in this regard whilst on the licensed area.
15. The Minister reserves the right to remove from or refuse entry to the licensed area any person regardless of any arrangements or contract with You.
16. All improvements, erections and fixtures ("Improvements") now or hereafter to be erected on the licensed area are acknowledged by You to be absolute property of the Minister, but You shall maintain and repair such Improvements during the period of this licence to the same condition that the Improvements were in on the date that this Licence commenced.
17. You shall not sublet, assign or otherwise deal with this Licence or the licensed area.

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18. Despite anything else in this Licence, this Licence shall terminate in the event that the Minister or a court determines that the licensed area is claimable Crown land under Aboriginal Land Rights Act 1983. You will not be entitled to any compensation, costs or damages in respect of the termination of this Licence by operation of this clause.
19. Despite anything else in this Licence, You agree to and approve of the transfer or termination of this Licence without any further notice if an Aboriginal Land Agreement (ALA) within the meaning of section 36AA(1) of the *Aboriginal Land Rights Act 1983*, affecting the land or part thereof, provides for the transfer or termination of this Licence. Except as may be expressly provided for in this Licence, You acknowledge and agree that You will not be entitled to any compensation, costs or damages in respect of the transfer or termination of this Licence by operation of this clause. You agree that the date of transfer or termination under this clause is the date provided for in the ALA, or if it is not so provided, the date the ALA is entered into. This clause constitutes an approval by You of the transfer or termination for the purposes of section 36AA(11) of the *Aboriginal Land Rights Act 1983*. The Minister may give notice to You of the transfer or termination of this Licence under this clause but is not required to do so to effect the transfer or termination.
20. You must comply on time with all laws and requirements of authorities in connection with this Licence, the licensed area, the purposes approved by this Licence and the use or occupation of the licensed area.
21. You must not contaminate, pollute or increase toxicity in the licensed area, any building in the licensed area or their environment or do anything in or around the licensed area which may be dangerous or offensive.
22. You must ensure that Your employees, agents, contractors and invitees comply with the licensee's obligations under this Licence.
23. You must not carry out any works in or on the licensed area without the Minister's written approval (which may be conditioned).
24. On the last day of the term of this Licence You must vacate the licensed area, remove all items You have brought onto the licensed area, repair any damage You have done to the licensed area and must leave the licensed area in a clean and tidy condition.



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## Schedule 1

Item	Column 1 (description of variable particulars)	Column 2 (particulars)
1	Licensee's Address for service of notices	C/- Kellie Clarke PO Box 42 NOWRA NSW 2541
2	Minister's Address for service of notices	Department of Industry - Lands & Water PO Box 2185 DANGAR NSW 2309
3	Address for payment of Licence Fee	Department of Industry - Lands & Water PO Box 2155 Dangar NSW 2309
4	Purpose for which the licensed area may be used	You shall have the use of the area described in Part 1 and Part 2 and as shown by red edge on the diagram attached as Schedule 3 (hereinafter called "the licensed area" for the purpose of Access and Environmental Protection (Conjola Lake entrance opening works)
5	Licence Period	The licence period shall be from 7th June 2019 to 6th June 2020. The Minister reserves the right to terminate the Licence without prior notice if there is a breach by You of any of the licence conditions.
6	Licence Fee	\$0.00
7	Insurance - Public Risk	Twenty Million Dollars (\$20,000,000.00)
8	Additional special terms and conditions	Annexed as Schedule 2

\*\*\*\*\* End of Schedule 1 \*\*\*\*\*

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## Schedule 2

### ADDITIONAL TERMS AND CONDITIONS

#### 1. Native Title (Subdivision 24LA - Low Impact Future Act)

##### Restrictions on the grant of this Licence

- (a) Notwithstanding any other provision in this Licence, this Licence does not permit or authorise any of the following:
  - (i) the excavation or clearing of any of the land or waters except for:
    - a. excavation or clearing that is reasonably necessary for the protection of public health or public safety; or
    - b. tree lopping, clearing of noxious or introduced animal or plant species, foreshore reclamation, regeneration or environmental assessment or protection activities; or
  - (ii) mining (other than fossicking by using hand-held implements); or
  - (iii) the construction or placing on the land, or in the waters, of any building, structure, or other thing (other than fencing or a gate), that is a fixture; or
  - (iv) the disposal or storing, on the land or in the waters, of any garbage or any poisonous, toxic or hazardous substance; or
  - (v) the conferral of a right of exclusive possession over any of the land or waters.

##### Termination of this Licence upon approved determination of native title

- (b) This Licence terminates immediately on the making of an approved determination under the Native Title Act 1993 (Commonwealth) ("NT Act") that native title exists in relation to the licensed area, in part or in whole, without any further notice or action.

##### Indigenous Land Use Agreement - New Licence

- (c) The Holder agrees that, if, prior to an approved determination under the NT Act that native title exists over the licensed area (in part or in whole):
  - (i) an indigenous land use agreement ("ILUA") is registered on the Register of Indigenous Land Use Agreements and the area of land described in the ILUA includes the whole or the part of the licensed area of this Licence, and
  - (ii) the ILUA expressly provides that a new licence on the same or similar terms and conditions as this Licence is valid, then a new licence will take effect on the same terms and conditions as this Licence, without the need for the Holder to enter into any further documentation or take any other action, except that:
  - (iii) the commencement date of the new licence will be the date the ILUA is registered on the Register of Indigenous Land Use Agreements;
  - (iv) (if applicable) the new licence will only be over that part of the licensed area of this Licence affected by the ILUA;
  - (v) clauses (b), (c), (d) and (e) of this special condition will not be terms of the new licence.

##### Terms of Native Title Determination - New Licence

- (d) The Holder agrees that if:
  - (i) an approved determination under the NT Act is made that native title exists over the licensed area (in part or in whole); and
  - (ii) The terms of the approved determination under the NT Act expressly provides that a new licence on the same or similar terms and conditions as this Licence is valid, then a new licence will take effect on the same terms and conditions as this Licence, without the need for the Holder to enter into any further documentation or take any other action, except that:
  - (iii) the commencement date of the new licence will be the date the determination is made;
  - (iv) (if applicable) the new licence will only be over that part of the licensed area of this Licence affected by the terms of the determination; and

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(v) clauses (b), (c), (d) and (e) of this special condition will not be terms of the new licence.

