

## Development & Environment Committee

**Meeting Date:** Tuesday, 05 November, 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**
  - Assets & Works

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## 9. Confidential Reports

Nil

## Development & Environment Committee

### Delegation:

Pursuant to s377(1) of the *Local Government Act 1993* (LG Act) the Committee is delegated the functions conferred on Council by the *Environmental Planning & Assessment Act 1979* (EPA Act), 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 Chief Executive Officer 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 Chief Executive Officer 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, 1 October 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 Clr Findley and Clr Guile.

### Confirmation of the Minutes

**RESOLVED** (Clr Pakes / Clr White) MIN19.712

That the Minutes of the Development & Environment Committee held on Tuesday 03 September 2019 be confirmed.

CARRIED

### Declarations of Interest

Clr Gartner – DE19.105 – Submission – Proposed New Regulatory Framework – Short Term Rental Accommodation - pecuniary interest declaration – owns a short term rental property with spouse – will leave the room and will not take part in discussion or vote.

## Call Over of the Business Paper

The following items were called up for debate:

DE19.94, DE19.95, DE19.96, DE19.97, DE19.98, DE19.99, DE19.100, DE19.102, DE19.103, DE19.104, DE19.105, DE19.106.

The remaining item (DE19.101) was resolved en-block (Clr Proudfoot / Clr Wells) at this time. It is marked with an asterisk (\*) in these Minutes.

## DEPUTATIONS AND PRESENTATIONS

### DE19.94 Notice of Motion - Call In DA19/1841 - 44 Duncan Street, Huskisson (Page 11)

Ms Susan Smith, representing the Huskisson Woollamia Community Voice CCB, spoke for the recommendation.

### DE19.95 Development Application 18/2115 – 171B Strongs Rd, Jaspers Brush – Lot 2 & DP 778594 (Page 18)

Mr Stuart Coughlan, representing the Berry Forum, spoke for the recommendation.

### DE19.104 Tomerong Quarry - Lot 4 DP 775296 Parnell Rd DA90/1912 (Page 115)

Mr Peter Allison, representing the Tomerong Community Forum, spoke to the recommendation.

## Procedural Motion - Bring Item Forward

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

MIN19.713

That the following matters be brought forward for consideration:

- DE19.94 - Notice of Motion - Call In DA19/1841 - 44 Duncan Street, Huskisson
- DE19.95 - Development Application 18/2115 – 171B Strongs Rd JASPERS BRUSH – Lot 2 & DP 778594
- DE19.104 - Tomerong Quarry - Lot 4 DP 775296 Parnell Rd DA90/1912

CARRIED

## NOTICES OF MOTION / QUESTIONS ON NOTICE

**DE19.94 Notice of Motion - Call In DA19/1841 - 44 Duncan Street, Huskisson**

**HPERM Ref:  
D19/316168**

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

That Council call in the Development Application DA19/1841 - 44 Duncan Street, Huskisson due to public interest.

**RESOLVED** (Clr Levett / Clr Pakes)

MIN19.714

That Council call in the Development Application DA19/1841 - 44 Duncan Street, Huskisson due to

public interest.

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

## REPORTS

**DE19.95 Development Application 18/2115 – 171B Strong's Rd  
JASPERS BRUSH – Lot 2 DP 778594**

**HPERM Ref:  
D19/240144**

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

That Development Application No. 18/2115 for the 'temporary use of land for events/functions including weddings' be determined by way of refusal for the reasons set out in the Notice of Determination **Attachment 1** to this report.

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

MIN19.715

That Development Application No. 18/2115 for the 'temporary use of land for events/functions including weddings' be determined by way of refusal for the reasons set out in the Notice of Determination **Attachment 1** to this report.

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

AGAINST: Nil

CARRIED

**DE19.104 Tomerong Quarry - Lot 4 DP 775296 Parnell Rd  
DA90/1912**

**HPERM Ref:  
D19/315873**

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

That Council receive this report on Tomerong Quarry for information.

**RESOLVED** (Clr Levett / Clr Digiglio)

MIN19.716

That Council receive this report on Tomerong Quarry for information.

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

**DE19.96 Development Application – No. 20, Lot 3 in DP 539866,  
The Wool Road Vincentia****HPERM Ref:  
D19/213103****Recommendation (Item to be determined under delegated authority)**

That Council refuse Development Application DA18/1736 for change of use to dual occupancy and strata subdivision at lot 3 DP539866, 20 The Wool Road Vincentia, for the reasons set out in **Attachment 1**.

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

MIN19.717

That the matter of Development Application – No. 20, Lot 3 in DP 539866, The Wool Road Vincentia be deferred at the request of the Applicant.

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

**DE19.97 Proposed Public Exhibition - Planning Proposal (PP043)  
- Additional Permitted Use - South Nowra Industrial  
Expansion Zone****HPERM Ref:  
D19/284727****Recommendation (Item to be determined under delegated authority)**

That Council:

1. Endorse Planning Proposal (PP043) – Additional Permitted Use – South Nowra Industrial Expansion Zone, updated to include the responses of Public Agency Consultation, for Public Exhibition for a minimum period of 28 days.
2. Receive a further report that provides the results of the Public Exhibition period and recommends the next steps to finalise the Planning Proposal.

**RESOLVED** (Clr Watson / Clr Digiglio)

MIN19.718

That Council:

1. Endorse Planning Proposal (PP043) – Additional Permitted Use – South Nowra Industrial Expansion Zone, updated to include the responses of Public Agency Consultation, for Public Exhibition for a minimum period of 28 days.
2. Receive a further report that provides the results of the Public Exhibition period and recommends the next steps to finalise the Planning Proposal.

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

**DE19.98 Urban Greening Strategy and Voluntary Compensatory Tree Planting Policy**

**HPERM Ref: D19/266523**

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

That Council

1. Commence development of an overarching urban greening strategy in-line with other Australian and regional Councils to meet objectives within the Community Strategic Plan 2027, Integrated Strategic Plan 2018, Delivery Program and Operational Plan 2019-2020 and Illawarra Shoalhaven Regional Plan, that includes a compensatory tree replacement policy (except where a development application has triggered entry into the NSW Biodiversity Offset Scheme).
2. Hold a Councillor workshop so that Councillors can provide input into the development of the draft Strategy and Policy.
3. Following the Councillor workshop report back to Council the draft Strategy and Policy for endorsement for public exhibition.
4. Endorse the NSW LGA *Increasing Resilience to Climate Change* grant applied for in September 2019 to enable Council to undertake a tree canopy audit within urban areas to determine tree canopy and land use distributions, vegetation change and priority areas for potential planting and urban greening to assist in implementation of Council resolution (MIN18.955).

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

MIN19.719

That the matter of Urban Greening Strategy and Voluntary Compensatory Tree Planting Policy be withdrawn pending a Councillor briefing and report back to Council.

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

**DE19.99 NSW Heritage Grants 2019-2020: Shoalhaven Local Heritage Assistance Fund**

**HPERM Ref: D19/289172**

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

That Council endorse the allocation of the Shoalhaven Local Heritage Assistance Funds for the 2019-2020 program as listed in **Table 1** within the report; and reallocate any declined offers amongst the remaining successful and eligible applicants if required.

**RESOLVED** (Clr White / Clr Proudfoot)

MIN19.720

That Council endorse the allocation of the Shoalhaven Local Heritage Assistance Funds for the 2019-2020 program as listed in **Table 1** within the report; and reallocate any declined offers amongst the remaining successful and eligible applicants if required.

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

**DE19.100 Nowra-Bomaderry Retail Review - Exhibition Outcomes and Proposed Implementation**

**HPERM Ref:  
D19/293966**

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

That Council:

1. Commission a detailed, city-wide retail supply and demand analysis modelled on forecast future population growth to inform its strategic land use planning activities.
2. Prepare a Planning Proposal to enable consideration of amendments to *Shoalhaven Local Environmental Plan 2014* to:
  - a. Introduce a new local provision to support retail activity in Nowra CBD.
  - b. Change the zone objectives for B3 Commercial Core and B4 Mixed Use zones to support retail activity in Nowra CBD, and
  - c. Exclude general and speciality shops from the South Nowra bulky goods retail area.
3. Commence a detailed project to examine the location, size and function of the planned retail centres intended to service the Moss Vale Road Urban Release Areas and the land use zones associated with the southern centre.
4. Identify Planning Priorities in its Local Strategic Planning Statement to:
  - a. Develop a city-wide retail strategy to identify the amount and type of retail floor space required across all retail zones and centres, and
  - b. Develop place-based strategies to guide the future growth and development of Nowra CBD and Bomaderry.

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

MIN19.721

That Council not proceed with the implementation of selected recommendations from the *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment*.

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

**Items marked with an \* were resolved ‘en block’.**

**DE19.101 St Andrews Way/Berry's Bay & Woollamia Sewerage Schemes - Waiving of Fees for Approval to Operate On-site Sewage Systems**

**HPERM Ref:  
D19/305033**

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

MIN19.722

1. That Council endorse the waiving of “Approval to Operate Systems of Sewage Management” and associated inspection fees for property owners within the St Andrews Way/Berry's Bay and Woollamia Sewerage Schemes, during the construction phase of the schemes.
2. Any annual risk inspections required through the construction of the schemes be funded from Council's sewer fund.

CARRIED

**DE19.102 Formation of Collingwood Beach Dunecare Group - Progress Report**

**HPERM Ref:  
D19/308998**

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

That Council receive the progress report, regarding the formation of the Collingwood Beach Dunecare Group, as per Council resolution (MIN19.318).

**RESOLVED** (Clr Proudfoot / Clr White)

MIN19.723

That:

1. As part of the Natural Area Volunteers Group, a Dunecare Group be formed at Collingwood Beach prior to the Ordinary Meeting of council on 29 October 2019.
2. A draft Collingwood Beach Dunecare Management Plan be presented to the Ordinary Meeting of Council on 29 October 2019. This plan be formulated taking into consideration the submission by Coordinator, Dawn Thompson's group, the Collingwood Beach Reserve Bushcare Action Plan (2008) and the Collingwood Beach Dune Vegetation Action Two-year Trial Plan.

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

AGAINST: Clr Levett and Clr Alldrick

CARRIED

**DE19.103 Initial Consideration - Proponent Initiated Planning Proposal - Danjera Dam Camping & Recreation Area**

**HPERM Ref:  
D19/309365**

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

That Council:

1. Support the Planning Proposal request for the Danjera Dam Camping & Recreation Area submitted for Shoalhaven Water.
2. Prepare and submit the required Planning Proposal documentation to the NSW Department of Planning, Industry and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advise the proponent of this resolution.

**RESOLVED** (Clr Watson / Clr Kitchener)

MIN19.724

That Council:

1. Support the Planning Proposal request for the Danjera Dam Camping & Recreation Area submitted for Shoalhaven Water.
2. Prepare and submit the required Planning Proposal documentation to the NSW Department of Planning, Industry and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advise the proponent of this resolution.

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

**DE19.104 Tomerong Quarry - Lot 4 DP 775296 Parnell Rd  
DA90/1912**

**HPERM REF:  
D19/315873**

Item dealt with earlier in the meeting see MIN19.716.

**DE19.105 Submission - Proposed New Regulatory Framework -  
Short Term Rental Accommodation**

**HPERM Ref:  
D19/316058**

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

That Council

1. Endorse the draft submission that was made on the proposed Short Term Rental Accommodation reform package (provided as **Attachment 1** to this report) and advise the NSW Government accordingly.
2. Continue to play an active role, as required, in this important matter and received future reports as needed.

Clr Gartner - pecuniary interest declaration - owns a short term rental property with spouse – left the room and did not take part in discussion or vote.

Note: Clr Gartner left the meeting at 6.17pm.

**RESOLVED** (Clr Proudfoot / Clr White)

MIN19.725

That Council:

1. Endorse the draft submission that was made on the proposed Short Term Rental Accommodation reform package (provided as **Attachment 1** to this report) and advise the NSW Government accordingly.
2. Continue to play an active role, as required, in this important matter and received future reports as needed.

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

AGAINST: Nil

CARRIED

Note: Clr Gartner returned to the meeting at 6.34pm.

**DE19.106 Ministerial Representations - Chapter G4 Tree &  
Vegetation Management - Shoalhaven DCP2014**

**HPERM Ref:  
D19/316102**

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

That Council

1. Determine relevant action having regard to options provided below or other appropriate actions,
2. Advise the NSW Minister for Planning & Public Spaces of this decision and keep him advised of the progress of the review/possible amendment to the DCP.



Clr Gartner raised a Point of Order against Clr Pakes for suggesting that some Councillors made accusations about illegal and wrong doing work taking place at the Huskisson Anglican Church site and those accusations haven't been made by her.

The Chair did not rule as a Point of Order as accusations were made by signs being put up at Huskisson, that Clr Gash, Clr Watson and Clr Pakes had "ruined Huskisson" because of the trees.

Clr Gartner raised a Point of Order against Clr Pakes for saying that the Hon Justin Field, MLC was unfamiliar with the area and stated that he lives in the Shoalhaven. The Chair did not rule as a Point of Order.

**RESOLVED** (Clr Proudfoot / Clr White)

MIN19.726

That Council:

1. Note the request received from the Minister that essentially requests that Council reconsider the current provisions in this regard and advise the Minister of Council's decision to retain the current provisions for the overriding reason of public safety, noting that Council is also considering policy options to address tree loss within the City more generally.
2. Write to all tree lopping and tree removal contractors on an annual basis to explain their obligations before a tree is removed, under the "45 degree rule". In addition, that the maximum penalties for any breaches be clearly outlined in the correspondence.
3. Advise the NSW Minister for Planning & Public Spaces of this decision.

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

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

CARRIED

**Note:** A Rescission Motion was received on this Item.

### Procedural Motion - Matters of Urgency

**MOTION** (Clr White / Clr Pakes)

That an additional item in relation to DA16/1465, corner of Albatross Road and Kinghorne Street, Nowra be introduced as a matter of urgency.

The Chairperson ruled the matter as urgent as it is in the public interest.

### DE19.107 Additional Item - Development Application - Residential Units and Commercial Space - 173 Kinghorne Street, Nowra

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

MIN19.727

That DA16/1465 – Residential Units and Commercial Space – 173 Kinghorne Street, Nowra be called in to Council for determination due to significant public interest.

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

Note: A Rescission Motion was received in relation to DE19.106 – Ministerial Representations – Chapter G4 Tree & Vegetation Management – Shoalhaven DCP2014 signed by Clr Gartner, Clr Digiglio and Clr Levett. *It will be considered at the Ordinary Meeting on Tuesday 29 October 2019 at 5pm in the Council Chambers.*

There being no further business, the meeting concluded, the time being 7.42pm.

Clr Gash  
CHAIRPERSON

## DE19.108 Updated - Parkcare Action Plans - Shoalhaven Heads Native Botanic Gardens / Kings Point / Nashos Rotary Park / Plantation Point

**HPERM Ref:** D19/293353

**Group:** Assets & Works Group

**Section:** Works & Services

**Attachments:**

1. Kings Point Parkcare Action Plan [↓](#)
2. Shoalhaven Heads Native Botanic Gardens Parkcare Action Plan [↓](#)
3. Plantation Point Parkcare Action Plan [↓](#)
4. Nasho's 1 Rotary Park Parkcare Action Plan [↓](#)

### Purpose / Summary

To present for consideration four updated draft Parkcare Action Plans that have been prepared by Parkcare Groups and Council staff. The plans are:

1. Shoalhaven Heads Native Botanic Gardens Parkcare Group (previously known as Curtis Park Arboretum Parkcare Group)
2. Kings Point Parkcare Group
3. Nashos Rotary Park Parkcare Group and
4. Plantation Point Parkcare Group

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

That Council:

1. Endorse the updated 'Parkcare' plans for Shoalhaven Heads Native Botanic Gardens (previously known as Curtis Park Arboretum Parkcare Group), Kings Point, Nashos Rotary Park and Plantation Point.
2. Continue to allocate ongoing annual funding of \$400 (CPI adjusted and exc GST) per each group to cover safety PPE, miscellaneous materials, waste disposal and purchase of minor tools.

### Options

1. Approve continued endorsement of Shoalhaven Heads Native Botanic Gardens Parkcare Group (previously known as Curtis Park Arboretum Parkcare Group), Kings Point Parkcare Group, Nashos Rotary Park Parkcare Group and Plantation Point Parkcare Group and adopt the draft Action Plans.

Implications: Annual cost of \$1,600 per year for these 4 groups currently allocated for continuing support of Parkcare objectives offset by the free resource offered to Council.

2. Reject the ongoing support of Shoalhaven Heads Native Botanic Gardens Parkcare Group (previously known as Curtis Park Arboretum Parkcare Group), Kings Point Parkcare Group, Nashos Rotary Park Parkcare Group and Plantation Point Parkcare Group pending changes to the Action Plans.

Implications: Lost opportunity for continued volunteer groups at Shoalhaven Heads Native Botanic Gardens Parkcare Group, Kings Point Parkcare Group, Nashos Rotary

DE19.108

Park Parkcare Group and Plantation Point Parkcare Group pending changes to the Action Plan.

## Background

Council currently has 50 Parkcare Groups with 448 volunteer members under its Parkcare Programme.

1. Shoalhaven Heads Native Botanic Gardens Parkcare Group (previously known as Curtis Park Arboretum Parkcare Group)
2. Kings Point Parkcare Group
3. Nashos Rotary Park Parkcare Group and
4. Plantation Point Parkcare Group are four of the Parkcare Action Plans that are due for readoption.

The Shoalhaven Heads Native Botanic Gardens Parkcare Group was previously known as the Curtis Parks Arboretum Parkcare Group. In 2017 the Park was admitted to Botanic Gardens Australia New Zealand BGANZ network of botanic gardens. This is the first and only recognised Botanic Garden in the Shoalhaven LGA and has attracted increased interest and tourism to Shoalhaven Heads.

There are no significant changes to the following plans:

- Kings Point Parkcare
- Nashos Rotary Park Parkcare
- Plantation Point Parkcare

The Shoalhaven Native Botanic Garden plan encompasses future projects, as the group's activities are expanding. These future projects will not fundamentally change the intent of the existing action plan (see Part 8. Possible Future Funding of the Action Plan).

An allocation of \$400 per annum per group is budgeted by Council to fund Parkcare. Some Parkcare groups are very active in applying for and obtaining grant funding in addition to the Council funding.

## Community Engagement

Participation and involvement in the groups are open to all community members.

The Shoalhaven Heads Native Botanic Garden Parkcare Action Plan will require community consultation before the Wheelchair accessible boardwalk and the upgrade of the nursery which will be completed before any commence of works.

## Financial Implications

No further cost to Council as all four groups have been established in the Shoalhaven for a number of years and have been allocated finance in future budgets.



## KINGS POINT PARKCARE ACTION PLAN

Document Number: XXXXX • Adopted: XXXXX • Minute Number: XXXX • File: 37850E  
• Produced By: Assets and Works Group • Review Date: XXXXX

### CONTACT INFORMATION

<b>Group Name:</b>	Kings Point Parkcare Group
<b>Contact:</b>	Don McLaren
<b>Address:</b>	11 Parkland Drive, Kings Point
<b>Telephone:</b>	44555456
<b>Email:</b>	wbgtrailers@bigpond.com
<b>Reserve Name:</b>	Parkland Drive
<b>Reserve Number:</b>	SKP859
<b>Land Tenure:</b>	Council Community land <b>Comm. Land Type:</b> Park

### 1. PARKCARE GROUP GOALS

To maintain the grass and the garden beds and keep free from rubbish the park area within the existing maintained mown areas defined with bollards as provided to Council with attached Action Plan map.