#### **Avoidance of Doubt**

- (e) For the avoidance of doubt, if a new licence takes effect due to the operation of clauses (c) or (d), the fact that the licence takes effect without the need for the Holder and the Minister to enter into any further documentation or take any other action includes that the licence takes effect without the Licensee being required to make a new licence application and without a new licence being issued.

#### **2. Approvals**

The Holder must ensure that all licences, permits and approvals are obtained and maintained as required throughout the life of the event. No condition of this Licence removes the obligation for the Holder to obtain, renew or comply with such licences, permits or approvals. The Holder must ensure that a copy of this Licence and all relevant approvals are available during the Licence term. The requirements of all relevant approvals including consent issued by local government must be met by the Holder.

#### **3. Work, Health and Safety Risks**

The Holder is responsible for safety induction of all persons onto the site. The Holder is responsible at all times for ensuring safe systems of work and that the site poses no work, health or safety risks to workers or the public. All persons engaged in the event relative to this approval must be qualified, trained or appropriately experienced or supervised in the running of the event including the safe operation of associated equipment, tools or machinery. Relevant advice should be obtained from NSW WorkCover.

#### **4. Relics**

Unless authorised to do so by a permit under Section 87 or a consent under Section 90 of the National Parks and Wildlife Act 1974 and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Holder will not knowingly disturb destroy deface or damage any aboriginal relic or place or other item of archaeological significance within the Land and shall take every precaution in drilling excavating or carrying out other operations or works in the Land against any such disturbance destruction defacement or damage.

If the Holder becomes aware of any aboriginal relic or place or other item of archaeological significance within the Land the Holder will within 24 hours notify the Director National Parks and Wildlife Service of the existence of such relic place or item.

The Holder will not continue any operations or works on the Land likely to interfere with or disturb any relic place or item referred to in subclause (b) without the approval of the Director National Parks and Wildlife Service and the Holder will observe and comply with all reasonable requirements of the Director in relation to the carrying out of the operations or works.

#### **5. Artefacts**

All fossils artefacts coins articles of value articles of antiquity structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall as between the Minister and the Holder be deemed to be the absolute property of the Minister and the Holder will as authorised by the Minister watch or examine any excavations and the Holder will take every precaution to prevent such articles or things being removed or damaged and shall immediately upon

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discovery thereof notify the Minister of such discovery and carry out at the reasonable expense of the Holder the Minister's orders as to the delivery up or disposal of such articles or things.

**6. Works**

All works undertaken in the Licence area are to be completed in accordance with the following documents

- i) Lake Conjola Interim Entrance Management Policy August 2013
- ii) Addendum - Review of Environmental Factors - Lake Conjola Entrance Manual Opening June 2019.

**7. Notification of works**

The Holder must notify the Minister of intended works prior to commencement.

**8. Site**

The licence holder shall ensure that the sites will be left clean and tidy on completion of works.

**9. Land subject to Aboriginal Land Claim (ALC)**

Part or all of the land(s) is subject to a claim(s) pursuant to the Aboriginal Land Rights Act 1983 (ALRA) Should investigations reveal that the land(s) was claimable Crown land within the meaning of the ALRA when the claim was made the land will be granted to the relevant Aboriginal Land Council and the licence will be terminated from the date of the grant.

Except as may be expressly provided for in this licence the Holder acknowledges and agrees that the Holder will not be entitled to any compensation, costs or damages, in respect of the termination/variation of this licence by operation of this clause.

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## Schedule 3



\*\*\*\*\*  
End of Schedule 3 \*\*\*\*\*

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DE19.75 - Attachment 1



Office of  
Environment  
& Heritage

MD19/1308  
2235E (D19/129943)

Mr Phil Costello  
Director  
Planning Environment & Development  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541

Dear Mr Costello

I refer to your letter to the Minister for Energy and Environment, the Hon Matt Kean MP about Lake Conjola. Your email was referred to the Office of Environment and Heritage (OEH) and I have been asked to reply.

The most commonly used classification for estuaries in NSW is based on a paper by Roy *et al.*, (2001), where the terminology of wave-dominated barrier estuary is introduced as one of five classes of coastal water bodies for eastern Australia.

This same paper also describes how the term ICOLL had been recently introduced to describe any lake or lagoon that can intermittently close to the ocean. In addition, it specifically notes that the term ICOLL can be applied to estuaries that are classed as both intermittent and wave-dominated barrier, recognising that estuaries classed as wave-dominated barrier do occasionally close.

It is well known that Lake Conjola has a history of closing for periods of time, which are documented in historic newspaper articles from as far back as 1909. A comprehensive summary of periods of time when the entrance was closed is also included in a discussion paper completed for council on Lake Conjola entrance management (GHD, 2012).

The term ICOLL has therefore been applied to describe Lake Conjola by those involved in its management, including Council and government agencies, consistent with its application to other wave-dominated barrier estuaries including the Tuross River and Bega River, both of which also close and have entrance management policies.

In closing, an estuary can be both classified as a wave-dominated barrier estuary and an ICOLL if it is known to close for periods, they are simply just ways to classify or describe estuaries based on different attributes.

PO Box A290 Sydney South NSW 1232  
59-61 Goulburn St, Sydney NSW 2000  
Tel: (02) 9995 5000 Fax: (02) 9995 5999  
TTY (02) 9211 4723  
ABN 30 841 387 271  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)



If you have any further questions about this issue, please contact Mr John Bucinkas, Senior Team Leader, Water Floodplains and Coast, South East Branch, OEH, on 4224 4153 or at [john.bucinkas@environment.nsw.gov.au](mailto:john.bucinkas@environment.nsw.gov.au)

Yours sincerely



**MICHAEL SAXON**  
Director, South East Branch

**Conservation and Regional Delivery**

Reference:

*Roy, P.S., Williams, R.J., Jones, A.R., Yassini, I., Gibbs, P.J., Coates, B., West, R.J., Scanes, P.R., Hudson, J.P. and Nichol, S. 2001. Structure and function of South-east Australian estuaries. Estuarine, Coastal Shelf and Science 53:351-384.*



Department of  
Primary Industries

Shoalhaven City Council

MF19/1120

Received

Your Ref: 2235E (D19/126016)

20 JUN 2019

Mr Phil Costello  
Director Planning Environment & Development  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541

File No. \_\_\_\_\_

Referred to: P. Costello

Dear Mr Costello

Thank you for your letter of 23 April 2019 to the Hon Adam Marshall MP, Minister for Agriculture and Western NSW, regarding marine life and seagrasses in Lake Conjola. The Minister has asked me to respond to you on his behalf.

The Department of Primary Industries (DPI) Fisheries investigates all reported fish kills and maintains a database of these investigations. Internal procedures are in place to ensure prompt investigation of fish kills by local staff. Members of the public, and council, are encouraged to report any fish kills to the department. Information on fish kill response can be found at

<https://www.dpi.nsw.gov.au/fishing/habitat/threats/fish-kills>

Recent fish kill incidents in Lake Conjola that were reported to DPI Fisheries and logged into the Fish Kill Database include:

- 22 July 2014: Fewer than 10 dead stingrays were observed near the entrance of Lake Conjola. The suspected cause was cold water stress, as water temperatures were recorded at 10-11 degrees Celsius. The entrance was closed and there was evidence of overtopping by waves into the lake system.
- 17 April 2018: Hundreds of dead sea mullet (30 - 40cm long) were reported along the shore of the Lake Conjola entrance channel. The fish were trapped within the closed lake while trying to migrate to sea.
- Early October 2018: DPI Fisheries investigated a report of several struggling (not deceased) octopus at various locations near the entrance to Lake Conjola. Local officers investigated this report and suspected this to be the result of freshwater inflows following recent rainfall.

DPI Fisheries determined that these incidents were attributed to natural causes and that no further action was, or is required. The impacts to fish stocks from these reports are considered to be minimal.

Regarding seagrasses, the distribution of some species of seagrass in NSW estuaries, and intermittently closing and opening lake and lagoon systems (ICOLLS), is known to naturally fluctuate in response to factors such as freshwater inputs, and

DPI Fisheries – Port Stephens Fisheries Institute  
Locked Bag 1, NELSON BAY NSW 2315  
Tel: 02 4982 1232 Fax: 02 4982 1107 www.dpi.nsw.gov.au ABN: 72 189 919 072

DE19.75 - Attachment 3

large amounts of sand movement. This can occur in both ICOLLs and permanently open estuaries.

DPI Fisheries scientists have noted a reduction in seagrass coverage in Lake Conjola (and other ICOLLs on the south coast) following a high rainfall event in late 2012/early 2013. DPI Fisheries notes that from recent aerial imagery there appears to be an increase in seagrass coverage between January 2012 and September 2018. The need for any analysis of historic trends in seagrass distribution can be considered as part of the upcoming preparation of a Coastal Management Program for Lake Conjola under the *Coastal Management Act 2016*. During the 2019/20 financial year, DPI Fisheries scientists will be conducting routine mapping of marine vegetation within Lake Conjola as part of the department's regular monitoring of marine vegetation in selected waterways along the NSW coast. This mapping can inform any further investigations into historic seagrass distribution trends in Lake Conjola that may be required as part of the Coastal Management Plan.

Regarding the possible accumulation of lead in Lake Conjola, DPI Fisheries is not aware of any health concerns, however any contamination within the environment is the responsibility of the NSW Environment Protection Authority (EPA). In situations where the NSW EPA and the Department of Health have determined that there are public health risks associated with ingestion of potentially contaminated seafood, DPI Fisheries forwards on any recommended dietary restriction advice to its stakeholders, or will implement any recommended fishing closures as necessary.

Thank you for your interest in this matter. DPI Fisheries looks forward to contributing to the management of Lake Conjola through Council's preparation of a Coastal Management Program for the lake, which will include a review of the Interim Lake Conjola Entrance Management Plan.

If you require additional information or wish to discuss this matter further, please contact Ms Carla Ganassin, Senior Fisheries Manager on (02) 4222 8342.

Yours sincerely



**Sarah Fairfull**  
**A/Deputy Director General DPI Fisheries**  
Date: 14/06/2019

## DE19.76 Orient Point Wetland Bushwalk

**HPERM Ref:** D19/191949

**Group:** Planning Environment & Development Group  
**Section:** Environmental Services

**Attachments:**

1. Photographs: Duckboards [↓](#)
2. Orient Point Wetland Reserve - Bushwalk - Duckboarding Submissions of Support and CCB Notification [↓](#)
3. Orient Point Wetland Reserve - Duckboarding Risk Assessment [↓](#)
4. Jenny Callanan - Email Support for Orient Point Wetland Walk [↓](#)
5. Submission - Orient Point Wetland - Merrilyn Helliwell [↓](#)

### Purpose / Summary

To provide Council with information about the upgraded bushwalk at the Orient Point Wetland as requested in MIN19.384, including costings, consultations and Australian Standards.

### Recommendation (Item to be determined under delegated authority)

That Council continue to maintain the newly constructed Orient Point Wetland duck board bushwalk, provided the following works are undertaken, prior to re-opening the bushwalk:

1. Track head area to be landscaped (Orama Crescent entrance);
2. Move the star picket, inserted on the outward side of the bearers (as per photo) to secure the structure, to the inside where they pose less risk to the user;
3. Installation of track head signage, stating that the bushwalk is rated as a Grade 3 (as per Australian Standards), with a narrow (380mm) width.

### Options

1. As recommended

Implications: The Orient Point Wetland bushwalk and the recently upgraded duck boarding would remain open for the community to utilise,

2. Removal of the Orient Point wetland duck board infrastructure

Implications: This would remove the facility for use by the community and would be an additional cost to Council.