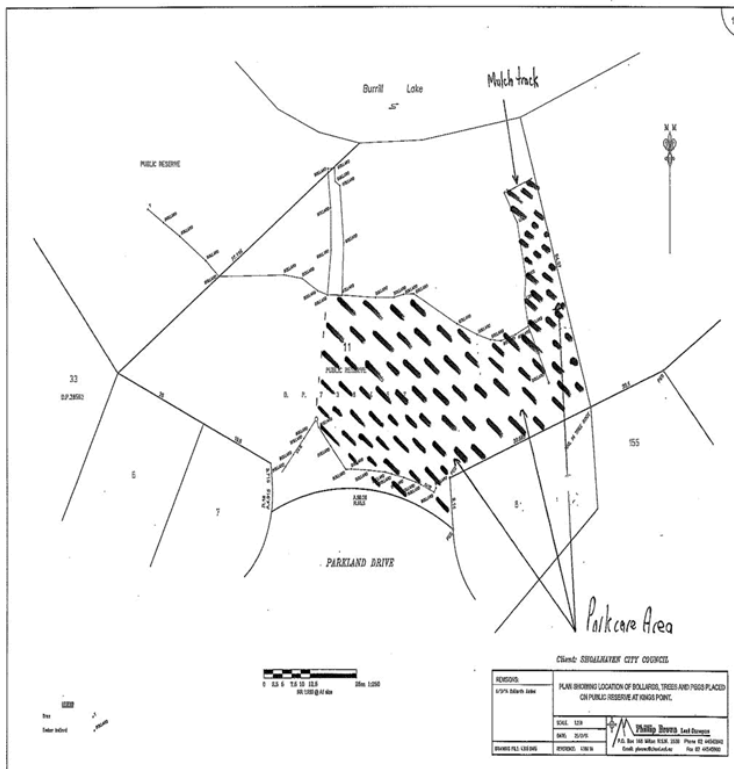
**2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE (to be in conjunction with attached site map)**  
**NOTE: Priority should be rated as H = High (within 12 months); M = Medium (1-3 years); L = Low**

GROUP ACTION	PRIORITY	METHOD	TIME
Clean park area, mow lawns, maintain native garden area	H	Hand tools	Ongoing
To maintain and paint existing parkland picnic tables	M	Hand tools	Ongoing

**3. PARKCARE GROUP ACTION PLAN MAP**



Following bollard line as shown in map below.



#### 4. PARKCARE GROUP WHS & EQUIPMENT REQUIREMENTS

Type of Activity	SWMS name included
Landscape Construction & Maintenance	SWMS1200
Operating Whipper Snipper	SWMS1286
Park Furnishings & Play Equipment Maintenance	SWMS1201
Roadside & Park Litter Collection	SWMS1172
Operate & Maintain Ride On Mower / Tractor	SWMS1133



**5. COUNCIL SUPPORT**

Provision of building materials and paints as necessary.
Provision of landscape materials including plants and mulch as necessary.
Disposal of waste costs as necessary

**6. HAS A SITE HAZARD AND RISK ASSESSMENT BEEN COMPLETED FOR THE PARKCARE SITE?**

Yes. Risk assessments are completed each working bee as part of the Site Recording Group Sheet & Site Specific Risk Assessment Form.

**7. LIST THE PERSONAL PROTECTION EQUIPMENT REQUIRED FOR VOLUNTEERS WHILST WORKING ON THE SITE**

<b>PPE Equipment Required</b>	<b>Date issued</b>
First Aid Kit	Issued as required
Gloves	Issued as required
Sunscreen	Issued as required
Insect repellent	Issued as required

**8. POSSIBLE FUTURE FUNDING**

Nil

**9. PLAN WILL BE REVIEWED EVERY THREE YEARS**

**10. PLEASE LIST OTHER LOCAL OR REGIONAL MANAGEMENT PLANS OR STRATEGIES THAT THIS PLAN RELATES TO**

<b>Name of document</b>	<b>Year it was produced</b>	<b>Produced by</b>
Kings Point Foreshore Plan Of Management	2000	SCC
Generic Plan Of Management Parks No6	2005	SCC
Foreshore Reserves Policy POL12/304	Adopted 2004 Reaffirmed 2013	Planning & Development

**RECOMMENDED PLANTING/REVEGETATION SPECIES LIST**

SHRUBS	
Botanical	Common
Dianella caerulea	Blue Flax Lily
Lomandra longifolia	Mat Rush
Westringia fruticosa	Native Rosemary

**Parkcare Group Name:** Kings Point Parkcare Group

**Coordinator Name:** Don McLaren

**Signature:** .....

**Date:** ..... / ..... / .....

DE19.108 - Attachment 1



## SHOALHAVEN HEADS NATIVE BOTANIC GARDEN PARKCARE ACTION PLAN

Document Number: D19/35426 • Adopted: [REDACTED] • Minute Number: [REDACTED] •  
File: 31955E • Produced By: Assets and Works Group • Review Date: xxxx

### CONTACT INFORMATION

<b>Group Name:</b>	Shoalhaven Heads Native Botanic Garden Incorporated (SHNBG)
<b>Contact:</b>	Tom Korevaar, Secretary
<b>Address:</b>	9 Celia Parade, Shoalhaven Heads NSW 2535
<b>Tel:</b>	0429 012 796
<b>Email:</b>	tomkorevaar@live.com.au
<b>Reserve Name:</b>	Curtis Reserve
<b>Location:</b>	Shoalhaven Heads
<b>Reserve No:</b>	NSH 035
<b>Land Tenure</b>	Council
<b>Comm Land Type</b>	Freehold - General community use

### 1. PARKCARE GROUP GOALS

Maintain the concept of the Shoalhaven Heads Native Botanic Garden, located in Curtis Reserve, as a demonstration and showcase of the plants of Australia.
Maintain the plantings and the grounds of Curtis Reserve.
Promote the educational value of the Shoalhaven Heads Native Botanic Garden for the local community and for visitors from further afield.
Initiate, design and implement improvements and upgrades to the infrastructure and the plantings of the Garden within the concept of the Shoalhaven Heads Native Botanic Garden.

**2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE (to be in conjunction with attached site map)**

**NOTE:** Priority should be rated as H = High (within 12 months); M = Medium (1-3 years); L = Low

GROUP ACTION	PRIORITY	METHOD	TIMING
Propagate, collect, grow, maintain and exhibit Australian native plants	High	Volunteers	Ongoing
Maintain the grass and garden beds through a program of mowing, mulching and weeding as required	High	Mowing and hand tools	Ongoing
Maintain minor parks infrastructure (excluding children's playground equipment), plus the Botanic Garden - specific improvements (e.g. the arbor entrance, plant nursery, interpretive signage, irrigation, etc) on the site	High	Hand tools and equipment as appropriate	Ongoing
Conduct educational tours, assist visiting groups and provide information presentations	High	Volunteers	Ongoing
Develop a wheelchair accessible boardwalk, incorporating a viewing platform, with expansion of adjoining garden beds <i>(Consultation with surrounding residents will occur in the planning stage)</i>	Medium to High	Professional design, grant applications, and engagement of contractors	2019/2020 Probably in stages

### 3. PARKCARE GROUP ACTION PLAN MAP



Please refer to  
D19/292959 for a 4  
page detailed survey  
plan

### 4. PARKCARE GROUP WHS & EQUIPMENT REQUIREMENTS

Type of Activity	SWMS name included
Weed control	SWMS1408
Mower – Ride On	SWI50
Landscape construction and maintenance	SWMS1200
Park furnishings and playground equipment maintenance	SWMS1201

### 5. COUNCIL SUPPORT

Technical advice and support, including training as required.
Provide an adequate water supply appropriate to Botanic Garden needs.
Arrange bulk supplies of mulch as required and if available.
Provide plants, materials and garden tools as required and as budget allows.
Remove surplus vegetation pruned, trimmed and collected from the Garden (included in the \$400 yearly allocation).

### 6. HAS A SITE HAZARD AND RISK ASSESSMENT BEEN COMPLETED FOR THE PARKCARE SITE?

Yes. Risk assessments are completed daily as part of the Site Recording Group Sheet & Site Specific Risk Assessment Form.

**7. LIST THE PERSONAL PROTECTION EQUIPMENT REQUIRED FOR VOLUNTEERS WHILST WORKING ON THE SITE**

PPE Equipment Required	Date issued
Insect repellent and sunscreen	As required
Gloves, safety glasses and safety vests	As required
1 <sup>st</sup> Aid kit	Issued

**8. POSSIBLE FUTURE FUNDING**

Project	Funding source
Wheelchair accessible boardwalk, incorporating a viewing platform, with expansion of adjoin garden beds <i>(Consultation with surrounding residents will occur in the planning stage)</i>	Grant applications and fundraising, with volunteer labour for garden beds
Develop new garden beds and planting on the eastern side of Curtis Reserve	Volunteers and fundraising
Upgrade plant nursery, by moving to new location where expanded size is possible <i>(Consultation with surrounding residents will occur in the planning stage)</i>	Volunteers and fundraising
Investigate options for reducing usage of potable water, including expansion of irrigation systems	Volunteers and fundraising
Investigate options for developing a dry creek bed feature	Volunteers and grant funding
Expand interpretive signage	Fund raising and sponsorships
Continue rock edging around gardens	Volunteers
Update Plan of Management and prepare Thematic Plan for site	Volunteers and collaboration with Council and Botanic Gardens Australia New Zealand (BGANZ)
Website development	Volunteers and fundraising

**9. PLAN WILL BE REVIEWED EVERY THREE YEARS**

**10. LOCAL OR REGIONAL MANAGEMENT PLANS OR STRATEGIES THAT THIS PLAN RELATES TO**

Name of document	Year it was produced	Produced by
Generic Plan of Management	2001	Shoalhaven City Council

**11. RECOMMENDED PLANTING SPECIES LIST**

With the limited space available at Curtis Reserve becoming increasingly planted out, SHNBG will increasingly concentrate on planting vulnerable and threatened species of Australian natives, with a view to developing excellence with such exhibits. Examples of these to date include:

- Banksia vincentia
- Brachychiton ormeau – Ormeau Bottle Tree
- Clausena smyrelliana – Greg's Wampi
- Glycosmis trifoliata – Orange Berry
- Notelaea lloydii - Olive

A detailed catalogue of the Australian native plants which have already been established by SHNBG is maintained on its website at [www.shnbotanicgarden.org.au](http://www.shnbotanicgarden.org.au)

**12. SITE WEED LIST**

Common Name	Control method used by group
Asparagus fern	Hand weeding
Small leaf oxalis	Spot spraying with Glyphosate
Wandering jew	Hand weeding

**13. NATIVE SPECIES LIST (EXISTING)**

The original western part of Curtis Reserve was planted out by Friends of the Curtis Park Arboretum with an extensive range of trees and shrubs and groundcovers native to eastern Australia.

This was subsequently added to by planting West Australian natives on part of the eastern side of Curtis Reserve.

A detailed catalogue of these Australian native plants is maintained on SHNBG's website at [www.shnbotanicgarden.org.au](http://www.shnbotanicgarden.org.au)

**Parkcare Group Name** Shoalhaven Heads Native Botanic Garden Incorporated

It is worth noting the name history of the Parkcare Group, starting as Friends of the Curtis Park Arboretum Incorporated on 4.5.2010 and changing to its current name on 1.9.2017 to better reflect the nature of this community Parkcare project.

**Coordinator Name** Rob Stewart, President

**Signature** .....

**Date** ....

DRAFT

DE19.108 - Attachment 2





## PLANTATION POINT PARKCARE ACTION PLAN

**Document Number:** D19/300487 • **Adopted:** Date • **Minute Number:**  
Minute number • **File:** 35254E • **Produced By:** Assets and Works Group • **Review**  
**Date:** Review Date

### CONTACT INFORMATION

<b>Group Name:</b>	Plantation Point Parkcare Group
<b>Contact:</b>	John Ross
<b>Address:</b>	76 Plantation Point Parade
<b>Tel:</b>	0411 747 040
<b>Email:</b>	<a href="mailto:jross380@gmail.com">jross380@gmail.com</a>
<b>Reserve Name:</b>	Plantation Point
<b>Location:</b>	Vincentia
<b>Reserve No:</b>	BVI507
<b>Land Tenure</b>	CROWN
<b>Comm Land Type</b>	Park

### 1. PARKCARE GROUP GOALS - Please provide a brief description of your Group's proposed project

To maintain the visual integrity and enhance the physical amenity of parks in the Vincentia area, with priority to be Plantation Point Rd Reserve and Plantation Point Reserve.

### 2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE (to be in conjunction with attached site map)

**NOTE:** Priority should be rated as H = High (within 12 months); M = Medium (1-3 years); L = Low

GROUP ACTION (these should relate to your project description)	PRIORITY	METHOD	TIMING
Area 1 Plantation Point Road	H	By hand and motorised equipment	Ongoing
Maintain current area. Weeding, trimming, mowing, rubbish clean up			
Area 2 Plantation Point Reserve	H	By hand and motorised equipment	Ongoing

Maintain garden bed opposite southern walkway access to Nelson Beach			
Other parks repainting Park furniture, maintaining landscape areas	M	Using hand tools supplied by Council	Ongoing

**3. PARKCARE GROUP ACTION PLAN MAP** - Please indicate below, on a map of your site what on-ground actions, from your group activity table, your group are planning to undertake. Include actions from other groups who may be involved, such as contractors, schools, Green Corps, Scouts etc. Please use black pen to indicate hard structures such as walking tracks, seats etc. (Council can help you access aerial map of your site if you wish, indicate North on your map)



PLANTATION POINT PARKCARE ACTION PLAN  
Page 2 of 4

**4. PARKCARE GROUP WHS & EQUIPMENT REQUIREMENTS**

Type of Activity	SWMS name included
Maintenance and Construction Activities	P10.F03
Weed Control Activities	SWMS1408
Roadside Waste, Biological Waste and Park Litter Collection	SWMS1417
Operate & Maintain Ride On Mower / Tractor	SWI150

**5. COUNCIL SUPPORT**

**What activities/actions will Council assist with? (list the activities/actions council will do).**

Provision of building materials and paints as budget permits.
Provision of landscape materials including plants and mulch as budget permits.
Disposal of waste as necessary.

**6. HAS A SITE HAZARD AND RISK ASSESSMENT BEEN COMPLETED FOR THE PARKCARE SITE?**

Yes. Risk assessments are completed each working bee as part of the Site Recording Group Sheet & Site Specific Risk Assessment Form

**7. LIST THE PERSONAL PROTECTION EQUIPMENT REQUIRED FOR VOLUNTEERS WHILST WORKING ON THE SITE**

PPE Equipment Required	Date issued
First Aid Kit	As required
Gloves	As required
Sunscreen	As required
Insect Repellent	As required

**8. POSSIBLE FUTURE FUNDING**

Project	Funding source
Nil	

**9. PLAN WILL BE REVIEWED EVERY THREE YEARS**

**10. LOCAL OR REGIONAL MANAGEMENT PLANS OR STRATEGIES THAT THIS PLAN RELATES TO**

Name of document	Year it was produced	Produced by
Plan Of Management & Landscape Plan for Plantation Point	2012	SCC

**11. RECOMMENDED PLANTING SPECIES LIST**

Name or type of plant	Maximum Height	Structural Role in the park vegetation	Number
No trees required at this site			

**12. SITE WEED LIST**

Common Name	Extent	Control method used by group
N/A		

**13. NATIVE SPECIES LIST (EXISTING)**

Name	Structural role	Abundance	Comment
Kangaroo Paw			
Apple Berry			
Native daisy			
Flax Lily			
Snake Vine			
Live Wire			
Mat Rush			

**Parkcare Group Name** Plantation Point Parkcare Group

**Coordinator Name** John Ross

**Signature** .....

**Date** ....



### NASHO'S 1 ROTARY PARK PARKCARE ACTION PLAN

**Document Number:** D19/306705 • **Adopted:** xxxxxx • **Minute Number:** XXXX •  
**File:** 37850E • **Produced By:** Assets and Works Group • **Review Date:** XXXX

#### CONTACT INFORMATION

<b>Group Name:</b>	Nasho's 1 Rotary Park Parkcare
<b>Contact:</b>	Rick Gallagher
<b>Address:</b>	9 Normandy Street, Narrawallee
<b>Telephone:</b>	4454 0412 / 0490 288 726
<b>Reserve Name:</b>	Ulladulla Rotary Park
<b>Reserve Number:</b>	SUL940
<b>Land Tenure:</b>	Crown
<b>Comm. Land Type:</b>	Public Recreational War Memorial

#### 1. PARKCARE GROUP GOALS

To maintain the visual integrity and enhance the physical amenity of Ulladulla Rotary Park.

**2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE (to be in conjunction with attached site map)**  
**NOTE: Priority should be rated as H = High (within 12 months); M = Medium (1-3 years); L = Low**

GROUP ACTION	PRIORITY	METHOD	TIME
Turf maintenance Garden bed maintenance	H	Push Mower Whipper snipper Hand tools	Ongoing
Painting of bollards and garden bed surrounds	H	Hand Tools	Ongoing

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**3. PARKCARE GROUP ACTION PLAN MAP**



DE19.108 - Attachment 4

**4. PARKCARE GROUP WHS & EQUIPMENT REQUIREMENTS**

Type of Activity	SWMS name included
Maintenance and Construction Activities	P10.F03
Line Trimmer	SWI41
Roadside Waste, Biological Waste & Park Litter Collection	SWMS1417
Operate & Maintain Ride On Mower / Tractor	SWI150

**5. COUNCIL SUPPORT**

Provision of paints as necessary
Provision of landscape materials including plants and mulch as budget permits
Disposal of waste costs as necessary

**6. HAS A SITE HAZARD AND RISK ASSESSMENT BEEN COMPLETED FOR THE PARKCARE SITE?**

Yes. Risk assessments are completed each working bee as part of the Site Recording Group Sheet & Site Specific Risk Assessment Form.

**7. LIST THE PERSONAL PROTECTION EQUIPMENT REQUIRED FOR VOLUNTEERS WHILST WORKING ON THE SITE**

PPE Equipment Required	Date issued
First Aid Kit	As required
Gloves	As required
Sunscreen	As required
Insect repellent	As required

**8. POSSIBLE FUTURE FUNDING**

Project	Funding source
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Fertiliser required March / September	Parkcare budget
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**9. PLAN WILL BE REVIEWED EVERY THREE YEARS**

**10. PLEASE LIST OTHER LOCAL OR REGIONAL MANAGEMENT PLANS OR STRATEGIES THAT THIS PLAN RELATES TO**

Name of document	Year it was produced	Produced by
Generic Plan of Management Parks	2001	SCC

**11. RECOMMENDED PLANTING/REVEGETATION SPECIES LIST**

OVERSTOREY TREES		
Botanical		Common
NIL		
SHRUBS		
Botanical		Common
Brachycome multifida	Native Daisy	
Callistemon 'Little John'	Bottlebrush	
Dianella caerulea	Blue Flax Lily	
Grevillea 'Bronze Rambler'	Grevillea 'Bronze Rambler'	
Grevillea 'gaudii chaudi'	Grevillea	
UNDERSTOREY (grasses, herbs, climbers)		
Botanical		Common
Nil		

**12. SITE WEED LIST**

Noxious	Environmental	Control Method
Nil		

**13. PARKCARE SITE SPECIES LIST**

<b>OVERSTOREY TREES</b>	
<b>Botanical</b>	<b>Common</b>
As Above	
<b>SHRUBS</b>	
<b>Botanical</b>	<b>Common</b>
As Above	
<b>UNDERSTOREY (grasses, herbs, orchids)</b>	
<b>Botanical</b>	<b>Common</b>
As Above	
<b>UNDERSTOREY (vines &amp; climbers)</b>	
<b>Botanical</b>	<b>Common</b>
As Above	

**Parkcare Group Name:** Nashos 1 Rotary Park Parkcare Group

**Coordinator Name:** Rick Gallagher

**Signature:** .....

**Date:** 28/08/2019

## DE19.109 Draft Low Density Residential Amendment - Shoalhaven DCP 2014 (DCP2014.25) - Post Exhibition Consideration and Finalisation

**HPERM Ref:** D19/332187

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

**Attachments:** 1. Exhibition Submission Summary [↓](#)  
2. Chapter G12 - Post Exhibition Version (under separate cover) [⇒](#)

### Purpose / Summary

To consider the:

- Submissions received as a result of the public exhibition of the draft Low Density Residential Amendment (the Amendment) to Shoalhaven Development Control Plan (DCP) 2014.
- Amendments proposed at the 3 September 2019 Development & Environment Committee meeting.
- Finalisation of the Amendment.

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

That Council:

1. Adopt the draft Low Density Residential Amendment (the Amendment) as exhibited, with the inclusion of the changes to draft Chapter G12 as shown in Attachment 2, based on:
  - a. The summary of submissions at Attachment 1.
  - b. The amendments in Table 1 in this Report that were proposed at the 3 September 2019 Development & Environment Committee meeting; as modified by the Staff recommendations in Column 2 of Table 1.
2. Notify the adoption of the Amendment in local newspapers in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and Regulations.
3. Rescind existing Chapter G12: Dwelling Houses, Rural Worker's Dwellings, Additions and Ancillary Structures of Shoalhaven Development Control 2014 when the Amendment is made effective.
4. Advise key stakeholders, including relevant industry representatives, of this decision and when the Amendment will be made effective.

### Options

1. As recommended.

Implications: This is the preferred option as it will enable the resolution of operational issues and matters that require clarification to improve the function of the low density residential development provisions in Shoalhaven.

The Amendment will also result in provisions that holistically consider local character and context, good quality design, amenity, universal design (optional) and more broadly the

DE19.109

public interest. It also gives due consideration to the submissions received and also the matters raised at the 3 September 2019 Development & Environment Committee meeting.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could further postpone the finalisation of the Amendment. Depending on the extent of any changes that may be made to the exhibition version of the Amendment, re-exhibition may be appropriate.

One such alternative recommendation could be to adopt the changes proposed at the 3 September 2019 Development & Environment Committee meeting:

- Verbatim (i.e. column 1 of Table 1) and not as recommended in Column 2 in Table 1.
- With staff recommendations and further augmentation.

3. Not adopt the recommendation.

Implications: This could stop or defer the implementation of more appropriate and better structured low density residential development provisions.

## Background

On 7 May 2019, Council's Development & Environment Committee resolved (MIN19.291) to:

1. *Support the exhibition of the draft Low Density Residential Amendment to Shoalhaven Development Control Plan 2014 for a period of 28 days as per legislative requirements.*
2. *Receive a further report on the draft Low Density Residential Amendment following the conclusion of the public exhibition period.*
3. *Continue to investigate the possibility of an off-site mature tree replacement scheme for Shoalhaven in line with MIN18.955(4) and receive a future report on this matter.*
4. *Advise key stakeholders, including relevant industry representatives, of this decision.*

The Amendment seeks to improve the function of low density residential development controls within the DCP and also address policy gaps/operational issues or matters that need clarification that have been identified in regard to this development form since the Shoalhaven DCP 2014 originally became effective on 22 October 2014.

The Amendment includes:

- The repeal of existing [Chapter G12: Dwelling Houses, Rural Worker's Dwellings, Additions and Ancillary Structures](#).
- Proposed new Chapter G12: Dwelling Houses and Other Low Density Residential Development.
- Proposed related amendments to the DCP Dictionary.

Draft Chapter G12 applies to dwelling houses and rural workers' dwellings (including additions and alterations), relocation of second-hand dwellings, detached habitable rooms, secondary dwellings, ancillary structures and non-habitable structures on vacant land.

## Public Exhibition

In accordance with the resolution, the Amendment package was publicly exhibited for a period of 30 days from Wednesday 29 May to Friday 28 June 2019 (inclusive).

Notices appeared in local newspapers on 29 May 2019. All Community Consultative Bodies, relevant development industry representatives (91) and one interested community member were notified directly in writing.

The exhibition material included the:

- Explanatory Statement.
- Draft Chapter G12: Dwelling Houses and Other Low Density Residential Development and the draft Dictionary. To view a copy of these Chapters, refer to the attachments to item DE19.27 considered at the 7 May 2019 Development & Environment Committee Meeting (MIN19.291).
- Newspaper advertisement.

As a result of the exhibition, two (2) formal submissions were received from development industry representatives.

A detailed summary of the submissions, with a Council staff response is provided in **Attachment 1**.

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

## Post-Exhibition Amendments

**Attachment 1** covers the content of the two submissions received, comments on them and highlights adjustments where required, justified etc.

Resulting from the submissions received, various amendments are proposed to the exhibited draft Chapter G12 as shown at **Attachment 2**. For convenience, the proposed changes are highlighted within the Chapter.

The recommended post exhibition amendments to draft Chapter G12 are summarised briefly below:

- Consolidation of content, as appropriate, to reduce length of the chapter and reduce duplication.
- Clarify content relating to 'restriction as to user' and 'certain' areas in relation to building materials, textures and colours.
- Clarify that setbacks may need to be reduced to respond to the prevailing setbacks in the streetscape. Also clarify that only the setbacks in the general vicinity of the subject land need to be considered when determining the prevailing setback in a street.
- Restructure and refine Table 2 (setbacks in urban areas), including the deletion of setbacks for development on battle axe lots and reduction of rear setbacks to 3m (average) as per [Chapter G13](#) (Medium Density Residential Development) of the Shoalhaven DCP 2014 as recently amended by Council.
- Refine and delete provisions relating to storage for consistency with [Chapter G13](#) as recently amended by Council.
- Removal of the restriction requiring car parking spaces to be provided behind the building line.

No changes are recommended in relation to the DCP Dictionary.

### Consideration of subsequent proposed amendments

On 3 September 2019, the Development & Environment Committee initially considered the post-exhibition finalisation report for this Amendment. It was resolved (MIN19.616):

*That this Item be deferred to a Councillor briefing to allow consideration and discussion of Clr Pakes' proposed amendments prior to the next Council meeting.*

The further amendments proposed by Clr Pakes to the exhibited Chapter G12 are outlined in column 1 of **Table 1** below.

A Councillor briefing was held on 19 September 2019 to enable the consideration and discussion of the additional proposed amendment content. The Council staff response/feedback to the proposed amendments is outlined in column 2 of **Table 1**.

It is recommended that the proposed amendments in **Table 1** also be made, as modified by the Council staff recommendations in column 2 of **Table 1**.

Column 1 Councillor Pakes' Proposed Amendments	Column2 Staff Response/Recommendations
a. Objective ii in section 6.3.2 is amended to read:  <i>ii. Ensure detached habitable rooms / studios function /operate as part of the principal dwelling and are linked by a continuously roofed, or, all weather hard stand connection.</i>	<i>No issue with proposed addition. Change supported.</i>
b. P27, dot point 4 is amended to read:  Rely or the principal dwelling for either a laundry, bathroom, or kitchen	<i>It is recommended that P27 (dot point 4) be amended as follows: "Rely on the principal dwelling for laundry and bathroom kitchen facilities".</i>  <i>This is consistent with the proposed Dictionary term 'detached habitable room' and 'detached studio', the latter being a defined term in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.</i>  <i>This enables the detached habitable room to function as part of the principal dwelling, not as a separate dwelling, which is the clear intent.</i>
c. A27.2 is deleted	<i>This will remove the suggested 10m separation distance requirement between the detached habitable room and the principal dwelling.</i>  <i>This is not preferred as it becomes difficult for the detached habitable room to function as part of the principal dwelling, which is clearly the required intention. Note that this is</i>

	<p><i>an acceptable solution and may be varied having regard to the performance criteria.</i></p> <p><i>Recommend retention as exhibited</i></p>
<p>d. A27.3 is amended to read:</p> <p><i>A27.3 An all-weather connection shall be provided between the detached habitable room / studio and the principal dwelling so they are physically connected.</i></p>	<p><i>No issue with proposed addition. Change supported.</i></p>
<p>e. A32.1 dot point 4 is amended to read:</p> <p><i>Division 2 of State Environmental Planning Policy (Affordable Rental Housing) 2009. Additionally, Schedule 1 – Development Standards for Secondary Dwellings is to be used as a guide. Where a proposal does not meet Schedule 1 development standards, Council will require proponents to demonstrate consistency with relevant performance criteria within Parts 5 &amp; 6 of this Chapter.</i></p> <p><b>Note: Should be dot point 2, not dot point 4. Dot point 4 relates to compliance with the Building Code of Australia requirements.</b></p>	<p><i>Recommended that the exhibited A32.1 dot point 2 and associated note box be adapted as follows. This has the same intent but matches DCP drafting for consistency.</i></p> <ul style="list-style-type: none"> <li>• AHSEPP - Schedule 1 Development standards for secondary dwellings, as a guide.</li> </ul> <p><b>Note:</b> Where the proposal does not comply with a provision in Schedule 1 of the AHSEPP, a variation statement must form part of the development application in accordance with Chapter 1: Introduction of this Development Control Plan the proposal must demonstrate consistency with the relevant performance criteria within Sections 5 and 6 of this Chapter.</p>
<p>f. Delete A33.2 and Table 4</p>	<p><i>This issue was identified by the Building &amp; Compliance Section and is a significant issue in residential areas ('monster sheds').</i></p> <p><i>The provision is existing, except for Figure 10 which provides guidance. The provision now also includes SP3 land.</i></p> <p><i>It is recommended that the provision be retained, however if it is deleted then Figure 10 should also be deleted as it is referred to in Table 4.</i></p>

## Conclusion

The draft Amendment, with recommended post exhibition changes and certain components of changes proposed at the September 2019 Development & Environment Committee, holistically considers the planning/design of low density residential development in Shoalhaven into the future. As such, there is merit in now adopting and finalising the Amendment, noting that DCP controls can always be varied, set aside etc. where appropriate/justified.

### Community Engagement

The draft Amendment was publicly exhibited for 30 days at the Nowra Administrative Building in accordance with legislative requirements. Two (2) submissions were received which are summarised at **Attachment 1**.

### Policy Implications

The Amendment seeks to introduce user-friendly DCP provisions in a logical structure that address gaps in policy and respond to operational matters that have arisen following the passing of time. Should the Amendment not proceed, these fundamental concerns will not be addressed.

It is intended that the new Chapter G12: Dwelling Houses and Other Low Density Residential Development will ultimately replace existing Chapter G12: Dwelling Houses, Rural Workers' Dwellings, Additions and Ancillary Structures.

### Financial Implications

The finalisation of the Amendment will continue to be resourced within the existing Strategic Planning budget.

### Risk Implications

Should the Amendment not proceed, there is a risk that Council will not be able to respond to low density residential development in a way that holistically considers matters such as local character and context, good quality design and amenity and more broadly the public interest. This could result in poor built form and liveability outcomes for both residents and the broader community. There are also matters that need to be revised to ensure the planning controls continue to operate as expected/intended and resolve inconsistencies.





## Summary of Submissions

### Amendment 25: Chapter G12

### Public Exhibition: 29 May - 28 June 2019

No.	Submitter	Summary of Submission	Comments
1	Lee Carmichael (PDC Lawyers and Planners)	The layout of the DCP is unnecessarily lengthy and repetitive. To address this, the following changes to the structure of the document are suggested: <ul style="list-style-type: none"> <li>Consolidate Sections 6.2.1, 6.2.2, 7.2, 7.3, 8.3, &amp; 9.3 into one section and incorporate it into Section 5 of the document.</li> <li>Consolidate Sections 8 &amp; 9 into one section.</li> </ul>	<b>Supported.</b> This can easily be accommodated, as shown at <b>Attachment 2</b> to the Council report.
		<b>Section 5.4 Building Form, Design and Materials, A6.4 and related note (dot point 3)</b> <ul style="list-style-type: none"> <li>A6.4 - Refers to 'certain' rural, environmental, foreshore, restriction as to user or scenic protection areas. Restrictions created pursuant to Section 88b of the Conveyancing Act 1919 can cover a wide range of situations and issues. Using the term 'restriction as to user' needs to be clarified and made more specific to address the particular context of setting controls for external building materials. What does 'certain' mean?</li> <li>Note (dot point 3) - The note indicates that white and bright colours are not acceptable in certain rural, environmental, foreshore, restriction as to user or scenic protection areas. What does 'certain' mean?</li> </ul>	<b>Supported.</b> There is merit in clarifying Council's intent as follows: <ul style="list-style-type: none"> <li>Delete reference to restriction as to user from A6.4 and provide clarification in the note box. Insert proposed new note box point as follows: <ul style="list-style-type: none"> <li>'A restriction as to user (i.e. 88B Instrument) may specify or restrict certain building materials, textures and colours.'</li> </ul> </li> <li>Delete the word 'certain' in relation to A6.4 and its associated note.</li> </ul>
		<b>Section 6.1.2 Height and Setbacks, note above A14.1</b> The note should be amended to state..... The acceptable solutions for setbacks may need to be increased, <i>reduced</i> , or modified.....	<b>Supported.</b> In some locations, setbacks may be less than the generic setback requirements.

	<p>The reason for this is to make it clear that in order to achieve relevant performance criteria, it may be necessary to reduce a front setback in particular circumstances. Achieving consistency with performance criteria for setbacks doesn't always translate to increasing setbacks.</p>	<p>It is recommended that the change also be applied to the proposed consolidated 'Ancillary Structures and Non-Habitable Structures on Vacant Land' section of the Chapter.</p>
	<p><b>Section 6.1.2 Height and Setbacks, A14.3</b></p> <p>The control cannot be reasonably applied. To require compatibility with an entire street is not workable for long streets (e.g. Illaroo Road, Princes Highway, Greville Ave).</p> <p>A14.3 should be deleted. The performance criteria within the DCP should serve to provide Council assessment staff with the tools required to ensure new buildings contribute towards the streetscape in a positive way.</p>	<p><b>Supported, in part.</b> This provision has been transferred from existing Chapter G12. Exhibited acceptable solution A14.3 (A18.3 at <b>Attachment 2</b>) proposes the preferred way to achieve exhibited P14.1 (P18.1 at <b>Attachment 2</b>) and appears helpful based on feedback from members of the community, particularly proponents who do not choose to engage the services of a planning consultant.</p> <p>A common-sense interpretation would be to consider the general vicinity of the subject land. It is considered more appropriate to provide this clarification rather than delete the provision entirely.</p> <p>It is also recommend that the change also be applied to the proposed consolidated 'Ancillary Structures and Non-Habitable Structures on Vacant Land' section of the Chapter.</p>
	<p><b>Section 6.1.2 Height and Setbacks, Table 2</b></p> <p>Table 2 should be deleted and replaced with a table similar to the recently exhibited setback table in G13 as below.</p> <p>The setback table:</p> <ul style="list-style-type: none"> <li>Removes the requirement for a 3m setback to a parallel road frontage. Parallel Road frontage setbacks should be assessed on merit. These roads are often used as accessways and frequently have garages located on the rear road boundary.</li> <li>Imposing 3m front and side setbacks and a 4m rear setback on battleaxe lots is not supported. Dwellings on battleaxe lots should be designed and positioned such that best outcomes are achieved for general amenity and solar access. Imposing a 3m front and side setbacks with a 4m rear setback to a battleaxe lot unfairly constrains these sites and doesn't always result in good design outcomes. With such onerous setback provisions in place for battleaxe lots, council is essentially forcing two storey development to occur.</li> <li>Rear setbacks have never been in place for single dwellings in the Shoalhaven. Our experience is that there is no need to impose rear setbacks of any kind for single dwellings. Imposing rear setbacks</li> </ul>	<p><b>Supported in part.</b> The 3m parallel setback is an existing provision in current G12. There has been feedback from the community that this provision provides some certainty where dual frontages exist. Recommend retention.</p> <p>Battle-axe provisions have been proposed in Chapter G12 for the first time in response to community concerns regarding perceived density, overdevelopment and adverse amenity impacts which can be difficult to manage as part of a merit-based assessment. Recommend removal for consistency with Chapter G13.</p> <p>Rear setbacks have been introduced in G12 for the first time following a number of representations from the community. Recommend retention, with a reduction to 3m (average) as per Chapter G13.</p> <p>The proposed table in draft Chapter G12 maintains the long-standing approach to setbacks based on categories of land (i.e. infill development or subdivisions typologies). The change in the setback table structure has recently been tested via the Chapter G13 process. The proposed setback table arrangement is consistent with the finalised Chapter G13 to an extent and the change is supported, with the following changes recommended:</p>

		<p>straightjackets proponents into having private open space areas the rear of their dwellings. This area may have bad orientation. New dwellings should be located on a site to allow for best solar access outcomes.</p> <table border="1"> <thead> <tr> <th>Front Setback (Lots with street frontage)</th><th>Side Setback Secondary Road</th><th>Side Setback</th><th>Rear / Side Setback to Foreshore reserve</th></tr> </thead> <tbody> <tr> <td> <p>Lots under 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>5m to walls of dwellings &amp; 4m to verandahs, patios and awnings.</li> </ul> <p>Lots over 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>6m to walls of dwellings &amp; 5m to verandahs, patios and awnings.</li> </ul> <p>Lots over 900m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>7.5m to walls of dwellings &amp; 6.5m to verandahs, patios and awnings.</li> </ul> <p>For any of the above setback requirements, reduced setbacks may be approved where the prevailing street character permits and the future desired character of the area is not prejudiced. The suitability of reduced setbacks must be demonstrated through addressing the relevant objectives and performance criteria of the DCP in support of the application.</p> </td><td> <p>Lots under 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>3m</li> </ul> <p>Lots over 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>3.5m</li> </ul> <p>Lots over 900m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>3.5m</li> </ul> </td><td> <p>900mm to dwellings and detached non-habitable outbuildings. 450mm from eaves/gutters.</p> <p>Where parking spaces are proposed at the rear of a dwelling, one 2.4m side setback is required for vehicular access.</p> </td><td>7.5m</td></tr> </tbody> </table> <p><b>6.2.5 Storage and Laundry Facilities, A23.1, A23.2 and A23.3</b></p> <p>These provisions are not supported and should be deleted. These same provisions were recently re-drafted as encouraged provisions in the medium density DCP. They should not be required for single dwellings.</p>	Front Setback (Lots with street frontage)	Side Setback Secondary Road	Side Setback	Rear / Side Setback to Foreshore reserve	<p>Lots under 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>5m to walls of dwellings &amp; 4m to verandahs, patios and awnings.</li> </ul> <p>Lots over 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>6m to walls of dwellings &amp; 5m to verandahs, patios and awnings.</li> </ul> <p>Lots over 900m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>7.5m to walls of dwellings &amp; 6.5m to verandahs, patios and awnings.</li> </ul> <p>For any of the above setback requirements, reduced setbacks may be approved where the prevailing street character permits and the future desired character of the area is not prejudiced. The suitability of reduced setbacks must be demonstrated through addressing the relevant objectives and performance criteria of the DCP in support of the application.</p>	<p>Lots under 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>3m</li> </ul> <p>Lots over 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>3.5m</li> </ul> <p>Lots over 900m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>3.5m</li> </ul>	<p>900mm to dwellings and detached non-habitable outbuildings. 450mm from eaves/gutters.</p> <p>Where parking spaces are proposed at the rear of a dwelling, one 2.4m side setback is required for vehicular access.</p>	7.5m	<ul style="list-style-type: none"> <li>Minor wording changes/additions to better reflect the G13 table (does not change intent).</li> <li>Retain existing parallel setback provision as exhibited.</li> <li>Retain rear setback provision but with a reduction to 3m (average) for consistency with Chapter G13.</li> <li>Amend note below 'Front Setback, primary road frontage' column to the following, to be consistent with the final wording in Chapter G13: <ul style="list-style-type: none"> <li>'Reduced setbacks may be considered where the prevailing street character permits and the future desired character of the area is not prejudiced'.</li> </ul> </li> </ul> <p><b>Attachment 2</b> to the Council report shows the layout suggested in the submission with the above recommended changes.</p> <p><b>Supported, in part.</b> To provide context:</p> <ul style="list-style-type: none"> <li>A23.1 – The same provision in Chapter G13 was amended to encourage the rates rather than state "is to be provided".</li> <li>A23.2 – The same provision in Chapter G13 was deleted.</li> <li>A23.3 – The same provision in Chapter G13 was retained.</li> </ul> <p>No justification has been provided as to why storage should not be required for single dwellings, other than consistency with Chapter G13.</p>
Front Setback (Lots with street frontage)	Side Setback Secondary Road	Side Setback	Rear / Side Setback to Foreshore reserve								
<p>Lots under 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>5m to walls of dwellings &amp; 4m to verandahs, patios and awnings.</li> </ul> <p>Lots over 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>6m to walls of dwellings &amp; 5m to verandahs, patios and awnings.</li> </ul> <p>Lots over 900m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>7.5m to walls of dwellings &amp; 6.5m to verandahs, patios and awnings.</li> </ul> <p>For any of the above setback requirements, reduced setbacks may be approved where the prevailing street character permits and the future desired character of the area is not prejudiced. The suitability of reduced setbacks must be demonstrated through addressing the relevant objectives and performance criteria of the DCP in support of the application.</p>	<p>Lots under 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>3m</li> </ul> <p>Lots over 600m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>3.5m</li> </ul> <p>Lots over 900m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>3.5m</li> </ul>	<p>900mm to dwellings and detached non-habitable outbuildings. 450mm from eaves/gutters.</p> <p>Where parking spaces are proposed at the rear of a dwelling, one 2.4m side setback is required for vehicular access.</p>	7.5m								