### Background

In response to a Procedural Motion – Matters of Urgency raised at the Development & Environment Committee meeting of 4 June 2019, Council resolved,

*That with respect to the recently constructed pathway structure at Orient Point, Council:*

1. *Take immediate steps to isolate or barricade the structure for concerns of public safety;*
2. *Provide an urgent report on the new pathway and the report include:*
  - a. *The total cost of the project*

DE19.76



- b. *Who in the Community was consulted*
- c. *If the pathway meets current standards*

This report is in response to point two (2) above, with item one (1) being attended to on 11 June 2019.

The upgrade of the bushwalk at the Orient Point Wetland was identified as an action in the Orient Point Bushcare Action Plan, which was adopted by Council in July 2010. The goals of the Bushcare Group are:

1. To protect and regenerate the degraded section of the Orient Point wetland, with attention to the salt marsh vegetation, to improve the reserve's habitat, biodiversity and aesthetic values.
2. Raise the local community's awareness of the natural values of the wetland through education programs with school, local residents and visitors.
3. Improve the informal walking trail through the wetland to provide a well-formed loop walk and educational signage.
4. Prevent illegal vehicle access onto the salt marsh wetland areas to prevent on-going damage.

As a coastal wetland identified in the Coastal Management Act 2016 and Coastal SEPP 2018, specific management objectives guide its protection, promotion, improvement and use. Filling, dumping and weed encroachment, along with uncontrolled vehicle access, had seen parts of the saltmarsh degraded. Sustained work by the Council and the Orient Point Bushcare Group has seen a steady improvement in the overall condition.

Duckboarding is used primarily in locations where site disturbance must be avoided due to the sensitivity of the environment and/or access for construction is difficult, due to the site conditions, topography or distance.

The classification of the track aligns with the width of the duckboards. Similar Council bushwalks are located at the Callala Creek Wetland and the Burrill Lake Aboriginal Cave. They are used locally by the National Parks and Wildlife Service at the Mt Bushwalker walk, on the Murramarang Coastal Walk and in Jervis Bay National Park. Duckboards are used extensively overseas as well.



Figure 1: Duckboard traversing damaged saltmarsh

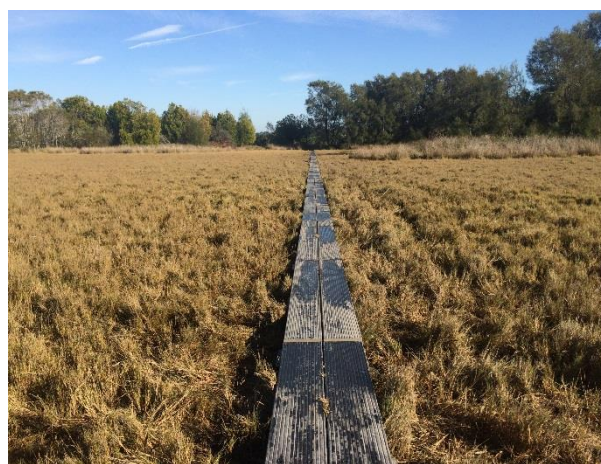


Figure 2: This section created a loop walk

This bushwalk is classified as Challenging, which is equivalent to the Australian Standard (AS) Classification three (3). Class 3 tracks provide an opportunity for visitors to walk in slightly modified natural environments, with moderate level of fitness required. The Elements for Classification for Class 3 Tracks are described in Table 1.

Table 1 – Australian Standards for Class 3 Tracks

Elements for Classification	Description
Overview	Opportunity for visitors to walk in a slightly modified natural environment requiring moderate level of fitness and where the provision of interpretation and facilities is not common
Track conditions	Generally, a modified surface, sections may be hardened. Width: variable and generally less than 1200mm. Kept mostly clear of intrusions and obstacles
Gradient	May exceed 1:10 for short sections but generally no steeper than 1:10. Steps may be common
Signage	Signs and track markers may be used for direction. Limited signage for management and interpretation purposes.
Infrastructure	Facilities generally not provided except for specific safety and environmental considerations.
Terrain	Users need no bushwalking experience and a minimum level of specialised skills. Users may encounter natural hazards such as steep slopes, unstable surfaces and minor water crossings. They are responsible for their own safety.
Weather	Storms may affect navigation and safety.

Council has undertaken hazard and risk assessment of the reserve structure (see attachment 3), which has found that the structure conforms to the standards. As previously explained, due to the class 3 classification of the walking track, the track width of 380mm is adequate, even though it is less than the 1200mm.

### Community Engagement

Council's Community Engagement team advised the Culburra Beach Progress Association of the project on 22 January 2019 (see attached) and suggested they could experience a similar boardwalk at the Callala Bay wetlands. The matter was taken to their February meeting.

A question about the total length of the proposed boardwalk was asked; however, there was no further discussion and there was no further contact with Council regarding the proposal.

Since the completion of the duckboarding at Orient Point Wetland Reserve, Council has received seven individual written correspondence items, six supporting the construction of the duckboarding and objecting to the Culburra Beach–Orient Point Progress Association request to have the bushwalk closed. There is also one submission objecting to the duckboarding installation (see attached).

### Financial Implications

The total cost of the project was \$25,424, which was funded from Council Walking Track Improvements, capital works budget. The works were deemed a priority, due to it being included in the Orient Point Wetland Bushcare Group Action Plan 2010. The Bushcare Group is contributing to the project, via on-going maintenance of the bushwalk and planting.

Subject to Council's decision in respect of this report, works will be ongoing and include:

- Completion of the stile (addition of the handrail)
- Development and installation of the track head signs
- Sympathetic landscaping of the new entrance on Orama Crescent



These costs will be <\$5K.

**Risk Implications**

Bushwalks managed by Council adhere to the Australian Standard AS2156.1-2001 Walking Tracks Part 1: Classification & Signage and AS2156.2-2001 Walking Tracks – Part 2: Infrastructure Design.

Examples of Duckboard Bushwalks



**From:** [CommunityEngagement](#)  
**To:** [MCobcroftCCB](#)  
**Subject:** Advice - Construction of Boardwalk - Orient Point  
**Date:** Tuesday, 22 January 2019 12:43:29 PM  
**Attachments:** [image001.png](#)

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Dear Merilyn and CBPA Members,

*The following notice is provided for information only.*

#### **Orient Point Boardwalk**

Please be advised that Council is commencing construction of a boardwalk through the Orient Pt Wetland Reserve. The project has been a long-time desire of a group of Orient Point residents and is to finally become a reality.

The boardwalk will extend the existing walking track located in the wetland and offer users a unique experience of walking “above” the diverse surrounding saltmarsh and wetland environments.

The development will be an asset to both local residents and tourists to the area.

A similar boardwalk can be experienced through the Callala Bay wetlands.

For enquires, please contact Council's Natural Area's Operations Team, on 4429 3111.

Kind regards,

**Madelaine North & Rianna Burgess**  
**Community Engagement Team**  
Shoalhaven City Council

02 4429 3628 | 02 4429 5482  
Bridge Rd (PO Box 42) Nowra NSW 2541  
[communityengagement@shoalhaven.nsw.gov.au](mailto:communityengagement@shoalhaven.nsw.gov.au)  
[www.shoalhaven.nsw.gov.au](http://www.shoalhaven.nsw.gov.au)  
cid:image001.png@01D03B07.BBC42C30



**From:** Wayne Gee  
**To:** [Council Email](#)  
**Cc:** [Kerry Thompson](#)  
**Subject:** Closure of Orient Point Wetland Walking Track  
**Date:** Sunday, 30 June 2019 4:03:48 PM

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Attention: Kerry Thompson

I object strongly to the recent closure of the Orient Point Wetland walking track. I have used the informal bush track to walk my dog for as many years as I care to remember and since completion of the boardwalk connecting to the track I have used this circuit on a daily basis. I think it's a very useful and worthwhile public asset.

I have read the Culburra Beach Progress Association's ridiculous submission on this matter and think it is totally unfounded. What's next? .... closure of the Crookhaven Heads Lighthouse walking track? .... closure of the Culburra Beach dune access tracks? The same arguments can be applied in these situations as well.

What will be Council's position in future .... if the disabled can't access an area no-one can?

This is a storm in a teacup. Don't the members of the CBPA have anything more worthwhile to contribute?

Wayne Gee

**From:** Jan Donney  
**To:** [Council Email](#)  
**Subject:** Closure of Orient Point Wetlands boardwalk  
**Date:** Tuesday, 25 June 2019 10:40:39 AM

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My name is Jannette Donney and I am a resident of Orient Point and also a volunteer with the Orient Point Bushcare group.

I wish to lodge my objection to the request by the Culburra Beach Progress Association that the boardwalk be closed.

The boardwalk was built by council to give pedestrian access over sensitive wetlands to the western foreshore area.

There have always been narrow walking tracks covering parts of this area but the boardwalk now extends access across the large central wetlands without compromising the integrity of this very fragile site.

I and all other residents of Orient Point who actually use this area were thrilled when council built the boardwalk and have enjoyed the added access. We understand that the boardwalk had to be built with the conditions of the site in mind and that a larger more dominant structure would not be appropriate.

I do not understand why the Progress Association want the boardwalk removed. It is not interfering with anyone and it would not benefit anyone to close it.

A wheelchair accessible boardwalk would have to be a completely different structure which would interfere drastically with the ecology of the wetland and the access paths would also have to be widened and paved. The financial cost of this would be prohibitive not to mention the environmental cost.

If the boardwalk is removed we would be losing a wonderful addition to our beautiful wetland and would gain nothing.

I do hope that council sees fit to keep the boardwalk open so we can keep enjoying this great facility.

Regards  
Jannette Donney

**From:** Diana Lindsay  
**To:** Kerry Thompson  
**Subject:** Re Orient Point Wetlands Boardwalk  
**Date:** Sunday, 30 June 2019 6:36:57 PM

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To the Mayor, Councillors and General Manager

I write concerning the future of the Orient Point Wetlands Boardwalk.

As a voluntary member of the National Parks and Wildlife Service Endangered Shorebird program, we are tasked with monitoring Endangered Shorebirds, both during the breeding season and over the winter. For the North Jervis Bay group, the Orient Point Wetlands Boardwalk has been helpful in allowing access to survey the birds on the mudflats without damaging the fragile wetland vegetation in the process.

On a personal note, as someone who had the privilege of knowing the late Val Callanan, I believe the construction of the boardwalk enhanced Val's vision for the environment of Orient Point, and provided a further tribute to her work for her local community.

In my profession, as a Disability Support Worker, my colleagues and I find that there are already a number of suitable, water front areas that are wheel chair accessible, where we regularly take our residents, eg Greenwell Point and the Callala Point pathway.

I urge you to reconsider, and re open the Orient Point Wetlands Boardwalk.

Sincerely,

Diana Lindsay



**From:** John Jpk  
**To:** [Council Email](#)  
**Cc:** [Kerry Thompson](#); [Peter Swanson](#)  
**Subject:** Submission in regard to Closure of Orient Point Wetlands/Bushcare Site Boardwalk.  
**Date:** Monday, 24 June 2019 9:35:07 AM  
**Attachments:** [CBPA Minutes-of-Meeting-1st-May-2019.pdf](#)  
[Orient Point Submission.rtf](#)  
[Orient Point wetlands boardwalk.jpg](#)

Dear Madam Mayor, Councillors and General Manager,

My name is John Polosak and I am the Volunteer Coordinator for the Orient Point Wetlands/Bushcare Group, The Marina Cres Culburra Beach Bushcare Group, and I also assist as required at The Crookhaven Heads Volunteer Nursery Bushcare Group. I wish to discuss with you the closure at the request of the Culburra Beach Progress Association as outlined in the attached CBPA Meeting minutes of 1st May, 2019 of the new boardwalk which is an adjunct to our existing land walkway at our Orient Point Wetlands/Bushcare site (Councillors who have attended long, extended Council meetings will be in wonder at the amount of business this body gets through in just 55 minutes).