			<p>As dwellings get smaller, it is important to ensure that storage space is available so that garages (which may also be the only parking space) are still able to be used.</p> <p>It would be appropriate to reflect the changes made to Chapter G13 as part of Amendment 33 to the DCP which came into effect on 24 July 2019.</p>
		<p><b>6.2.6 Car Parking, A24.2</b></p> <p>The provision should be deleted as it essentially straightjackets proponents into a double garage for every new dwelling proposed in the Shoalhaven.</p> <p>Chapter G21 requires 2 car parking spaces per dwelling regardless of their size.</p> <p>For both of these spaces to be located behind the building line is representative of an inefficient use of space within a site. There is nothing wrong with a single garage with an additional space located within the front setback /driveway area. This would generally allow for a more pleasing front façade that isn't dominated by a double garage door and more private open space on site in rear yards.</p>	<p><b>Supported.</b> Chapter G13 now enables certain dual occupancy development to include parking forward of the building line. The suggested change is consistent with this.</p>
		<p><b>6.3.1 Building Form, Design and Materials, A25.1</b></p> <p>A25.1, dot point 1, should be rephrased to state: "address the street by having a front door and / or living room windows facing the street at the ground level".</p> <p>Front doors are not the only means by which the performance criteria can be achieved. Living room windows can be just as, if not more effective.</p>	<p><b>Not supported.</b> It is correct to state that a front door is not the only way in which the performance criteria can be met. The variation mechanism built into the DCP provides an opportunity for an application to propose an alternative solution.</p> <p>Crime Prevention Through Environmental Design (CPTED) incorporates basic design principles which contribute to the safety and security of a development and the public domain. There are four broad principles of CPTED: surveillance, access control, territorial re-enforcement and space management. The use of an entrance (i.e. front door) as a passive surveillance technique is well documented and results in activation of the streetscape. For more information on CPTED, refer to Chapter 2: General and Environmental Considerations of Shoalhaven DCP 2014.</p>
		<p><b>6.3.2 Detached Habitable Rooms and Studios, A27.2</b></p> <p>A27.2 should be deleted. This control is unnecessary and sets onerous controls on the establishment of detached habitable rooms – particularly on rural properties. Detached habitable rooms are an important element of the land use mix in the Shoalhaven as these structures often provide accommodation for family members who do not wish to live independently</p>	<p><b>Not supported.</b> This provision requires a detached habitable room to be a maximum of 10m from the principal dwelling. The existing related provision in Chapter G12 required the detached habitable rooms to be "in close proximity to the dwelling".</p> <p>The existing terminology is subjective and raises difficulties in terms of assessment and certainty. The proposed 10m sets a defined standard.</p>

		of their family, however need their own space and privacy. Typical users of detached habitable rooms include young adult children who are unable to afford their own home and / or elderly relatives who need the support of their family.	The variation mechanism built into the DCP provides an opportunity for an application to propose an alternative solution.  Importantly, the detached habitable rooms/studios need to be close enough to the main dwelling to so that together they function as a single dwelling occupancy.
		<b>6.3.4 Fences and Walls, A29.4</b>  A29.4 should be amended to remove the term 'classified'. There are plenty of busy roads in the Shoalhaven that warrant the erection of high front fences that are not necessarily classified.	<b>Not supported.</b> The wording of this provision is consistent with recently amended Chapter G13 (Medium Density and Other Residential Development).  The variation mechanism built into the DCP provides an opportunity for an application to propose an alternative solution where other roads may benefit from a front fence higher than 1.2m
		<b>7.1 Principal Controls, A32.1</b>  The reason a DA is usually lodged for a secondary dwelling is that Schedule 1 cannot be complied with. It seems onerous to require compliance with Schedule 1 on this basis when a merit-based assessment is required.	<b>Not supported.</b> This provision has been set up to use Schedule 1 as the assessment framework (acceptable solutions in essence), and any departure to a provision in Schedule 1 would be considered as any other variation to the DCP. This is consistent with the note below A32.1 dot point 2 note.  Without a reference back to Schedule 1, there would be virtually no controls for this form of development which is likely to result in poor built form and amenity outcomes.
2	Todd Slaughter (Nest Residential Design)	<b>Section 6.2.5 Storage and Laundry Facilities, A23.1 and A23.2</b>  As per the recently passed amendments to chapter G13, storage is being "encouraged" in relation to proposed A23.1. The recently passed amendments to chapter G13 has deleted the 50% storage space provision in relation to A23.2. This should be the same in G12. Single dwellings on residential sites allow adequate room for owners to create plenty of future storage through garden sheds etc and it should not be a requirement within the building.	<b>Supported,</b> as per above submission commentary.
		<b>6.3.5 Universal Design</b>  The section is noted as not being a requirement and only applies where an applicant designs a dwelling to be accessible or adaptable. Whilst we acknowledge the need, we do not see why this would be included at all in the DCP unless council is offering to certify any buildings designed as accessible or adaptable.	<b>Not supported.</b> This Section has been included as the standard of accessible/adaptable design is important to the ongoing usability of dwellings by occupants. The inclusion of Universal Design provisions is strongly supported by Council's Inclusion & Access Advisory Group. This is further supported by Council's resolution of 18 December 2018 (MIN18.1009) which considers inclusion of accessibility requirements into the relevant chapters of the DCP.

	<p><b>Dictionary, Detached Habitable Room</b></p> <p>In respect to the proposed definition change, we would like to see the definition include that in addition to a bathroom being permitted a 'kitchenette' can also be permitted but not with any fixed cooking facilities.</p> <p>We acknowledge that cooking facilities would undermine the definition by possibly making such building almost self-contained.</p> <p>However these types of buildings are often used for art / hobby studios and games rooms which may desire a kitchenette for tea and coffee facilities and a sink for washing up cups etc or equipment used as part of the hobby.</p>	<p><b>Not supported.</b> Opening up the definition to include kitchenettes has the potential to lead to conversions to full kitchens. This may result in a structure that is fully self-contained, i.e. a dwelling for which lawful consent has not been obtained. Further, this may have other implications with regards to the Shoalhaven Contributions Plan 2019.</p> <p>The definition is consistent with the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (i.e. the Codes SEPP) definition of 'Detached studio' which explicitly excludes any cooking facilities.</p>
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## DE19.110 Development Application – 52 Cyrus Street Hyams Beach – Lot 58 & DP 577627

**DA. No:** DA16/1341/4

**HPERM Ref:** D19/294076

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

**Attachments:**

1. Independent Planner Report - Kerry Gordon - Peter Stutchbury Architecture - Newport (under separate cover) [⇒](#)
2. Conditions - Independent Planner - Kerry Gordon - Peter Stutchbury Architecture (under separate cover) [⇒](#)
3. NSW Land & Environment Court Determination - Platford v Van Veenendaal and Shoalhaven City Council [↓](#)

**Description of Development:** Demolition of the existing dwelling and construction of two storey dwelling and boat house.

**Owner:** T G Van Veenendaal  
**Applicant:** Peter Stutchbury Architecture

**Notification Dates:** 6 to 21 April 2016, renotified 10 to 25 October 2016, renotified 17 February to 6 March 2017, renotified 4 – 16 August 2018 and renotified 4 – 19 December 2018.

**No. of Submissions:** 41 submissions (17 of these were made on behalf of the owner at 54 Cyrus Street)

### Purpose / Reason for consideration by Council

The Land and Environment Court determined that development consent granted for DA16/1341 is invalid and of no effect. The development application therefore remains undetermined.

This report provides an independent assessment of the application and recommends approval.

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

That Council approve Development Application DA16/1341 for demolition of the existing dwelling and construction of a two-storey dwelling and boat house situated at 52 Cyrus Street, Hyams Beach legally described as Lot 58 in DP577627, subject to the recommended conditions of consent contained in Attachment 2 of this report.

### Options

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

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

## 2. Alternative recommendation

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

## Background

### Proposed Development

The proposed development seeks approval for demolition of the existing dwelling and construction of a two-storey dwelling and boat house.

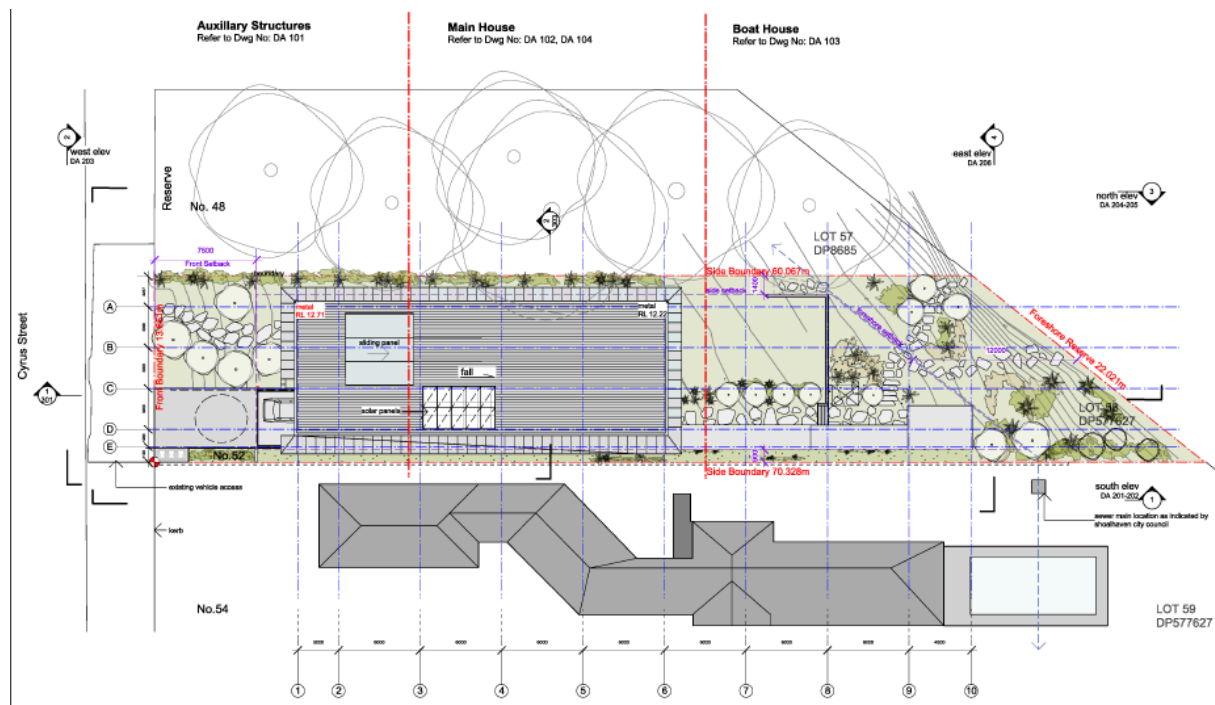


Figure 1 – Proposed site plan

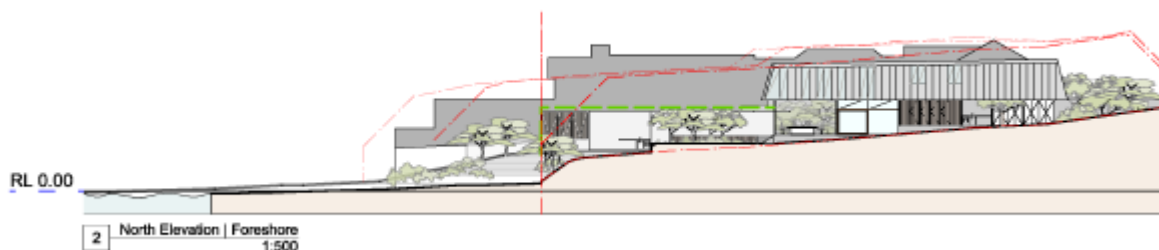


Figure 2 – Elevation

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### Subject Land

The subject site is located on the eastern side of Cyrus Street and is known as 52 Cyrus Street, Hyams Beach. The site is legally described as Lot 58 in DP 577627.

The site is an irregular shape allotment with an angled rear boundary to the foreshore and total site area of 941.7m<sup>2</sup>. The site has a frontage of 13.715m to Cyrus Street and a rear boundary dimension of 21.925m. The southern side boundary dimension of 77.22m and northern side boundary dimension of 60.115m.



Figure 3 – Subject Site

### History

The subject application was lodged with Council on 22 March 2016. The application has undergone several amendments and in particular the design of the boat shed. A number of geotechnical and coastal hazard assessments have been provided in response to requests for information from Council.

The application, in its various forms, has been notified five (5) times and received a total of 41 submissions. Of these submissions, 17 were received by or on behalf of the owner of the adjoining property at 54 Cyrus Street.

It was resolved by Council at its Ordinary Meeting of 28 February 2017 to call in the application for determination due to the significant public interest. The application was considered at Council's meeting of 17 July 2017 where it was approved. Development Consent DA16/1341 was issued on 25 July 2017.

Subsequent to the issue of Development Consent DA16/1341, the owner of 54 Cyrus Street challenged the legal validity of the consent in the Land and Environment Court. The proceedings were heard by Preston CJ and a decision was handed down on 9 March 2018 with Orders as follows:

*The Court:*

- (1) Declares that the development consent granted by the second respondent on or about 25 July 2017 in respect of the Development Application 16/1341 for

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*development at 52 Cyrus Street Hyams Beach ("Purported Consent for DA 16/1341") is invalid and of no effect.*

- (2) *Sets aside the Purported Consent for DA 16/1341.*
- (3) *Grants an injunction restraining the first respondent from undertaking any development in reliance upon the Purported Consent for DA 16/1341.*
- (4) *Lists the proceedings at 9:30am on 26 March 2018 for directions concerning the question of the costs of the proceedings.*

The effect of the Court's decision is that DA16/1341 remains undetermined as consent granted by the Council on 17 July 2017 has been set aside. A copy of this determination is included at attachment 3.

Subsequent to the judgement, amended plans were submitted by the applicant, with changes confined to the design of the boat shed and boat shed arm to address wave run up.

Given the history of the development application, Council engaged an independent Town Planning Consultant to undertake a section 4.15 assessment.

### Planning Assessment

The development application has been assessed against the provisions of section 4.15 of the Environmental Planning and Assessment Act 1979. The independent Town Planning Consultant's assessment is attached and forms the basis of the recommendation contained in this report (Refer attachment 1).

The recommendation is based upon full and complete assessment, including the provisions within Chapter G6 Coastal Management Area of the Shoalhaven Development Control Plan 2014, including the contrary view articulated in the objector's legal advice. The primary concern raised was the potential impact from wave runup in a 1 in 100 storm event.

The applicant has submitted revised plans to address this issue. The revised design includes suspended decking supported by concrete encased piers. This will ensure that any wave runup will be dispersed as opposed to hitting a solid wall which could potentially redirect the storm surge and impact upon the adjoining property.

In addition to the above, the proposed boat shed is in close proximity to the *Banksia integrifolia* which are identified to be retained and the works required for the footings of the boat shed have the potential to impact on these trees as depicted below in figure 3.



**Figure 4 – Banksia Integrifolia to be retained**

The trees will provide screening and softening of the visual impact of the boat shed as viewed from the beach to the east and their retention is considered appropriate for this reason.

In order to ensure the retention of the trees, the independent town planning consultant has recommended a condition to be placed upon the consent requiring the boat shed to be relocated 1.5m to the west, with the subsequent shortening of either the vegetable garden or outdoor wash area to accommodate the relocation. Condition eight (8) of the consent reads as follows:

### **Amended plans**

1. ***Prior to the issue of the construction certificate, the applicant must submit to the PCA amended building plans that address the following:***
  - a. *The boat shed arm and boatshed must be reduced in length landwards such that its eastern extent is relocated 1.5m westward;*
  - b. *The WC within the boat shed arm shall be elevated such that the base of the slab shall be above RL 4.4 AHD;*
  - c. *The subfloor beam of the boat shed and boat shed arm shall be raised such that the base of the beam is at or above RL 4.4 AHD. This shall be achieved without increasing the height of the structure above RL 7.76 AHD;*
  - d. *The boat shed and entire boat shed arm shall be constructed on piled footings in accordance with the recommendations of the Report on Geotechnical Investigation by Douglas Partners Pty Ltd ref no Project 89244.00 R.001. Rev2 dated 15 February 2017;*
  - e. *All electrical, wiring, fuel lines or any other service pipes and connections to the boathouse arm must be located at least 500mm above the wave runoff level; and*
  - f. *No filling shall be placed and no retaining walls shall be constructed in the wave runoff area.*

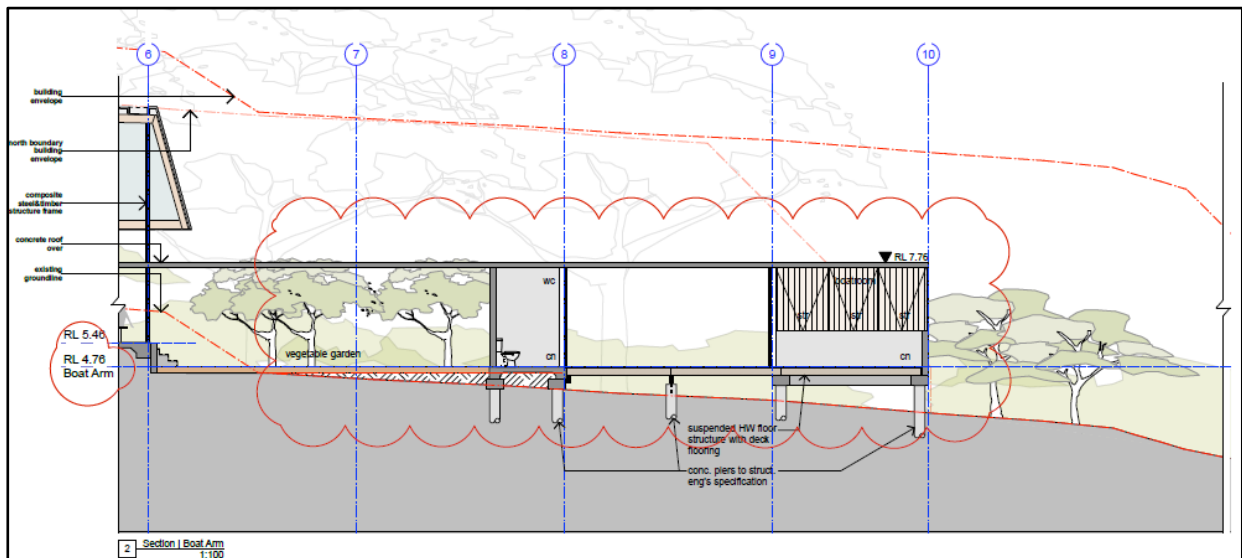
In summary, the independent Town Planning Consultant recommended that the development application should be supported subject to the attached conditions of consent.

Should Council determine that the provisions of Chapter G6 of SDCP prohibit the boat shed and boat shed arm seaward of the ZRFC 2025, contrary to the attached independent planners assessment, then it is recommended that Council grant partial consent to the development application without the boat shed and boat shed arm, with the following changes to the conditions:

1. Condition 3 be deleted and replacement with the following:

The boat shed and boat shed arm are not approved under this consent and are to be deleted from the Construction Certificate plans prior to issue of the Construction Certificate.

  - a. The boatshed arm and boat shed shall be deleted.
2. Condition 26 be amended by deletion of c, d and e.
3. Deletion of Conditions 8, 10 and 45.



**Figure 2 – Proposed Section Plan of the Boat Arm.**

### Consultation and Community Engagement:

The application, in its various forms, has been notified five (5) times;

- Initial notification 6 to 21 April 2016 (extended to 2 May 2016 in response to neighbour's request). A total of 13 submissions were received from or on behalf of 6 respondents.
- Renotified 10 to 25 October 2016 (extended to 31 October 2016 in response to neighbour's request) – amended plans, boat shed arm design statement, initial and supplementary Coastal Hazards Risk Assessment Reports. A total of 10 submissions were received from or on behalf of 6 respondents.
- Renotified 17 February to 6 March 2017 – additional information on geotechnical and coastal hazard assessment issues. A total of 16 submissions were received from or on behalf of 15 respondents.

Since the Court's decision to set aside the consent granted by the Council, the application has been amended and renotified a further two times.

- The fourth notification occurred from 4–16 August 2018. In response to this notification 13 submissions were received.
- The fifth notification period occurred from 4–19 December 2018. In response to this notification 2 submissions were received.

All notifications were undertaken in accordance with Council's Community Consultation Policy, with the letters for the first notification sent to the owners of four (4) properties lying within a 25m buffer of the site. Subsequent notifications were sent to the owners notified in the first round of notification and to those people who made submissions during the first and second rounds.

A summary of each submission and response has been provided in the attached Section 4.15 Assessment Report prepared by an independent Town Planning Consultant.

DE19.110

**Financial Implications:**

The development application was subject to a Class 1 appeal in the Land and Environment Court. The amended development application has addressed the issues raised as part of the Class 1 appeal which relate to wave run up. As a result, no further financial implications are likely to occur due to the previous proceedings.

**Legal Implications**

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

**Summary and Conclusion**

Based upon the finding within the attached independent section 4.15 assessment report. It is recommended that Council approve DA16/1341, subject to the conditions at Attachment 2.



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## Land and Environment Court New South Wales

**Medium Neutral Citation:**

**Platford v van Veenendaal and Shoalhaven City Council [2018] NSWLEC 27**

**Hearing dates:**

5 March 2018

**Date of orders:**

09 March 2018

**Decision date:**

09 March 2018

**Jurisdiction:**

Class 4

**Before:**

Preston CJ

**Decision:**

The Court:

- (1) Declares that the development consent granted by the second respondent on or about 25 July 2017 in respect of the Development Application 16/1341 for development at 52 Cyrus Street Hyams Beach ("Purported Consent for DA 16/1341") is invalid and of no effect.
- (2) Sets aside the Purported Consent for DA 16/1341.
- (3) Grants an injunction restraining the first respondent from undertaking any development in reliance upon the Purported Consent for DA 16/1341.
- (4) Lists the proceedings at 9:30am on 26 March 2018 for directions concerning the question of the costs of the proceedings.

**Catchwords:**

JUDICIAL REVIEW – development consent for dwelling in coastal zone – boathouse arm of development at risk of

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coastal inundation – condition of consent required  
maintenance of existing seawall – whether council the  
consent authority – whether council considered height  
controls applying to the boathouse arm – whether council  
considered effects of coastal inundation on the screen wall  
of the boathouse arm – failure to consider relevant matters  
established

**Legislation Cited:**

Coastal Protection Act 1979 ss 4(1), 37, 55M  
Environmental Planning and Assessment Act 1979 ss 4,  
76A(1)(b), 79C(1)(a), 80A(1)(f)  
Shoalhaven Development Control Plan 2014 Ch G6, G12  
Shoalhaven Local Environmental Plan 2014 cl 5.5  
State Environmental Planning Policy (Infrastructure) 2007  
cl 129A  
State Environmental Planning Policy No 71 – Coastal  
Protection cl 7, 8

**Cases Cited:**

Parramatta City Council v Pestell (1972) 128 CLR 305  
SZEPEZ v Minister for Immigration and Multicultural Affairs  
(2006) 159 FCR 291; [2006] FCAFC 107  
Tenacity Consulting v Warringah Council [2004] NSWLEC  
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**Category:**

Principal judgment

**Parties:**

Colleen Anne Platford (Applicant)  
Theodorus van Veenendaal (First Respondent)  
Shoalhaven City Council (Second Respondent)

**Representation:**

Counsel:  
Noel Hutley SC and Stephen Free (Applicant)  
The First and Second Respondents filed submitting  
appearances.

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## Solicitors:

Gilbert + Tobin Lawyers (Applicant)

Steele Law (First Respondent)

BAL Lawyers (Second Respondent)

**File Number(s):**

2017/254528

**Publication restriction:**

Nil

**JUDGMENT**

- 1 Hyams Beach, near Jervis Bay, is scenically stunning, with its white sands and turquoise waters. Two residential properties, on the southern end of the beach, enjoy scenic views.
- 2 The more southerly property, at 54 Cyrus Street, owned by the applicant, Ms Platford, was redeveloped first. The two storey house, running west to east along a considerable portion of the property, has extensive views to the east to the sea and to the north over the adjoining property along the beach.
- 3 The owner of the more northerly property at 52 Cyrus Street, the first respondent, Mr van Veenendaal, now wishes to redevelop the property. Mr van Veenendaal lodged a development application (DA 16/1341) with Shoalhaven City Council (the Council) to demolish the existing two storey dwelling and erect a new two storey dwelling on the western portion of the property. The application also seeks approval for what is described by the applicant as the “boathouse arm”. This is a non-habitable, ancillary building extending along the side boundary with No 54 Cyrus Street, from the new dwelling to 7.5m from the eastern boundary. (The eastern boundary is now in the sands of the beach). The boathouse arm includes a boathouse room and a solid concrete screen wall linking the boathouse to the main dwelling. The screen wall varies in height from 3.7m to 4.12m and is set back 900mm from the side boundary with 54 Cyrus



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Street. The screen wall is of coloured concrete construction. A concrete roof projects northwards from the top of the screen wall, covering the pathway between the main dwelling and the boathouse.

- 4 Ms Platford objected to the proposed development, particularly the boathouse arm. The boathouse and the screen wall would block her “iconic” views to Hyams Beach, particularly from the ground floor of her house and overshadow her house. The boathouse arm would also be exposed to coastal hazards and interfere with wave runup flows.
- 5 The Council met on 17 July 2017 and determined to grant consent to the application subject to conditions. Three conditions are of relevance. Condition 6 required the applicant, prior to the issue of the construction certificate, to submit amended building plans that would mitigate the effects of wave runup, including raising the level of the floor of the boathouse, changing the floor’s construction to be timber slats rather than concrete, founding the entire development on piled footings, and placing no filling or retaining walls in the wave run up area. Condition 36 reiterated that no filling or retaining walls must be constructed in the wave runup area. Condition 43 required the existing sea wall within the property to be maintained such that it continues to provide protection to the south eastern half of the property.
- 6 Ms Platford has brought judicial review proceedings challenging the validity of the development consent on nine grounds. Mr van Veenendaal and the Council have filed submitting appearances. They submit to the making of all orders sought and the giving or entry of judgment in respect of all claims made, save as to costs. In such circumstances, it remains necessary for the applicant, Ms Platford, to satisfy the Court that the consent is invalid: *SZEPZ v Minister for Immigration and Multicultural Affairs* (2006) 159 FCR 291; [2006] FCAFC 107 at [4].
- 7 Ms Platford’s grounds concern three topics: the correct consent authority to determine the development application, the height of the screen wall of the boathouse arm and the effect of the screen wall on wave runup flows.

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**The correct consent authority**

- 8 The first ground of challenge (ground 1) is that the Council was not the relevant consent authority to determine the development application and hence the Council's determination to grant consent to the application was outside power. This ground depends on the development consent being construed as granting consent for development for the purposes of a sea wall.
- 9 The Council had carried out "interim works" in 2013 of constructing a rock revetment or sea wall to protect the public sewer that runs through the property. The existing sea wall, if maintained, will protect the south eastern half of the property from wave action and erosion. The protection afforded by the sea wall enabled the proposed boathouse to be located closer to the beach than would otherwise have been allowed. However, the existing wall must be maintained in order to continue to provide this protection to the boathouse from wave action and erosion. Accordingly, the Council, in granting consent to the development including the boathouse, imposed condition 43 that the existing sea wall be maintained such that it continues to provide protection to the south eastern half of the property.
- 10 Ms Platford contends that the Council had no power to grant consent to development for the purposes of a sea wall, only the Coastal Panel had that power. Clause 129A(1) of the State Environmental Planning Policy (Infrastructure) 2007 ('Infrastructure SEPP') provides that development for the purposes of a sea wall may be carried out by a person with consent on the open coast. Hyams Beach is part of the open coast. The consent authority to determine a development application seeking consent for development for the purposes of a sea wall depends on whether or not a coastal zone management plan applies to the land. For Hyams Beach, a coastal zone management plan had not been adopted at the time that the Council determined the development application. In this circumstance, cl 129A(2) provides that the Coastal Panel is the consent authority with the function of determining a development application for development for the purposes of a sea wall.

<https://www.caselaw.nsw.gov.au/decision/5aa08777e4b087b8baa87556>

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- 11 Ms Platford contends that the Council, by imposing condition 43, extended the development approved by the consent to include a form of development for the purposes of a sea wall. The maintenance of the sea wall required by condition 43 involves the carrying out of a work (the work required to maintain the sea wall) and a change of the purpose for which the sea wall is to be used (from a temporary measure to protect the sewerage pipe to a permanent measure to protect the boathouse), both of which are “development” (within the definition of “development” in s 4 of the *Environmental Planning and Assessment Act 1979* (‘EPA Act’) and s 37 of the *Coastal Protection Act 1979*) and for the purposes of a sea wall.
- 12 By operation of cl 129A(2) of the Infrastructure SEPP, however, only the Coastal Panel and not the Council had the function of granting consent to development for the purposes of a sea wall. Hence, Ms Platford contends, the grant of consent was outside power.
- 13 I do not accept this contention. On its proper construction, the development application made by Mr van Veenendaal did not seek consent for development for the purposes of a sea wall. The development for which consent was sought was for the demolition of the existing dwelling and the erection and use of the new dwelling, including the building and structures of the boathouse arm. The development application did not seek consent for development (in any of the ways defined) for the purposes of a sea wall. It is true that part of the development for which consent was sought (in the boathouse arm) depended on the continued existence and proper functioning of the sea wall. The Coastal Hazards Risk Assessment Report (6 June 2016) submitted as part of the development application noted that “the 2013 sewer protection works would need to be maintained and that this revetment would provide a level of protection to the boatshed”. However, the development application did not seek consent to maintain the revetment. In these circumstances, the Coastal Panel was not the consent authority.

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A “consent authority” is defined to be, in relation to a development application, the relevant public authority having the function of determining the development application (see definition of “consent authority” in s 4 of the EPA Act). The Coastal Panel can have the function of determining a development application for development for the purposes of a sea wall (see cl 129A(2) of the Infrastructure SEPP). But it can only have this function if and when a development application is made seeking consent to carry out development for the purposes of a sea wall. The development application in this case did not seek consent for development for the purposes of a sea wall and hence the Coastal Panel was not the consent authority having the function of determining this development application.

- 15 The fact that the Council imposed condition 43 requiring maintenance of the sea wall does not change this conclusion for two reasons. First, the identification of the consent authority operates by reference to the development application made and the development for which consent is sought in that development application, so as to be able to identify the public authority with the function of determining the development application. The identification of the consent authority cannot operate retrospectively by reference to the determination to grant consent to the development application (including the conditions of the consent).
- 16 Secondly, the imposition of condition 43 in the grant of consent to the development application did not extend the approved development to include development for the purposes of a sea wall. The approved development remained that sought in the development application of the demolition of the existing dwelling and the erection and use of the new dwelling. The power to impose condition 43 lay in s 80A(1)(f) of the EPA Act, which empowers a consent authority to impose a condition of development consent if:

“it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C(1) applicable to the development the subject of the consent”.

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<https://www.caselaw.nsw.gov.au/decision/5aa08777e4b087b8baa87556>

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The maintenance of the existing sea wall could include the carrying out of works on the land. The Council had power under s 80A(1)(f) to require the carrying out of such maintenance works. The imposition of a condition requiring the carrying out of works does not involve the grant of consent to the carrying out of the works, notwithstanding that the carrying out of works is development as defined. This is because the grant of development consent entitles the holder of the consent to carry out the development approved by the consent but does not require the carrying out of that development. A condition requiring the carrying out of works is different; the works must be carried out if the holder of the consent elects to carry out the development approved by the consent. The development must be carried out in accordance with the consent (see s 76A(1)(b)) and this includes any conditions of the consent. The development for which consent has been granted, however, remains that which was sought in the development application. It does not extend to the carrying out of any works required by a condition of the consent imposed under s 80A(1)(f) of the EPA Act.

18 I reject ground 1.

#### **The height of the screen wall**

- 19 Two grounds of challenge (grounds 2 and 3) concern the Council's consideration of the height of the screen wall in the boathouse arm. The screen wall, which links the main dwelling to the boathouse, varies in height from 3.71m to 4.12m. Shoalhaven Development Control Plan 2014 ('Shoalhaven DCP') contains controls regulating the height of various buildings and structures in residential zones. For dwelling houses in the applicable R2 Low Density Residential Zone, Chapter G12 contains controls for fencing (s 5.3.3), freestanding privacy screens (s 5.3.5) and ancillary structures (s 5.3.8).
- 20 Ground 2 contends that the Council failed to take into consideration these height controls in determining to grant consent to the development application. The first two controls can be quickly dismissed as not applicable. The screen wall is set back

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900mm from the side boundary. The fencing controls in s 5.3.3 concern fences or walls on boundaries. The screen wall also extends from the main dwelling to the boathouse. The controls for freestanding privacy screens in s 5.3.5 concern screens that are freestanding. By reason of its connection to both the main dwelling and the boathouse the screen wall in this case is not freestanding. The Report to the Council meeting on 17 July 2017 concluded that these controls in s 5.3.3 (fencing) and s 5.3.5 (freestanding privacy screens) were not applicable. Ms Platford has not demonstrated that the Council was in error in so concluding.

- 21 The controls in s 5.3.8 concerning ancillary structures may, however, be applicable. The note to s 5.3.8 describes “Ancillary structures” to include:

“carports, garages, sheds, freestanding pergola, swimming pools, tennis courts and the like. Although the principal dwelling is usually the main building, a number of the ancillary structures may be built to provide additional facilities or features for use by the residents.”

- 22 The specific objectives of the controls for ancillary structures include to “minimise the impacts of ancillary structures upon the surrounding properties.” The controls specified are of two types: Performance Criteria and Acceptable Solutions. The Performance Criteria identifies how a development should perform so that the desired objectives can be achieved. Acceptable Solutions indicate how the development can achieve the desired performance and objectives.

- 23 One of the performance criteria (P22.1) for ancillary structures is that “the design of a carport, garage or other residential related freestanding structure complements the dwelling design and has minimal impact on the amenity and solar access of adjoining properties.” For Performance Criterion P22.1, the Acceptable Solution, in certain residential zones, including the R2 Zone, is stated in A22.1 to be “The floor area of a garage does not exceed 110m<sup>2</sup> and the height of the walls do not exceed 3.0m”.

- 24 The Council Officer, in the Shoalhaven DCP Chapter G12 Checklist attached to the Report to the Council meeting on 17 July 2017, found that the screen wall was “non-compliant” with the Acceptable Solution A22.1 because “the proposed boathouse arm

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exceeds 3m for most of its length.” The Checklist noted that: “The non-compliance is with the Acceptable Solution and so the proposal has been assessed against the Performance Criteria P22.1-P24.” The Checklist found that Performance Criteria P22.2 (relating to garages) and P24 (relating to swimming pools and tennis courts) were not relevant. Performance Criterion P23 was achieved as the buildings in the boathouse arm are “clearly neither equipped nor intended for residential occupation separate to the main dwelling.”

- 25 This left Performance Criterion P22.1 (quoted earlier). The Checklist stated: “The impact of the boathouse arm on amenity and solar access of adjoining properties has been addressed in detail in the Section 79C Planning Assessment Report and is considered to be acceptable.” In terms, this statement does not find that the ancillary structure of the boathouse arm, including the screen wall, “has minimal impact on the amenity and solar access of adjoining properties”, as required by Performance Criterion P22.1. However, the statement refers to and incorporates the findings in the Section 79C Planning Assessment Report on the impact of the boathouse arm on adjoining properties. In this section of the Planning Assessment Report, there are findings that the boathouse arm has minimal impact on the amenity and solar access of the adjoining property of 54 Cyrus Street.
- 26 The Section 79C Planning Assessment Report assessed the impact on views from 54 Cyrus Street applying the four step methodology established by the Court in the planning principle in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, namely assessment of the value of the views to be affected, consideration from what part of the property the views are obtained, assessment of the extent of the impact, and assessment of the reasonableness of the proposal that is causing the impact. In the third step, the extent of the impact, the Report stated:

“The views available to the property need first to be identified. Currently the property has unimpeded views from the north north west to slightly south of east. The views captured by the property are significantly obtained across the side boundary between 52 and 54. The view loss to the living areas on the upper floor will suffer negligible

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impact. There is a greater loss to the upper floor bedrooms however this is balanced by the fact that they are not living rooms. The overall impact to views from the upper level is assessed as **minor**.

The views affected on the lower level are more significant, with most views across the side boundary lost. The impact to views from the lower level is assessed as **severe**.

Weighing up the views from the whole property, the overall view impact is assessed as **minor**. This is influenced by:

- the high quality of the views which remain unaffected;
- the fact that the views lost are across a side boundary;
- the views from living areas and the principal open space area are virtually unaffected."

- 27 The Section 79C Planning Assessment Report assessed the overshadowing caused by the boathouse arm:

"Shadow diagrams provided by the applicant with the amended plans show that on the lower floor there will be some additional loss of sun (compared with the pre-development state) in the afternoon to the ground floor bedrooms, bathroom and outdoor paved area. However, the shadow diagrams indicate that the lower level rooms do not lose any sunlight due to the new development until well after 12pm and the outdoor terrace also retains substantial sunlight between 9am and 3pm. There remains ample access for light and air to the lower level. It is useful to note that these areas would be more significantly affected if a building utilising the full available building envelope were to be constructed on the site. The amended plans indicate that the raised ground level shown in the first issue of plans has been removed."

- 28 In summary, the Report to the Council meeting concluded that, although the boathouse arm did not comply with Acceptable Solution A22.1, in that the wall exceeded 3m, it did achieve the Performance Criteria, including P22.1, for ancillary structures.
- 29 Ground 3 challenges the reasonableness of this conclusion. Ground 3 contends that "if Council concluded that the boathouse arm/concrete structure was compliant with the Shoalhaven DCP, that conclusion was unreasonable" and alternatively, "if Council concluded that the boathouse arm/concrete structure was non-compliant with the Shoalhaven DCP but it was nevertheless appropriate to approve the Development Application, that conclusion was unreasonable".

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I reject ground 3. Ms Platford has not established that the finding that the ancillary structure of the boathouse arm, including the screen wall, achieved the Performance Criteria, including P22.1, was manifestly unreasonable. The ground of judicial review of manifest unreasonableness sets a high bar for a challenger. It is not enough that the Council's finding or inferences of fact and any decision based on those findings or inferences could be unsound. The validity of the decision is not dependent upon the soundness of the Council's findings or inferences: see, for example, *Parramatta City Council v Pestell* (1972) 128 CLR 305 at 323.

- 31 Here, the Report to the Council meeting assessed the impacts of the boathouse arm, including the screen wall with its height exceeding 3m, on the view from and the overshadowing of the adjoining property of 54 Cyrus Street and found those impacts to be minimal. Those findings were reasonably open on the material before the Council.
- 32 Ground 2 raises a different argument. This ground relies upon the apparent difference between what was said in the Checklist (that the ancillary structure of the boathouse arm was "non-compliant" with the controls in s 5.3.8) and what was said orally by the Council Officer at the meeting on 17 July 2017 (that the boathouse arm is "compliant"). Ground 2 contends that the boathouse arm is not compliant with the controls for ancillary structures in s 5.3.8 but the Council, as the collegiate body, proceeded to consider and determine the development application on the basis that the boathouse arm was compliant with these controls. As a consequence, the Council failed to take into consideration these controls.
- 33 Ms Platford relied upon the following statements at the Council meeting on 17 July 2017. The first was the question asked by Councillor Alldrick and the answer given by the Council Officer:

"Councillor Alldrick: There was mention in the second deputation, that it was said that the wall is non-compliant. Um, the wall is compliant?"

Council Officer: The wall at the boathouse, the boathouse arm wall is compliant in terms of the heights and distance from boundary and things like that. I think there was some suggestion that the rock wall protecting the sewer wasn't compliant.

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Councillor Alldrick: OK.

Council Officer: but we have even had Advisian do their review of the coastal hazard issues, they actually look closely at that wall and gave advice that it was satisfactory and would withstand the expected storm."

- 34 The second was the question asked by Councillor Wells and the answer given by the Council Officer:

"Councillor Wells: Staff, during her presentation Miss Platford mentioned that the standard boundary fence was 1.8 meters high, I think she asserted that for a screening fence 2.4 meters was the limit. Where does 3.6 sit in terms of development controls and...