I would like to give a brief history of the site, almost a decade ago a gentle lady by the name of Val Callanan looked at the Orient Point Wetlands Reserve and seeing it's degraded environmental state decided to create a Bushcare group whose Action Plan was adopted by Council in 2010. The goals of the Orient Point Wetlands/Bushcare Group were as follows: 1. To protect, regenerate the degraded section of the Orient Point wetland, with particular attention to the salt marsh vegetation, so as to improve the reserves habitat, biodiversity and aesthetic values. 2. Raise the local communities' awareness of the natural values of the wetland through education program with school, local residents and visitors. 3. Improve the informal walking trail through the wetland to provide a well formed loop walk and educational signage. 4. Prevent illegal vehicle access onto the salt marsh wetland areas to prevent on-going damage.

To this end with nary a progress association in site (sic), Val, her husband John and a small group of volunteers with support from a much appreciated Council Bushcare Field Officer toiled away on every first Saturday of the month removing the infestations of weeds and replacing them with indigenous native plants supplied by the Crook Nursery until sadly, almost upon completion of the task, Val passed away.

The remaining members of the Bushcare Group now have the privilege of completing the unfinished tasks as outlined in Val's Bushcare plan and ascertained that the board walk which would complete the loop walk from the existing track to Orama Cres had not been started, I approached Council staffer Kerry Thompson as to the feasibility of doing this and to our great satisfaction material and funding eventuated and the boardwalk was constructed albeit smaller than originally intended due to environmental and monetary constraints.

I have had positive feedback from people using the loop track and Mr John Millington, a resident of Culburra Beach and not affiliated with any group involved here, who is blind in one eye, has publicly stated that he has traversed the walkway with no difficulty and would much prefer any intended funding to upgrade the track, be instead be spent on upgrading/new footpaths in the Culburra Brach/ Orient Point area. John has a great concern for post natal mothers dangerously power walking their prams on the roads of Culburra. Another nearby resident said he liked the boardwalk but could I get rid of the sheoaks.

The land track has been deliberately left at two lawnmower widths wide to facilitate ease of maintenance and to stop it encroaching on and denigrating vegetation on the river bank on one side and the wetlands on the other which at some places are only about two meters away. Erosion of the river bank has been a major problem but plantings of native pigface may have alleviated this. Time will tell.

Wheelchair access to this site would be nice but every "thing" cannot be everything for everyone and it would be more appropriate for scarce "disability dollars" be spent on the many, many ,more easily accessible wonderful sites in other parts of our beautiful Shoalhaven which currently do not enjoy disability access..

Our position, which is open to compromise, is that that the boardwalk was built to Australian standards to protect the wetland environment whilst giving community access. A handrail is still to be installed on the style and we hope to have the children at Culburra PS help to landscape that area and employment of a part time Education Officer is envisioned. Signage is to be erected which will depict the degree of difficulty of the walkway thus enabling everyone to decide whether they have the capacity to proceed along the track or not. I am told these signs appear on many scenic walkways around Australia where disabled access is not feasible or cost effective.

So, please vote to allow the Boardwalk to be retained, so that the people of the Shoalhaven can come to Val's wonderful wetlands with glorious flora and fauna, fabulous views of river and mountain and sea, to reflect in peace and quiet, exercise their minds and bodies, drop a line without using a cell phone, launch a kayak, or just enjoy a picnic with loved ones on the adjacent river reserve, with kindest regards,

John Polosak  
23/6/2019

and thankyou for taking the time to read this.

**From:** Yasmin Bowers  
**To:** [Council Email](#)  
**Subject:** Submission in regard to Closure of Orient Point Wetlands/Bushcare Site Boardwalk.  
**Date:** Wednesday, 26 June 2019 10:29:05 AM  
**Attachments:** [Minutes-of-Meeting-1st-May-2019 CBPA.pdf](#)

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I wish to discuss with you the closure at the request of the Culburra Beach Progress Association as outlined in the attached CBPA Meeting minutes of 1st May, 2019 (attached) of the new boardwalk at Orient Point

I understand that the Culburra Beach Progressive Association Inc Minutes of meeting 1 May 2019 (attached) have raised several objections to the newly completely Orient Point Wetlands.

Objection 1:

**The walkway is not suitable for persons with a disability, prams or strollers or people with any difficulty with walking.**

As a resident of Culburra Beach I have walked the newly installed boardwalk at Orient Point Wetlands, with my partner who has a mobility disability and found it to be accessible. Yes, wheelchair access to this site would be nice but every “thing” cannot be everything for everyone. I also understand that a handrail is still to be installed.

The adjacent Foreshore Reserve is equally unfriendly for persons with certain disabilities, prams or strollers or people with any difficulty with walking or wheelchairs.

I understand that the boardwalk was constructed smaller than originally intended due to environmental and monetary constraints.

This boardwalk was built to Australian standards to protect the wetland environment whilst giving community access.

Objection 2:

**The walkway only leads to bush tracks which are uneven and only 36cm wide and maybe under water during King Tides.**

This boardwalk is in Wetlands and consequently it will, at times be affected by Kings Tides and extreme wet weather. The adjacent Foreshore Reserve is also affected by King Tides and during extreme wet weather.

The land track has been deliberately left at two lawnmower widths wide to facilitate ease of maintenance and to stop it encroaching on and denigrating vegetation on the river bank on one side and the wetlands on the other which at some places are only about two metres away. Erosion of the river bank has been a major problem but

plantings of native pigface by the local Bushcare groups may alleviate this.

Objection 3:

**That the Council last year demolished a perfectly good toilet block in Orient Point for the main reason being of not having disabled access. Then in the same area produce a walkway that has no semblance of any disabled access.**

That this argument is totally irrelevant

I also see that CBPA that request:

**That the inadequate walkway be removed and be replaced with a walkway complying with the requirements for disabled access.**

I totally disagree with this proposal as this boardwalk was built to Australian standards to protect the wetland environment whilst giving community access.