Council Officer: Through Madam Chair, the numbers that we have been quoted were acceptable solutions in the DCP document. They are one way of meeting the requirement but the DCP is structured with performance criteria and this wall is part of a total structure and really doesn't fit the definition of either a boundary fence or just a screen. So it has been assessed on the merits of the proposal in accordance with the performance criteria and is acceptable.

Councillor Wells: Was there a discussion had with the applicant at any time that the wall height be reduced, so that the boat shed arm looks more like a tooth brush than just a solid brick wall?

Council Officer: Yes the issue of the height of the wall was raised with the applicant and did end up in a reduction in the height of the wall, but that is the only change they have agreed to carry out to the design.

Councillor Wells: The height of that wall is below the floor level of the upper storey of 54?

Council Officer: By just a bit over a meter.

Councillor Wells: Thank you."

- 35 The third was the statement by Councillor Proudfoot that "we're informed that the boathouse certainly does comply".
- 36 The fourth is the statement by Councillor Pakes that: "I can't not support it because all the processes have been followed, everything complies..."
- 37 The fifth is the statement by Councillor Proudfoot that: "I mean it complies, it fits, it sits with our DCP..."

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Ms Platford contended that these statements that the boathouse arm complies with Shoalhaven DCP were incorrect. The height of the screen wall exceeded 3m, which was the maximum height given in the Acceptable Solution A22.1 for walls of ancillary structures.

39 I reject this ground. It is based on an incorrect understanding of the controls for ancillary structures in s 5.3.8 of Shoalhaven DCP. The controls specify the Performance Criteria that must be met for ancillary structures. The Acceptable Solutions are ways in which those Performance Criteria can be met. In a sense, by meeting an Acceptable Solution, the ancillary structure is deemed to comply with the Performance Criteria. But the converse does not apply: not meeting the Acceptable Solution does not necessarily mean that the ancillary structure cannot comply with the Performance Criteria.

40 In this case, the Council Officer assessed that, although the ancillary structure of the boathouse arm, including the screen wall, did not meet the Acceptable Solution A22.1 (because the wall exceeded 3m in height), it nevertheless achieved the Performance Criteria, including P22.1. In this way, the ancillary structure could be described as being “compliant” with the controls for ancillary structures in s 5.3.8 of Shoalhaven DCP. This is what the Council Officer said in the Council Officer’s Report and, on a fair reading, what the Council Officer said orally at the meeting (particularly the second statement quoted where the officer explained that the structure had been assessed in accordance with the Performance Criteria).

41 In these circumstances, the Council as a collegiate body was not misled about the compliance of the boathouse arm with the controls in Shoalhaven DCP.

42 I reject ground 2.

#### **The effect of the screen wall on coastal inundation**

43 The remaining five grounds (grounds 4-9) concern the effect of the screen wall on coastal inundation, particularly wave runup flows.

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The boathouse arm includes the boathouse room and the screen wall connecting the main dwelling to the boathouse. The boathouse arm is deliberately located in the south eastern half of the property so as to be protected from coastal erosion by the seawall that protects the public sewer running near the eastern boundary of the property. The coastal engineer engaged by the Council to assess the coastal risks of the proposed development, Mr Adamantidis of Advisian, concluded:

"As the existing revetment has been assessed to provide adequate protection against storm erosion for the southern half of the property, the immediate erosion hazard is assessed to extend only as far landward as the seawall for the southern half of the property, as mapped in Figure 17.

Due to the presence of the protective seawall, the proposed boathouse is located landward of the 2025 *Zone of Reduced Foundation Capacity* landward limit and is therefore not considered to be Precinct 1 according to Council's DCP, and would therefore be allowable."

- 45 Whilst the boathouse arm was assessed not to be at risk from wave erosion, it still would be exposed to coastal inundation by wave runup. Wave runup relates to the rush of water up the beach on the breaking of a wave. The amount of runup is the vertical height above still water level to which the rush of water reaches. Wave runup is site specific. Advisian assessed the present day maximum wave runup level for a 100 year ARI storm event at the property to be 4.4m AHD at the location of the boathouse. Sea level rise would be expected to increase this value by approximately the quantum of the sea level rise, ie. 0.35m by 2100.
- 46 The plans lodged with the development application showed the boathouse to have a concrete floor with a finished floor level of RL 4.05. A wave runup level of 4.4m AHD would therefore be approximately 0.35m above the finished floor level. As a consequence, Advisian recommended that:

"The boathouse would need to be constructed with a floor level above the wave inundation level plus suitable freeboard to allow for future sea level rise, to enable it to comply with the provision of Council's DCP, Chapter G6, Section 4, which requires that, for structures constructed in the coastal frontage zones, *'future developments in the coastal zone consider the risks associated with local coastal hazards such as coastal erosion, shoreline recession, coastal inundation, coastal entrance migration, slope*

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*instability and stormwater erosion and their potential increase with projected Sea Level Rise.* As the boathouse may be subject to future wave inundation with sea level rise, it is recommended that the floor of the boathouse be constructed of timber slats to reduce wave uplift pressures."

47 Advisian noted that:

"The wave runup assessment was valid for the existing ground elevations. If ground levels were to be modified (eg. by introducing fill), that would increase the level of wave runup – for this reason, the area under the boathouse must not be filled."

48 Advisian also recommended that "all electrical wiring, fuel lines or other service pipes and connections are located above the wave runup level plus a freeboard of 0.5m" and that "[t]he boathouse should still be constructed on piled foundations bedded into the underlying rock..."

49 The Council Officer's Report and the Council by its determination adopted these findings and recommendations of Advisian through the imposition of condition 6 requiring the submission of amended building plans for the boathouse. Condition 6 provides:

"6. Prior to the issue of the Construction Certificate, the applicant must submit to the PCA amended building plans that address the following:

a. The boathouse floor being constructed to a height of RL 4.75m AHD and in accordance with the requirements of the Advisian report dated 6 June 2017 (report No. 30105-03779-001) vis:

(i) the floor of the boathouse is to be constructed of timber slats to reduce wave uplift pressures;

(ii) access to the boathouse is to be from the landward side or via a timber ramp oriented south-north so that it does not interfere with wave runup flows;

(iii) The boathouse is to be landscaped to suitably screen the sub-floor area and the area between the boathouse arm and the dividing fence be landscaped with appropriate vegetation of a height that must not exceed that of the boathouse arm;

b. The boathouse overall height is to be RL 7.76m AHD;

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- c. All electrical, wiring, fuel lines or any other service pipes and connections to the boathouse arm must be located at least 500mm above the wave runup level;
- d. The entire development must be founded on piled footings in accordance with the recommendations of the Report on Geotechnical Investigation by Douglas Partners Pty Ltd re no Project 89244.00 R.001. Rev2 dated 15 February 2017;
- e. No filling must be placed and no retaining walls must be constructed in the wave runup area."

- 50 Ms Platford contends that this assessment of coastal inundation risks was incomplete because it failed to assess the screen wall connecting the boathouse to the main dwelling. The screen wall was proposed to be a solid concrete structure from 3.71m to 4.2m in height. The plans show the level of the paving adjacent to the screen wall to be RL 4.05, the same as the finished floor level of the boathouse room. Advisian plotted (in Figure 17) the extent of present day wave runup to be around a third of the length of the screen wall (landward of the boathouse room) and the extent of wave runup allowing for sea level rise to 2050 to be around half of the length of the screen wall (landward of the boathouse room).
- 51 Ms Platford contends, however, that Advisian did not address the effect of wave runup on this part of the screen wall in the wave runup area or, conversely, the effect of this part of the screen wall on wave runup. Advisian only assessed the effects of wave runup on the boathouse room and the effect of the boathouse room on wave runup.
- 52 The explanation for this omission to consider the screen wall in the wave runup area might lie in the plans provided by the Council to Advisian. The Council provided, by attachment to an email on 5 June 2017, two plans, the Boat House & Garden Plan showing the finished floor level of the boathouse room and the level of the paving both to be RL 4.05, and an east-west section through the boathouse and the outdoor WC with a concrete roof extending from the main dwelling to the boathouse room. Neither plan explicitly shows a solid concrete screen wall connecting the boathouse to the main dwelling. In these circumstances, Ms Platford suggests, Advisian may not have

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appreciated that there was a solid concrete wall with a height of 3.71m to 4.12m from ground level (which was at one place RL 4.05, which was lower than the extent of wave runup (RL 4.4)).

53 Ms Platford contends that the Council was obliged under s 79C(1)(a)(i) and (iii) of the EPA Act and various legal instruments to consider the coastal inundation risks of and on the screen wall.

54 First, Chapter G6 of the Shoalhaven DCP contains objectives and controls to manage the risks associated with coastal processes. Key objectives include:

“i. Ensure that future development in areas of coastal management considers the risks associated with coastal processes and is sympathetic to the physical constraints.

ii. Consider local physical coastal processes and hazards to avoid significant adverse impacts from these processes...

iv. Ensure that future developments in the coastal zone consider the risks associated with local coastal hazards such as coastal erosion, shoreline recession, coastal inundation, coastal entrance migration, slope instability and stormwater erosion and their potential increase with projected Sea Level Rise.”

55 The controls vary depending on the level of risk for the area in which buildings are proposed. Because of the protection from beach erosion provided by the seawall, the south-eastern half of the property was assessed by Advisian to be landward of Precinct 1 High Risk and Precinct 2 Moderate Risk, and hence fell within Precinct 3 Low Risk. There are no particular controls applying to land within Precinct 3, but the development application still needs to be assessed on merit, taking into consideration the risks associated with coastal inundation by wave runup.

56 Ms Platford contends that the assessment required by Chapter G6 of Shoalhaven DCP included assessing the risks associated with coastal inundation by wave runup on the screen wall and the likely effect of the screen wall on wave runup flows. Ms Platford contends that the Council failed to take these matters into consideration (ground 4) or, if it did, its consideration was manifestly unreasonable (ground 5).

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Second, cl 5.5 of Shoalhaven Local Environmental Plan 2014 (“Shoalhaven LEP”) regulates development within the coastal zone. The “coastal zone” is defined to have the same meaning as in the *Coastal Protection Act 1979*. It was accepted by the Council that the properties at 52 and 54 Cyrus Street, Hyams Beach are in the coastal zone as defined. Clause 5.5(3)(d) of Shoalhaven LEP provides:

“(d) the proposed development will not:

- (i) be significantly affected by coastal hazards, or
- (ii) have a significant impact on coastal hazards, or
- (iii) increase the risk of coastal hazards in relation to any other land.”

- 58 “Coastal hazards” is defined to have the same meaning as in the *Coastal Protection Act*. That meaning includes “coastal inundation”.
- 59 Ms Platford contends that the Council was obliged by cl 5.5(3)(d) to address and be satisfied that not only the boathouse room but also the screen wall within the wave runup area will not have the effects identified in cl 5.5(3)(d). Ms Platford contends that the Council failed to consider and form the required opinion of satisfaction about these matters (ground 6) or, if it did, its opinion of satisfaction was manifestly unreasonable (ground 7).
- 60 Third, cl 7 of State Environmental Planning Policy No 71 – Coastal Protection (“Coastal Protection SEPP”) requires a consent authority, when it determines a development application to carry out development on land within the coastal zone, to take into account the matters for consideration in cl 8. One of the matters for consideration in cl 8 is “(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on the coastal processes and coastal hazards”. “Coastal zone” has the same meaning as in the *Coastal Protection Act*.
- 61 Ms Platford contends that the Council failed to consider the likely impact of coastal inundation by wave runup on the screen wall in the wave runup area and any likely impacts of the screen wall on wave runup flows (ground 8).



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Fourth, s 55M of the *Coastal Protection Act* provides that:

“(1) Consent must not be granted under the Environmental Planning and Assessment Act 1979 to development for the purpose of coastal protection works, unless the consent authority is satisfied that:

(a) the works will not over the life of the works:

- (i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or
- (ii) pose or be likely to pose a threat to public safety, and

(b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works:

- (i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,
- (ii) the maintenance of the works.

(2) The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following:

(a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following:

- (i) the owner or owners from time to time of the land protected by the works,
- (ii) if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,

Note. Section 80A (6) of the Environmental Planning and Assessment Act 1979 provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

(b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the Local Government Act 1993).

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(3) The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned."

- 63 "Coastal protection works" are defined to mean "activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters and includes seawalls, revetments, groynes and beach nourishment." (s 4(1)).
- 64 Ms Platford contends that the Council, by granting consent subject to condition 43 that required the existing seawall to be maintained, granted consent to development for the purpose of coastal protection works. As a consequence, Ms Platford argues, the Council was required to have considered and formed the opinion of satisfaction about the matters in s 55M(1)(a) and (b) and there is nothing in the material before the Council, or in the recording of the Council meeting, to indicate that any consideration was given to these matters, let alone that the Council was satisfied of the matters (ground 9).
- 65 In these various ways, Ms Platford contends the Council failed to consider these relevant matters.
- 66 I find that the Council did fail to consider the relevant matters in Chapter G6 of the Shoalhaven DCP, cl 5.5(3)(d) of the Shoalhaven LEP and cl 8(j) of the Coastal Protection SEPP by failing to consider the likely effect of coastal inundation by wave runup on the screen wall in the wave runup area and the likely effect of the screen wall on wave runup flows. Advisian found that the other part of the boathouse arm in the wave runup area, the boathouse room, would be affected by and would itself affect wave runup and recommended various measures to mitigate these effects, including raising the floor level of the structure and prohibiting the placing of any fill or the construction of any retaining walls in the wave runup area. The construction of a solid concrete screen wall in the wave runup area is inconsistent with Advisian's assessment and recommendations. The inference should be drawn that Advisian did not address the likely effects of wave runup on the screen wall or the likely effects of the screen wall on wave runup. These were material effects falling within the scope of the relevant

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matters regarding coastal hazards in Chapter G6 of the Shoalhaven DCP, cl 5.5(3)(d) of the Shoalhaven LEP and cl 8(j) of the Coastal Protection SEPP that the Council was bound to consider in determining the development application. The Council failed to do so. The Council relied on and adopted the consideration by Advisian of the relevant matters regarding coastal hazards. There is nothing in Advisian's reports, or in any other material considered by the Council, that addressed the likely effects of wave runup on the screen wall or the likely effects of the screen wall on wave runup flows. Equally, there is no indication in the recording of the discussion at the Council's meeting on 17 July 2017 that these effects were addressed by the Council.

- 67 In these circumstances, I uphold grounds 4, 6 and 8 that the Council failed to consider the relevant matters under Chapter G6 of Shoalhaven DCP, cl 5.5(3)(d) of the Shoalhaven LEP and cl 8(j) of the Coastal Protection SEPP.
- 68 As the Council failed to consider these relevant matters, grounds 5 and 7, which contended that the Council's consideration of these matters was manifestly unreasonable, do not arise and for that reason, I reject them.
- 69 I do not uphold ground 9 for a different reason. Section 55M of the *Coastal Protection Act* requires the consent authority, before granting consent to development for the purpose of coastal protection works, to be satisfied of the matters in s 55M(1). In this case, as I have found earlier, the development application did not seek consent for development for the purpose of coastal protection works. The Council, which was the consent authority with the function of determining that development application, did not grant consent to development for the purpose of coastal protection works. It granted consent to the development sought in the development application of the demolition of the existing dwelling and the erection and use of the new dwelling. The imposition of a condition (condition 43) on the grant of consent to that development requiring the carrying out of works (the works of maintaining the existing seawall) did not involve the granting of consent to the carrying out of those works.

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<https://www.caselaw.nsw.gov.au/decision/5aa08777e4b087b8baa87556>

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In these circumstances, s 55M did not operate to prevent the Council from granting consent to the development application unless it was satisfied of the matters in s 55M(1).

**Orders to be made**

- 71 Ms Platford has established that the Council failed to consider relevant matters in determining to grant consent to the development application. These failures are material and invalidate the consent. Ms Platford seeks in the summons orders declaring the consent to be invalid and setting aside the consent and restraining Mr van Veenendaal from undertaking any development in reliance on the consent. The Council and Mr van Veenendaal submit to the making of these orders.
- 72 Ms Platford seeks an order that the respondents pay her costs of the proceedings. The respondents submitted to the orders of the Court, save as to costs. The respondents should therefore be given an opportunity to be heard as to why they should not be ordered to pay Ms Platford's costs, if they oppose such an order. The proceedings should be listed initially for a directions hearing to determine whether the respondents wish to oppose an order for costs in favour of Ms Platford and, if so, to set a date for the hearing on costs.
- 73 The Court:
- (1) Declares that the development consent granted by the second respondent on or about 25 July 2017 in respect of the Development Application 16/1341 for development at 52 Cyrus Street Hyams Beach ("Purported Consent for DA 16/1341") is invalid and of no effect.
  - (2) Sets aside the Purported Consent for DA 16/1341.
  - (3) Grants an injunction restraining the first respondent from undertaking any development in reliance upon the Purported Consent for DA 16/1341.
  - (4) Lists the proceedings at 9:30am on 26 March 2018 for directions concerning the question of the costs of the proceedings.

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Decision last updated: 09 March 2018

## **DE19.111 Development Application - SF10689 – Greens Road GREENWELL POINT – Lot 1 DP 625828**

**DA. No:** SF10689/4

**HPERM Ref:** D19/306348

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

**Attachments:**

1. Draft - Determination - Refusal - Greens Road, GREENWELL POINT - Lot 1 DP 625828 [↓](#)
2. Draft - Determination - Approval - Greens Road, GREENWELL POINT - Lot 1 DP 625828 (under separate cover) [⇨](#)
3. Plans of Proposed Development (complied documents) for Council Report - SF10689 - Lot 1 DP 625828 - Greens Road, GREENWELL POINT [↓](#)
4. Planning Report – S4.15 Assessment Greens Rd GREENWELL POINT - Lot 1 DP 625828 (under separate cover) [⇨](#)

**Description of Development:** Four (4) lot Torrens Title subdivision and placement of fill to create building platforms

**Owner:** J Farnham and V Farnham

**Applicant:** PDC Planners

**Notification Dates:** 29 April 2019 – 14 May 2019

**No. of Submissions:** 1 submission (objection)

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

At the Ordinary Meeting of 25 June 2019, Council resolved the following:

*That Council call in the Development Application SF10689 - proposed 4 lot subdivision, Lot 1 DP 625828 Greens Road, Greenwell Point due to public interest. (MIN19.451)*

This report has been prepared on the basis that the 'call in' is to determine the application.

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

That Development Application SF10689 for a 'four (4) lot Torrens Title subdivision and placement of fill to create building platforms' be determined by way of refusal for the reasons set out in the Notice of Determination (**Attachment 1**) to this report.

### **Options**

1. Refuse the Development Application (DA) in accordance with the recommendation. (See **Attachment 1**.)

Implications: The application would not proceed. The applicant can apply for a section 8.2 review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court against Council's decision.

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2. Approve the DA.

Implications: Council would have to determine the grounds on which the DA is to be approved, that is, provide reasons to support the development, having regard to section 4.15 considerations. A suite of conditions is attached in the event that Council supports the proposal (**Attachment 2**). Under some circumstances, third parties (i.e. objectors) can seek a judicial review of Council's decision in the NSW Land and Environment Court.

3. Alternative recommendation

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

**Location Map**



Figure 1: Location Map

**Background**

Proposed Development

On 6 June 2018, Development Application (DA) No. SF 10689 was submitted, seeking development consent for a four (4) lot Torrens Title subdivision and placement of fill to create building platforms at Greens Road (Lot 1 DP 625828) as described in the Statement of Environmental Effects (SEE) prepared by PDC Planners (Ref: S18-019) dated June 2018 and amended 26 July 2018.

The subdivision is proposed pursuant to Clause 4.1 of *Shoalhaven Local Environmental Plan 2014* (SLEP 2014).

Plans of the proposed development are shown in **Attachment 3**

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### Subject Land

The subject site is located at Greens Road, Greenwell Point and is legally described as Lot 1 in DP 625828.

### Site & Context

The development site:

- is currently vacant and contains some established native vegetation with part of the land being mapped as 'coastal wetlands' under *State Environmental Planning Policy (Coastal Management) 2018*. Other areas of the site are mapped as 'proximity area for coastal wetland'. The land mapped as 'coastal wetlands' is also identified as 'excluded land' on the Terrestrial Biodiversity Map in the SLEP 2014;
- has a steep drop in slope away from Greens Road on the western portion of the site, with the eastern portion of the site largely flat;
- is zoned R2 Low Density Residential and the property has a site area of 6,750m<sup>2</sup>;
- is identified as flood prone land with the majority of the site categorised as high hazard floodway;
- is mapped as Acid Sulfate Soils Class 5 and Class 2 in lower lying areas of the site; and
- is mapped as bush fire prone land.

The surrounding area is residential in character with the development site being adjoined by low density residential development to the west, an existing caravan/tourist park to the north and environmental conservation land to the south and east.

The Crookhaven oyster farming area is located approximately 200m to the east of the site.

### History

The subject property was excised from the E2 Environmental Conservation zoned land to the east by way of subdivision which was registered 7 May 1982.

The subject site is vacant and has not been previously developed.

### Post Lodgement

The following correspondence and actions have taken place with the applicant following the lodgement of SF10689:

6 June 2018	Application lodged with Council.
4 July 2018	Additional information requested by Council for applicant to clarify the proposed development, provide details of proposed filling and provide a variation statement to DCP controls with regard to subdivision and placement of fill on flood prone land
13 July 2018	Applicant submitted additional information in response to Council requests.
1 August 2018	Additional information requested by Council for applicant to clarify if proposal is considered to be 'Designated Development' under the <i>Environmental Planning and Assessment Act 1979</i> .
11 September 2018	Applicant provided legal opinion indicating that the application should not be considered as 'Designated Development'.
23 April 2019	Legal advice received from Council's Legal Department concurring that the application should not be considered as 'Designated Development'



24 April 2019	Additional information requested by Council for the applicant to consider the proposed development's impact on Acid Sulfate Soils, existing infrastructure, nearby oyster farms and associated infrastructure and provide additional information in regard to proposed filling.
12 June 2019	Applicant submitted additional information in response to Council requests.
13 May and 13 June 2019	Additional information requested by Council for applicant to consider the appropriateness of the development given site is mapped as flood prone land – high hazard floodway.
17 June 2019	Additional information requested by Council for applicant to provide geotechnical report and additional stormwater drainage infrastructure.
25 June 2019	At an Ordinary Meeting of Council, it was resolved that Council call-in SF10689 due to the public interest (MIN19.451).
30 June 2019 and 12 August 2019	Applicant submitted additional information in response to Council requests. This additional information indicated: <ul style="list-style-type: none"> <li>a) A 'variation statement' will not be provided as the submitted Flood Impact Statement has already considered the performance criteria set out in Chapter G9 of SDCP 2014.</li> <li>b) Additional stormwater information has been provided, however, if further information is necessary, applicant is happy to liaise further with Council. This would occur if the elected Council decide to support the proposal on the grounds of flooding.</li> </ul>

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## Issues

### Issue – Clause 7.3 (Flood Planning) of Shoalhaven LEP 2014

Clause 7.3 of the SLEP 2014 specifies that development consent must not be granted to development on land at or below the flood planning level unless the consent authority is satisfied that the development:

- a) is compatible with the flood hazard of the land, and
- b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- c) incorporates appropriate measures to manage risk to life from flood, and
- d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses, and
- e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding, and
- f) will not affect the safe occupation or evacuation of the land.

### Applicant's Submission

The applicant submitted a 'Flood Impact Statement' and 'Supplementary Letter' in support of the application. The applicant contends that the proposal is satisfactory in regard to the considerations of Clause 7.3 of the SLEP 2014, by making the following comments:

<b>LEP Requirement</b>	<b>How the Proposal Addresses the Requirement</b>
<i>To minimise the flood risk to life and property associated with the use of land,</i>	<p><i>Future risk to property and life is minimised by:</i></p> <ul style="list-style-type: none"> <li><i>Improvement of residentially zoned land that is flood free in the 1% AEP event, including allowances for climate change.</i></li> <li><i>Ensuring habitable floor levels (of future residential development) set at a minimum of the 1% AEP flood level plus 500mm.</i></li> <li><i>All lots having reliable access available to Greens Road.</i></li> <li><i>Safe refuge (of future residential development) available in the Probable Maximum Flood.</i></li> </ul>
<i>To allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change</i>	<p><i>It is our view that the development is compatible with the lands flood hazard, as it will directly facilitate appropriate future development in accordance with the residential zoning.</i></p> <p><i>Sea level rise has been directly taken into account in the supplied FPL from SCC, and we have adopted this FPL for use in this study.</i></p>
<i>To avoid significant adverse impacts on flood behaviour and the environment.</i>	<i>It is our view that the impacts arising from the proposed development are not significant or adverse on flood behaviour or the environment, as they are directly commensurate with the lands zoning. Losses of flood storage in the Lower Shoalhaven River are immaterial.</i>
<i>The development is compatible with the flood hazard of the land.</i>	<i>It is our view that the proposed development is compatible with the flood hazard of the land. In effect, the development seeks to change the flood hazard on part of the land to enable future residential development to occur.</i>
<i>The development will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development of properties.</i>	<i>It is our view that the impacts arising from the proposed development are not significant or adverse on the potential flood affectation of other development of properties.</i>
<i>The development incorporates appropriate measures to manage risk to life from flood</i>	<i>It is our view that the proposed development meets this requirement. The proposed building areas are entirely above the 1% AEP flood planning level, and future residential development can readily meet the controls of SCC's DCP (Chapter G9).</i>
<i>The development will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourse</i>	<i>It is our view that the proposed development would cause no such environmental effects.</i>

<i>The development is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding</i>	<i>It is our view that the proposed development will not result in unsustainable social and economic costs to the community as a consequence of flooding. This is demonstrated, and managed, by:</i> <ul style="list-style-type: none"> <li><i>• Improvement of residentially zoned land that is flood free in the 1% AEP event, including allowances for climate change.</i></li> <li><i>• Ensuring habitable floor levels (of future residential development) set at a minimum of the 1% AEP flood level plus 500mm.</i></li> <li><i>• Safe refuge (of future residential development) in the PMF.</i></li> </ul>
<i>The development will not affect the safe occupation or evacuation of the land.</i>	<i>It is our view that the proposed development does not hinder evacuation, where it is ever required.</i>

### Discussion

The land is mapped as flood prone land and is categorised as high hazard floodway. The proposed subdivision will create four lots with dwelling entitlements with the implied right to construct a dwelling.

To facilitate the subdivision, the development also includes the placement of significant fill - up to 2.3m above natural ground level to create building platforms above the 1% AEP flood planning level. The proposal will place 'obstructions' in the high hazard floodway and will result in an increased dwelling density within a high hazard flood area as a result of the creation of additional allotments of land.

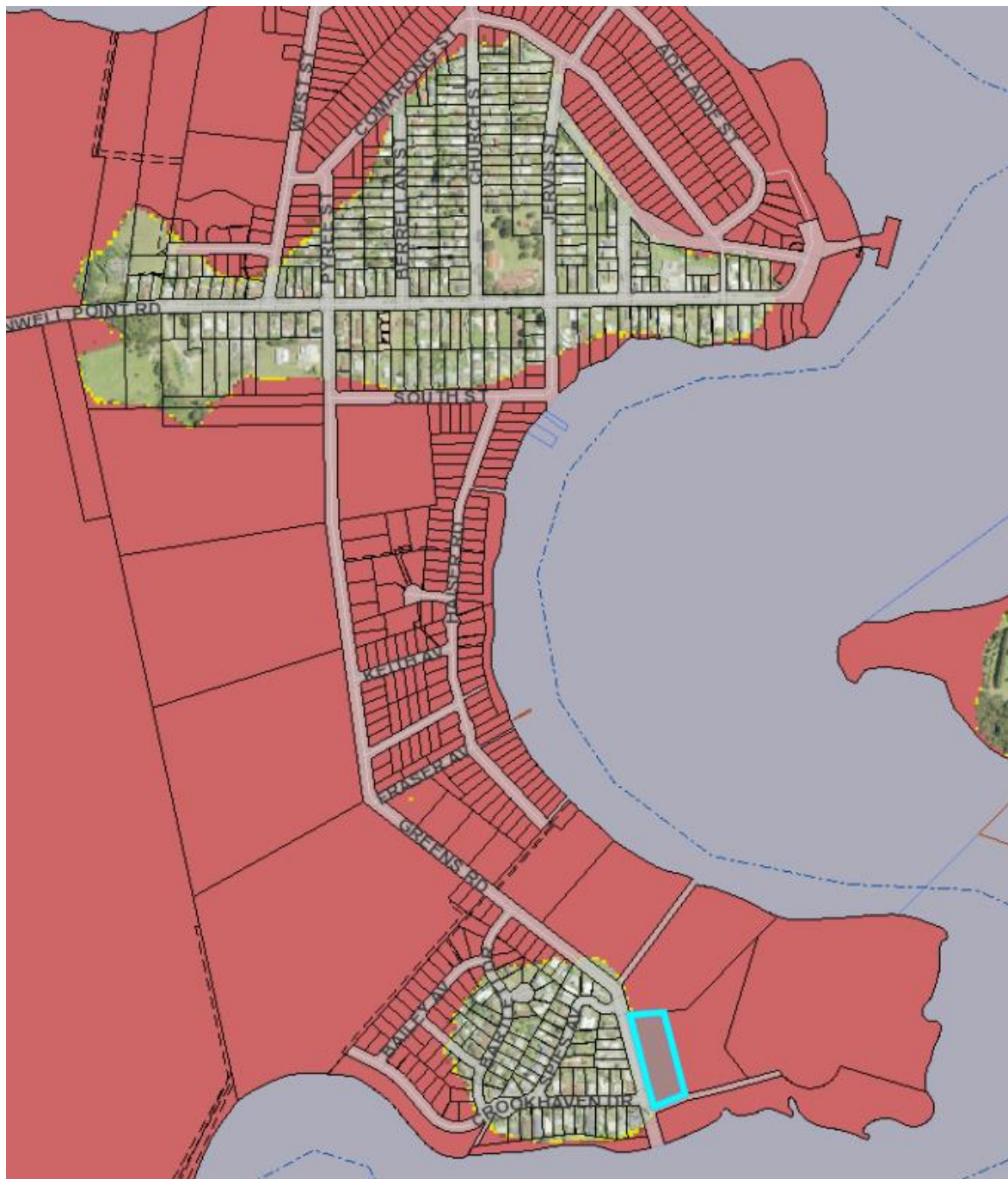
Council's Natural Resources and Floodplain Unit (NRFU) provided referral comments on 8 August 2018 and 10 May 2019 noting numerous non-compliances with the SDCP 2014 and other flood controls and raising objection to the proposal.

Referral comments indicated that the application should not be supported as the proposed subdivision increased potential dwelling density in high hazard floodway land which presents a significant risk to life and property. The NRFU concluded that the development is not compatible with the land's flood hazard and should not be supported.

The NRFU referral comments also note that rather than demonstrating any quantitative analysis, the Flood Impact Study only provides that in the view of the flood consultant the proposed development will not have any significant adverse impact and the proposal is suitable in the opinion of that flood consultant. The Flood Impact Study also does not assess any hydraulic impact towards the neighbouring property due to the filling.

The NRFU also noted that although this section of Greens Road is above the 1% AEP flood level, only a small area of land in this part of Greenwell Point is above the present day 1% AEP flood level and is isolated from the main Greenwell Point township and the rest of the local government area during the 1% AEP flood event (see Figure 2).

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*Figure 2: Map showing extent of flooding during the 1% AEP flood event.*

*Subject property is highlighted in blue. Greenwell Point is shown to the north*

The proposed development is not suitable with regard to the considerations of clause 7.3 (3) of SLEP 2014, specifically:

- a) The proposed subdivision and placement of fill is not compatible with the flood hazard (high hazard floodway) of the land as it will likely negatively alter floodwater behaviour and present an increased risk to life and property. The applicant has not demonstrated to the contrary.
- b) The placement of substantial amounts of fill within the high hazard floodway would likely alter floodwater behaviour and potentially displace floodwater onto adjoining properties. The application has not adequately demonstrated that the development, particularly the placement of fill, will not significantly adversely affect flood behaviour

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resulting in detrimental increase in the potential flood affectation of adjoining properties.

- c) The placement of fill within a high hazard floodway may potentially exacerbate erosion and siltation processes during flood events and lead to additional sediment entering the adjoining coastal wetland. This could have an adverse impact on riparian vegetation within nearby sensitive wetland environments. The application has not adequately demonstrated that the development will not significantly adversely affect the environment or not exacerbate erosion or siltation processes or lead to the destruction of riparian vegetation by altering floodwater behaviour. The applicant provided some additional information; however, it is considered that the information provided has not adequately addressed how erosion and siltation processes will be managed and adverse impacts minimised.
- d) The proposed subdivision is of land within a high hazard floodway where safe evacuation out of the immediate area may not be achievable, thereby increasing the dependence on emergency services. It is considered that the proposal is likely to result in additional social and economic costs to the community as a consequence of flooding by increasing dwelling density in a flood area with restricted evacuation, presenting an increased risk to life and property and increasing burden on emergency services for the community.
- e) Safe occupation or evacuation from the immediate area may not be achievable in a flood event and access will also be cut off from the Greenwell Point township during the 1% AEP flood. Greenwell Point is also itself cut off. Refer to Figure 2.

**Issue – State Environmental Planning Policy (Coastal Management) 2018**

The subject land is mapped as “coastal environment area”, “coastal use area”, “proximity area for coastal wetlands” and “coastal wetlands” under SEPP (Coastal Management) 2018.

Part 2 of the SEPP identifies the matters for consideration for development on land identified within coastal wetlands, on land in proximity to coastal wetlands and land within the coastal use area and coastal environment area. The matters for consideration are discussed in detail in the section 4.15 Planning Report for SF10689 (**Attachment 4**).

As discussed in the section 4.15 Planning Report for SF10689, the application has not demonstrated that the proposal is suitable in relation to the considerations set out in SEPP (Coastal Management 2018), specifically potential adverse impact of proposed developments on nearby mapped “coastal wetlands”. For example, the proposed placement of fill within the high hazard flooding area may alter floodwater behaviour and potentially exacerbate erosion and siltation processes which may lead to additional sediment being displaced and deposited onto the coastal wetland area. This may have adverse impacts on sensitive vegetation and the integrity of the coastal wetland. The applicant provided additional information; however, it is considered that the information provided has not adequately addressed the potential environmental impacts on coastal wetlands or any measures proposed to protect the biophysical, hydrological and ecological integrity of the coastal wetland. The application is not supported on this basis.

**Issue – Shoalhaven DCP Chapter G9 (Development on Flood Prone Land)**

**Objectives of Chapter G9: Development on Flood Prone Land, SDCP 2014**

The objectives of the Chapter are to:

- i. Reduce risk to life and property resulting from floods.

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- ii. Ensure that the impacts of the full range of flood sizes up to and including the probable maximum flood (PMF) are considered when assessing development on flood prone land.
- iii. Ensure that the impact of climate change is considered when assessing development on flood prone land.
- iv. Ensure the future use of flood prone land does not cause undue distress to individuals or unduly increase potential flood liability to individuals or the community
- v. Incorporate site specific floodplain management recommendations from local floodplain risk management plans into Council's overall planning framework.

The proposed development involves the placement of fill and subdivision of land within a high hazard floodway. The application has not demonstrated that the development is compatible with the current or predicted future flood hazard of the land and, rather, presents an increased risk to life and property. The proposed subdivision would increase dwelling density in an area with restricted flood evacuation from the immediate area and so increasing reliance on emergency services and community resources. The proposal is inconsistent with the overall objectives of Chapter G9.

### **Objectives and Performance Criteria P2 of Control 5.2 Fill or Excavation on the Floodplain, Chapter G9: Development on Flood Prone Land, SDCP 2014**

#### Objectives

The objectives of Control 5.2 are to:

- i. Ensure that filling or excavation within the floodplain does not have a significant impact on flood behaviour, conveyance and storage capacity, as well as surrounding properties or structures and the environment in the specific area where the development is proposed.

The application has not provided any quantitative analysis of flood behaviour. The submitted Flood Impact Report only provides, that in the view of the flood consultant, the proposed development will not have any significant adverse impact. The Flood Impact Study also does not assess any hydraulic impact towards the neighbouring property due to the filling. Assessment staff are not satisfied that the application and submitted Flood Impact Study has demonstrated that the proposed development and proposed filling within the high hazard flood area will not significantly adversely affect flood behaviour and have a detrimental impact on adjoining properties, structures and sensitive environments through displacement of floodwaters. The proposal is inconsistent with the objectives of Control 5.2.

#### Performance Criteria

P2 states that:

*"Filling or excavation on flood prone land will meet the following:*

- *High hazard floodway areas are kept free of fill and/or obstructions.*
- *The proposed fill or excavation will not unduly restrict the flow behaviour of floodwaters.*
- *The proposed fill or excavation will not unduly increase the level or flow of floodwaters or stormwater runoff on land in the vicinity, including adjoining land.*
- *The proposed fill or excavation will not exacerbate erosion, siltation and destruction of vegetation caused by floodwaters flowing on the land.*

- *The proposed fill or excavation will not be carried out on flood prone land if sufficient flood free area is available for development within the subject property.*
- *The proposed excavation does not create new habitable rooms, non-habitable storage areas or carparks with floor levels below the existing ground level.”.*

The proposed development involves the placement of fill within a high hazard floodway area to facilitate the subdivision. Furthermore, the application has not adequately or quantitatively demonstrated that the placement of fill within the floodway will not adversely affect flood behaviour by displacing floodwater and will not have a detrimental impact on adjoining properties. Insufficient information has been provided to demonstrate that the development and proposed filling will not exacerbate erosion and siltation processes which may lead to additional sediment being deposited on nearby sensitive coastal environments. The proposed development is inconsistent with P2.1.

### **Performance Criteria P3.1, P3.2 and P3.3 of Control 5.3 Subdivision in the Floodplain, Chapter G9: Development on Flood Prone Land, SDCP 2014**

#### Objectives

The objectives of Control 5.3 are to:

- Ensure that the creation of new lots does not increase potential flood risks to landowners or the community.
- Ensure that new lots that are created on the floodplain are suitable for, and capable of, being developed for their intended future use.

The proposal involves subdivision of land within a high hazard floodway with restricted evacuation access from the immediate area. Subdivision of high hazard flood areas is not supported in the DCP as it presents and increased risk to life and property. The application has not adequately or quantitatively demonstrated that the proposed placement of fill within the floodway will not have a detrimental impact on adjoining properties and nearby sensitive environments. Further, the restricted evacuation access from the immediate area increases the community's reliance on emergency services during a flood event.

The proposal necessitates the placement of substantial amounts of fill, up to 2.1m above natural ground level, within the floodway in order to create building envelopes above the 1% AEP flood level. The proposal is inconsistent with the objectives of Control 5.3.

#### Performance Criteria

P3.1 states that *“The development (subdivision and intended future use) is a suitable land use, and is adequately designed, for the defined hazard/hydraulic category.”*

P3.2 states that *“the proposed subdivision will not create new lots that are affected by a high hazard area, or floodway in today's flood conditions or in climate change conditions up to the year 2100.”*

P3.3 states that *“the proposed subdivision will not increase the potential population density in any areas (flood prone or flood free) with restricted evacuation access.”*

The proposed development involves subdivision of high hazard floodway and the creation of four additional dwelling sites with restricted evacuation access from the flood affected area. The proposal is therefore inconsistent with P3.1 and P3.3 and in direct contrast to P3.2.