**Please vote to allow the Boardwalk to be retained, so that the people of the Shoalhaven can come to Orient Point Wetlands with its flora and fauna, the views of river and mountain and sea.**

Yasmin Bowers



## Assets & Works Group

## RESERVE – HAZARD INSPECTION CHECKLIST

Reserve Name: Orient Point Wetland Res. Reserve Number: \_\_\_\_\_

Location: Orient point. Date: 28/6/2019

Description		Condition		Description		Condition	
1	BBQ's	Conf.	NonC	<del>N/A</del>	12	Sewer service	Conf. NonC <del>N/A</del>
2	BMX Circuit/Skate Parks	Conf.	NonC	<del>N/A</del>	13	Shelters/Shade/Rotundas/Other	Conf. NonC <del>N/A</del>
3	Bridges/Boardwalks/Steps	Conf.	NonC	<del>N/A</del>	14	Signs- Regulatory/Warning/Safety	Conf. NonC <del>N/A</del>
4	Drainage structures -	Conf.	NonC	<del>N/A</del>	15	Stairs	Conf. NonC <del>N/A</del>
5	Electrical/Lighting	Conf.	NonC	<del>N/A</del>	16	Telephone	Conf. NonC <del>N/A</del>
6	Fencing- Security/Bollards/Other	Conf.	NonC	<del>N/A</del>	17	Trees-Deadwood/Trip/Disease	Conf. NonC <del>N/A</del>
7	Field markings/Goal Posts/Wickets	Conf.	NonC	<del>N/A</del>	18	Turf- Safety Hazard/Trip/Twist/Cover	Conf. NonC <del>N/A</del>
8	Gardens-Safe/Diseased/Pruning	Conf.	NonC	<del>N/A</del>	19	Walking tracks paved or unpaved	Conf. NonC <del>N/A</del>
9	Litter Bins	Conf.	NonC	<del>N/A</del>	20	Walls - Retaining/Dividing	Conf. NonC <del>N/A</del>
10	Picnic Sets / Seats	Conf.	NonC	<del>N/A</del>	21	Water- Taps/Bubblers/Services	Conf. NonC <del>N/A</del>
11	Roads - Sealed/Unsealed	Conf.	NonC	<del>N/A</del>			Conf. NonC <del>N/A</del>

[illegible]

Hello there,

I would like to send you congratulations on construction of the walkway through the Orient Point wetlands and salt marsh.

It opens this fragile place up for educational benefit of the community and visitors, and should help to foster the protection of this important habitat.

I know the children in my family appreciate the birds and insects, crabs and fish, plants and waterway that they can interact with. The boardwalk makes that easier, and encourages people to stick to the track, and not tramp all over fragile areas.

Thank you for your commitment to the task.

Jenny Callanan  
Sent from my iPad



Greetings

As a resident of Orient Point

I wish to know about the future progress of the board walk of Orient Point .

It seems that it is not known about by the general public and even the residents.

My interests are in the development ( if any ) for this board walk ?

Concerns are:

- 1) too narrow
- 2) danger of stepping off due to being narrow

My vision would be :

- 1) A safe place for the whole community to access Which could include school excursions , age local community field trips
- 2) Two seats ( facing in both directions ) to view the wetlands environment and its bird life
- 3) Signage and description / map of the walking track and board walk

I am sure these things have been discussed in council I am just wondering about its further development so all can access this wonderful addition to our community.

As a OH&S officer for federal govt in the past I cannot but notice the hazard of turning to look at something and being miss footed .

My letter comes on this day as I watched a woman with a walking stick have much difficulty crossing the two plant walk .

Kind regards  
Merrilyn Helliwell

## **DE19.77      Review of Environmental Factors - Woollamia and St Andrews Way - Berrys Bay- Pressure Sewer Scheme**

**HPERM Ref:**      D19/202563

**Group:**              Shoalhaven Water Group

**Attachments:**    1. Woollamia Pressure Sewer System REF - Public Works (under separate cover) ➡  
2. St Andrews Way Berrys Bay Pressure Sewer System REF - Public Works (under separate cover)

### **Purpose / Summary**

The purpose of this report is to inform Council of the Review of Environmental Factors (REF) for the Woollamia and Coolangatta Pressure Sewer Schemes dated June 2019.

### **Recommendation (Item to be determined under delegated authority)**

That

1. After consideration of the REF for Woollamia Pressure Sewerage System, June 2019,
  - a. Council determine that it is unlikely that there will be any significant environmental impact as a result of the proposed work and an Environmental Impact Statement is therefore not required for the proposed activity.
  - b. The proposed mitigation measures and controls outlined in the REF be adopted and implemented.
2. After consideration of the REF for St Andrews Way, Berrys Bay Pressure Sewerage System, June 2019,
  - a. Council determine that it is unlikely that there will be any significant environmental impact as a result of the proposed work and an Environmental Impact Statement is therefore not required for the proposed activity.
  - b. The proposed mitigation measures and controls outlined in the REF be adopted and implemented.

### **Options**

1. Adopt the recommendations.

Implications: This is recommended as the community has been consulted following Council's resolutions to provide pressure sewer systems to the subject areas of Woollamia and St Andrews Way/Berrys Bay.

2. Council could determine not to proceed with provision of pressure sewer provision to the subject areas of Woollamia and St Andrews Way/Berrys Bay.

Implications: The community has been consulted extensively following the resolutions of Council to connect these areas to Council's pressure sewer systems. Council has made funds available for the completion of the project.

DE19.77

3. Council could determine that the environmental impacts warrant the preparation of an EIS.

Implications: This is not recommended as the REF has found that the identified potential impacts are addressed by the proposed management and mitigation measures and assessment of statutory matters reveals the proposed management and mitigation measures will meet legislative requirements.

## Background

Council, at its Ordinary Meeting on 31 January 2017, resolved to:

*Amend the Delivery Program and Operational Plan to include the new capital projects for sewer extensions to Woollamia Village and the residential subdivision at St Andrews Way.*

Council, at its Ordinary on 26 June 2018, resolved to:

*Connect 1260 – 1280 Bolong Road, Coolangatta (Berry's Bay) to reticulated sewer and amend the Delivery Program and Operational Plan to include these properties in the capital project to sewer the residential subdivision at St Andrews Way (construction to be completed in 2019/20).*

In response to the recommendations above staff have progressed through the planning phase and design is complete.

The preparation of separate Reviews of Environmental Factors (REFs) for the two components of the project, Woollamia and St Andrews Way/Berrys Bay has been proceeding concurrently with the design and preparation of specifications. It is intended to deliver the two components under a single supply and construct contract.

## REF for St Andrews Way and Berrys Bay

The owners of various parcels of land within Coolangatta Estate approached Council to express interest in connecting to the new system when implemented. While the design and environmental assessment for the scheme has taken into consideration the connection of parts of Coolangatta Estate, the connection would be subject to a formal application and considered under a separate process (in accordance with Council's Rural Wastewater Connection Policy). A further report would be provided to Council for its consideration should this application be received.

Following environmental assessment, the REF states that the proposal would potentially cause short term impacts such as increased noise and traffic, as well as a reduction in community amenity for the users of construction areas and adjoining land during the construction phase. However, the works are temporary and can be managed to minimise impacts.

Given that the works predominantly comprise underground pipelines, adverse environmental impacts potentially associated with the operation phase of the proposal are considered to be minimal. The operational impacts would be positive due to the provision of sewage reticulation infrastructure in the village.

The REF for St Andrews Way, Berrys Bay and Coolangatta Estate Pressure Sewerage System concludes as follows:

*Based on the information in this REF, it is concluded that:*

- i. the proposed activity is not likely to have a significant impact on the environment and therefore an Environmental Impact Statement is not required.*

- ii. *the proposed activity is not likely to significantly affect threatened species, populations, ecological communities, or critical habitat. Therefore, a Species Impact Statement (SIS) is not required.*
- iii. *the proposed activity is not likely to affect any Commonwealth land, is not being carried out on Commonwealth land, or significantly affect any Matters of National Environmental Significance.*

*The proposed activity is recommended to proceed subject to the implementation of the measures to avoid, minimise or manage environmental impacts listed in this REF.*

### **REF for Woollamia Village**

The REF for Woollamia Village states that a pressure sewer system would provide a much-needed sewerage reticulation system for the developed and future lots at the village zoned areas on Edendale Street and Woollamia Road, a fishing club toilet block on Frank Lewis Way; and rural residential lots on Coulon Street in Woollamia. The proposal would potentially cause short term impacts such as increased noise and traffic, as well as a reduction in community amenity for the users of construction areas and adjoining land during the construction phase. However, the works are temporary and can be managed to minimise impacts.

The REF recommends further due diligence works in relation to Aboriginal Heritage. This process has commenced and is expected to be completed in time for a tender to be released.

Given that the works predominantly comprise underground pipelines, adverse environmental impacts potentially associated with the operation phase of the proposal are considered to be minimal. The operational impacts would be positive due to the provision of sewage reticulation infrastructure in the village.

The REF for Woollamia Pressure Sewerage System concludes as follows:

*Notwithstanding further assessment, which is recommended in relation to Aboriginal heritage impacts, on the basis of the information presented in this REF it is concluded that:*

- i. *the proposed activity is not likely to have a significant impact on the environment and therefore an Environmental Impact Statement is not required.*
- ii. *the proposed activity is not likely to significantly affect threatened species, populations, ecological communities, or critical habitat. Therefore, a Species Impact Statement (SIS) is not required*
- iii. *the proposed activity is not likely to affect any Commonwealth land, is not being carried out on Commonwealth land, or significantly affect any Matters of National Environmental Significance.*

*The proposed activity is recommended to proceed subject to the implementation of the measures to avoid, minimise or manage environmental impacts listed in this REF.*

### **Community Engagement**

Community engagement has been extensive through the planning and design phases of the schemes. It was recognised that numerous property owners, particularly in Woollamia, would not be aware that the scheme in their area was proceeding. It was also recognised that few would have knowledge of pressure sewer systems. Some consultation had been undertaken with property owners in St Andrews Way and Berrys Bay by Environmental Services so have some familiarity with the proposed system.

The consultation process thus far has included newsletters, information brochures, website updates, social media and a community drop-in session. The community drop-in session was held at the Lady Denman from 9:30am to 11:30am on Saturday 9 February 2019. It was very

well attended with approximately 60 people in attendance (most from Woollamia but some from St Andrews Way). The vast majority of attendees were in support of the scheme but there were some concerned with the potential and ongoing costs of being connected to the scheme; others were concerned with the cost of decommissioning recently installed (expensive) on-site systems.

There were several requests to hold another similar session at the completion of the design process (and prior to construction commencing). This will be added into the program.

A “Get Involved” page has been set up on Council’s website to continue the consultation process and provide a history of correspondence for those who haven’t responded to the consultative process thus far.

The REFs for these projects were placed on public exhibition between from 3 July 2019 to 20 July 2019 during which time submissions were invited. Two responses were received in relation to the Woollamia scheme.

The first respondent was supportive of the scheme and requested an extension of the current scheme boundary. It is not considered a matter to be dealt with under this REF as the assessment only considered the impacts within the adopted scheme boundary.

The second respondent objected to the scheme generally, raising matters such as ongoing costs to the landowners through sewer availability charges and electricity costs. These matters have been previously dealt with by correspondence and discussed at the Community drop in session. It is considered that the matters raised can be resolved with the respondent during the construction and management of the project or have been addressed by the REF.

### **Policy Implications**

Council’s Policy *POL16/94 - Pressure Sewer System Policy - Backlog Sewerage Schemes* has been provided to all property owners and the main points were highlighted at the Community drop-in session. The primary interest of the property owners has been the potential and ongoing costs.

### **Financial Implications**

Adequate funds have been allocated in the sewer budget to support Council’s resolutions to complete design for the schemes in 2018/19 and construction in 2019/20.

### **Risk Implications**

A project risk assessment for the project has been established. Environmental risks have been identified and addressed in the project REFs by recommending mitigation measures. These mitigation measures will be required to be implemented by the construction contractor through their Construction Environmental Management 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.