### Applicant's Submission

The Flood Impact Statement contends that the proposal is satisfactory in regard to the performance criteria set out in *Section 5.2 Fill or Excavation on the Floodplain* in Chapter G9 of the SDCP 2014, by making the following comments:

<b>DCP Performance Criteria</b>	<b>How the Proposal Addresses the Performance Criteria</b>
<i>High hazard floodway areas are kept free of fill and/or obstructions.</i>	<i>Minor amounts for fill are proposed in the high hazard floodway areas, specifically to generate modest building envelopes to support development on the land commensurate with its zoning. The impacts of this filling are unquantifiable because they are so minor. Given that the minor amount of filling is specifically for the purposes of supporting residential development on residentially zoned land, there is no engineering-based reason why such filling is not reasonable.</i>
<i>The proposed fill or excavation will not unduly restrict the flow behaviour of floodwaters.</i>	<i>The proposed fill does not unduly restrict the flow behaviour of floodwaters, as the fill simply extends an embankment adjacent to Greens Road.</i>
<i>The proposed fill or excavation will not unduly increase the level or flow of floodwaters or stormwater runoff on land in the vicinity, including adjoining land.</i>	<i>The proposed fill does not unduly increase the level or flow of floodwaters or stormwater runoff on land in the vicinity, including adjoining land, as the fill simply extends an embankment adjacent to Greens Road.</i>
<i>The proposed fill or excavation will not exacerbate erosion, siltation and destruction of vegetation caused by floodwaters flowing on the land.</i>	<i>We do not consider the proposed earthworks will exacerbate erosion, siltation and destruction of vegetation caused by floodwaters flowing on the land.</i>
<i>The proposed fill or excavation will not be carried out on flood prone land if sufficient flood free area is available for development within the subject property.</i>	<i>The proposed residential development would be very difficult to achieve without the accompanying fill. The entire site is zoned for R2 residential purposes.</i>
<i>The proposed excavation does not create new habitable rooms, non-habitable storage areas or carparks with floor levels below the existing ground level.</i>	<i>No excavation is proposed.</i>

The Flood Impact Statement does not provide any commentary specifically addressing the performance criteria set out in *Section 5.3 Subdivision in the Floodplain* in Chapter G9 of the SDCP 2014.

### Discussion

Referral comments from Council's NRFU note that the proposal is inconsistent with the development controls and the performance criteria set out in Chapter G9 of SDCP 2014.

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Referral comments conclude that the proposal should not be supported due to the non-compliances with the relevant performance criteria and implications and impacts of allowing placement of substantial amounts of fill to facilitate a subdivision on land categorised as high hazard floodway.

The proposed development is not suitable having regard to the SDCP 2014, specifically due to the non-compliance with the performance criteria (P2.1, P3.1, P3.2 and P3.3) set out in Chapter G9. The application is not supported because:

- a) The proposal involves the placement of a substantial amount of fill (up to 2.1m above natural ground level) within a high hazard floodway land to create building platforms above the 1% AEP land. P2.1 requires that *“high hazard floodway areas are kept free of fill and/or obstructions”* and the proposal is in direct contrast to this requirement. The proposal is inconsistent with performance criteria P2.1.
- b) P2.1 requires that *“The proposed fill or excavation will not unduly restrict the flow behaviour of floodwaters”* and *“The proposed fill or excavation will not unduly increase the level or flow of floodwaters or stormwater runoff on land in the vicinity, including adjoining land”*. The application has not adequately considered the impact of this filling on adjoining property and the environment. It is considered that the proposed filling would likely affect the flow and behaviour of floodwaters and would have an adverse impact on adjoining property by redirecting flows onto adjoining land. The proposal is inconsistent with performance criteria P2.1.
- c) P2.1 specifies that *“The proposed fill or excavation will not exacerbate erosion, siltation and destruction of vegetation caused by floodwaters flowing on the land”*. The application has not adequately demonstrated that the proposal would not exacerbate erosion or siltation processes.

Further, adequate information has not been provided for Council to be satisfied that the proposed development would not have a significant impact on native vegetation or nearby environmentally sensitive ecosystems, such land mapped as ‘coastal wetland’ as a result of the alteration to floodwater behaviour. The proposal is inconsistent with performance criteria P2.1.

- d) P3.1 requires that *“the development (subdivision and intended future use) is a suitable land use, and is adequately designed, for the defined hazard/hydraulic category”*. The proposed subdivision of residential land necessitates the placement of substantial amounts of fill on high hazard floodway land and is therefore not considered to be a suitable land use given the flood hazard of the land. The proposal is inconsistent with performance criteria P3.1.
- e) P3.2 states that *“the proposed subdivision will not create new lots that are affected by a high hazard area, or floodway in today’s flood conditions or in climate change conditions up to the year 2100”*. The proposed development involves creation of additional lots that are affected by a high hazard area and is therefore in direct contrast to this requirement. The proposal is inconsistent with performance criteria P3.2.
- f) P3.3 requires that *“the proposed subdivision will not increase the potential population density in any areas (flood prone or flood free) with restricted evacuation access”*. Although the property has access to a section of Greens Road which is above the 1% AEP flood level, flood free access from the immediate area is unachievable and the site would be isolated from the Greenwell Point township which is also isolated during the 1% AEP flood event. As such, it is considered that the development is inconsistent with performance criteria P3.3.

### Issue – Stormwater Drainage

The application proposes to direct stormwater from any future dwellings to absorption trenches and level spreaders 3m from the eastern boundary of each proposed lot.

### Applicant's Submission

Stormwater information and a Report on Geotechnical Investigation was submitted in support of the application. The applicant has also provided the following comments in relation to stormwater issues raised by Council:

*Whilst the stormwater plan submitted proposes absorption trenches, it also specifies a level spreader for each lot. The stormwater plan basically assumes zero absorption, and it therefore assumes all runoff that isn't stored in the absorption trenches will percolate thru the ground surface and then discharge across the rear boundary as shallow sheet flow – much like it does now.*

*With respect to the size, shape and location of absorption trenches, it is our position that the provision of this information is premature and it is more appropriate that these requirements be calculated at DA stage for future dwellings.*

*We are happy to liaise further with the Council in relation to stormwater if required and should the elected Council make a decision to support the proposal on flooding grounds, however we do not think this is necessary. Sufficient information has been provided to Council to date in order for it to make a planning decision for the application in relation to stormwater and the submitted concept plan is sound.*

### Discussion

Council's Asset and Works – Drainage Engineer provided referral comments on 31 May 2018 and 15 August 2019 firstly requiring a geotechnical report and additional stormwater information be submitted and also noting potential issues with the site's suitability for on-site stormwater disposal. Upon reviewing the additional information provided by the applicant, the following referral comments were made:

*I have reviewed the additional information provided including the Geotech report:-*

- 1) I can conclude from the geo report that absorption trench, as proposed, is an unsuitable method of stormwater dispersal at this site.*
- 2) Given point (1) above, applicant needs to demonstrate how the site will manage its stormwater discharge. How and where a suitable site stormwater discharge will be achieved.*
- 3) Location and method of stormwater discharge will impact adjoining properties, in particular, if overland discharge is proposed. I note that a caravan park adjoins this site. I have concerns related to the impact of the proposed stormwater discharge onto this caravan park and request further information on measures proposed to mitigate overland flow impacts.*
- 4) Overland runoff will exacerbate waterlogging in an area already prone to water issues.*

In this regard, the follow concerns arise:

- a) Based on a review of the hydraulic conductivity of the site, it does not appear that the proposal could effectively utilise absorption trenches to manage stormwater discharge from future development of the lots.
- b) On-site stormwater disposal may have an adverse impact on adjoining property. If absorption trenches do not have capacity to manage stormwater from future residential development on the lots, overflow would flow onto adjoining land.

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- c) The filling and proposed stormwater drainage methods could have an adverse impact on adjoining land and nearby environmentally sensitive ecosystems (e.g. 'coastal wetland') by exacerbating waterlogging in an area already prone to water issue.

Noting that alternatives can potentially be explored and designed by the applicant, stormwater management is not considered an overwhelming or fatal issue. However, any solution will need to have regard to Council's stormwater requirements and could result in unforeseen time and expense to the applicant.

### Planning Assessment

The DA has been assessed under section 4.15 of the Environmental Planning and Assessment Act 1979. Please refer to **Attachment 4**.

The issues relating to the flood hazard of the land and stormwater disposal are the reasons for recommending refusal.

### Policy Implications

#### SDCP 2014 Chapter G9

The proposed development conflicts with the Performance Criteria P3.1, P3.3 and is in direct contrast to P2.1 and P3.2 of Chapter G9 of SDCP 2014.

The NSW Floodplain Development Manual provides the following guidance for circumstances such as are brought into focus by the current application:

*"Case-by-case decision making cannot account for the cumulative impacts on flood behaviour and risks, caused by individual developments of works. This form of assessment contravenes the principles of the manual."* (NSW Floodplain Development Manual, p.5).

*"A fundamental principle of floodplain risk management is to assess development applications within the strategic framework of a floodplain risk management plan and not in isolation or individually."* (NSW Floodplain Development Manual, p.12).

If Council were of a mind to approve SF10689, this would be inconsistent and in direct contrast to the performance criteria set out in Chapter G9 of the SDCP 2014, specifically those that prohibit the placement of fill or other obstructions in high hazard floodway and also those that prohibit the creation of additional lots in high hazard flooding areas or any floodway.

Approval of the current application would potentially compromise flood related performance criteria set out in Chapter G9.

### Consultation and Community Engagement:

One (1) public submission was received objecting to the development in relation to Council's notification of the development.

The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 25m buffer of the site. The notification was for a two week period.

Key issues raised in the objection are as follows:

#### Issue – Subdivision and filling of high hazard floodway

Concern raised about the proposed subdivision and impact of proposed filling in a high hazard floodway. The submission identified that filling of the land would have an adverse

impact on adjoining land, leading to altered flood behaviour and detrimental increases in the potential flood affectation of nearby and adjoining land and properties.

Comment

The application has not adequately demonstrated that the proposed development will not adversely impact on adjoining properties.

Similar concerns in relation to subdivision and filling high hazard floodway land have been raised by Council's NRFU and by assessment staff. It is considered that the proposed development may adversely impact on adjoining land by altering flows and floodwater behaviour. The proposed subdivision and filling of land presents an increased flood risk to life and property.

Issue – Stormwater management and water quality

Concern raised about the proposed stormwater design and the impact of the development on water quality and how this will impact on nearby oyster leases.

Comment

The application has not adequately demonstrated that the proposed stormwater drainage design with disposal by way of absorption trenches and level spreaders is appropriate.

Similar concerns in relation to stormwater disposal have been raised by Council's Assets – Drainage Engineer and by assessment staff. Based on a review of the provided stormwater information and the hydraulic conductivity of the site, it does not appear that the proposal could effectively utilise absorption trenches to dispose of stormwater from future development.

With regard to nearby oyster leases, referral comments from NSW Department of Primary Industries recommend that appropriate sediment and erosion controls must be in place to ensure that development does not impact on the health and lifecycle of aquatic organisms. Erosion and sediment controls could be applied to minimise impact on nearby oyster leases.

Issue – Integrated development – proximity to watercourse

Is the development integrated development? Therefore, it would require a controlled activity approval under the Water Management Act.

Comment

The proposed development does not involve work within 40m of 'waterfront land' or a 'river' as defined under the *Water Management Act 2000*. The current application is not nominated integrated development under the *Water Management Act 2000*.

Issue – Acid Sulfate Soil (ASS)

Concerns were raised in relation to the impact of the proposed development, specifically the proposed absorption trenches on acid sulfate soils.

Comment

The application has been supported by a Geotechnical Investigation Report. This Report identified that the land is likely to contain ASSs and recommended that appropriate measures be implemented on site where ASS is disturbed. It is considered that subject to compliance with the recommendations of the Report on Geotechnical Investigation, the development will not have an unacceptable impact on ASSs.

**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 NSW Land and Environment Court, should the applicant utilise appeal rights afforded under the EP&A Act.

**Legal Implications**

Council is protected in its decisions relating to floodplain management by section 733 of the Local Government Act 1993 (LG Act), provided it acts in good faith. That is, Councils have due regard to the policy framework, controls applicable and the circumstances of the particular case.

Council *may* not be seen to have acted in good faith if it were to approve a development application that is clearly inconsistent with the performance criteria set out in an adopted development control plan, and in the absence of sound planning reasons to support a development. Council in such a scenario could be exposed to challenge in relation to losses encountered due to flooding of the approved development or in increasing the risk to other properties, people and emergency services personnel.

**Summary and Conclusion**

This application for a four (4) lot Torrens Title subdivision and placement of fill at Greens Road (Lot 1 DP 625828) is inconsistent with the provisions of Clause 7.3 of SLEP 2014, SEPP (Coastal Management) 2018 and also performance criteria (P2.1, P3.1, P3.2, P3.3) of Chapter G9 of SDCP 2014 as outlined in this report.

Given the issues that have arisen with regard to flooding, a negative recommendation has been made. As a secondary issue, the application has not adequately demonstrated that stormwater can be appropriately managed from future development on the lots. However, subject to suitable design this secondary issue could potentially be resolved and / or addressed via conditions of development consent.



Bridge Rd, Nowra NSW 2541 | 02 4429 3111  
Deering St, Ulladulla NSW 2539 | 02 4429 8999

[Address all correspondence to](#)

The Chief Executive Officer, PO Box 42, Nowra NSW 2541 Australia  
[council@shoalhaven.nsw.gov.au](mailto:council@shoalhaven.nsw.gov.au) | DX5323 Nowra | Fax 02 4422 1816

[shoalhaven.nsw.gov.au](http://shoalhaven.nsw.gov.au) [f](#) [@](#) [in](#) [v](#) [t](#)

**NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION  
DETERMINATION BY WAY OF REFUSAL**

Environmental Planning and Assessment Act, 1979  
SF10689

**TO:**

PDC Planners  
PO Box 214  
Wollongong NSW 2520

being the applicant(s) for **SF10689** relating to:  
**Greens Rd, GREENWELL POINT - Lot 1 - DP 625828**

**APPROVED USE AND OR DEVELOPMENT:**

Four (4) x lot Torrens Title subdivision and placement of fill

**DETERMINATION DATE:**

**REFUSAL DATE:**

Pursuant to section 4.18 of the Act, notice is hereby given that the above application has been determined by way of **REFUSAL** for the reasons as outlined in Part A.

DE19.111 - Attachment 1

Development Consent - Page 2 of 3 - SF10689

**PART A**  
**CONDITIONS OF A GENERAL NATURE, INCLUDING A DESCRIPTION OF**  
**THE PROPOSED DEVELOPMENT**

1. The proposal has not satisfactorily demonstrated that the proposed development is supportable in considering the matters set out in clause 7.2 (3) of *Shoalhaven Local Environmental Plan 2014* (section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*).
2. The proposal has not satisfactorily demonstrated that the proposed development is supportable in considering the matters set out in clause 7.3 (3) of *Shoalhaven Local Environmental Plan 2014* (section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*).
3. The proposal has not satisfactorily demonstrated that the proposed development is supportable in considering the matters set out in clause 7.6 (3) of *Shoalhaven Local Environmental Plan 2014* (section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*).
4. Council as the consent authority is not satisfied that the requirements set out in 7.6 (4) have been achieved of *Shoalhaven Local Environmental Plan 2014* (Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*).
5. The proposal has not satisfactorily demonstrated that the proposed development is supportable in considering the matters set out in clause 13 (1) of *State Environmental Planning Policy (Coastal Management) 2018* (Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*).
6. Council as the consent authority is not satisfied that the requirements set out in clause 11 (1) and 13 (1) of *State Environmental Planning Policy (Coastal Management) 2018* (section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*).
7. Council is not satisfied that the proposed development is suitable in considering the development controls and performance criteria set out in *Shoalhaven Development Control Plan 2014*, specifically due to the non-compliances with performance criteria P1, P2, P3.1, P3.2 and P3.3 of Chapter G9 Development on Flood Prone Land, and performance criteria P1, P9, P73, P75, P79, P80, P92 of Chapter G11 Subdivision of Land (section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act, 1979*).
8. In considering the likely impacts of the proposed development and based on the information provided, Council is not satisfied that the proposal is appropriate in the locality (section 4.15(1)(b) of *Environmental Planning and Assessment Act, 1979*).
9. The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the development (section 4.15(1)(c) of the *Environmental Planning and Assessment Act, 1979*).
10. The information submitted with the development application does not satisfactorily demonstrate that the development is in the public interest. (section 4.15(1)(e) of *Environmental Planning and Assessment Act, 1979*)

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## **PART B**

### **ADVICE ABOUT RIGHTS OF REVIEW AND APPEAL**

#### ***Determination under Environmental Planning and Assessment Act, 1979***

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request must be made **within three (3) months** of the date of the receipt of the determination to allow Council time to undertake the review within the prescribed period of six (6) months and be accompanied by the prescribed fee.

Division 8.3 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised within 6 months after the applicant has been notified of the decision.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within 28 days after the date the objector is notified of the decision.

## **PART C**

### **GENERAL ADVICE TO APPLICANT**

#### ***Privacy Notification***

Personal information contained on this Development Consent and any associated documents will be published on Council's website as required by the *Government Information (Public Access) Act 2009* (GIPAA).

**SIGNED** on behalf of Shoalhaven City Council:

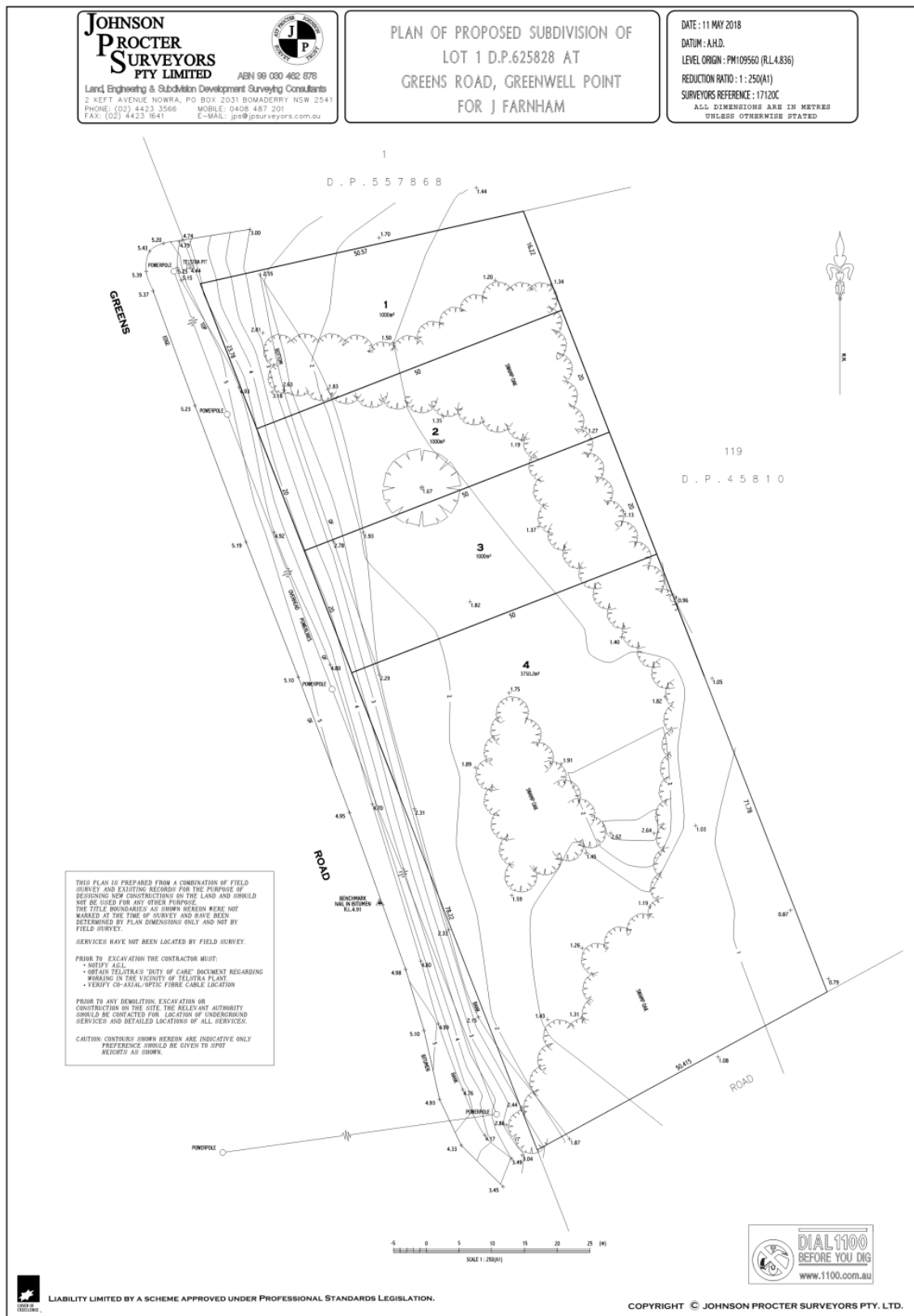
Choose an item.

Choose an item.

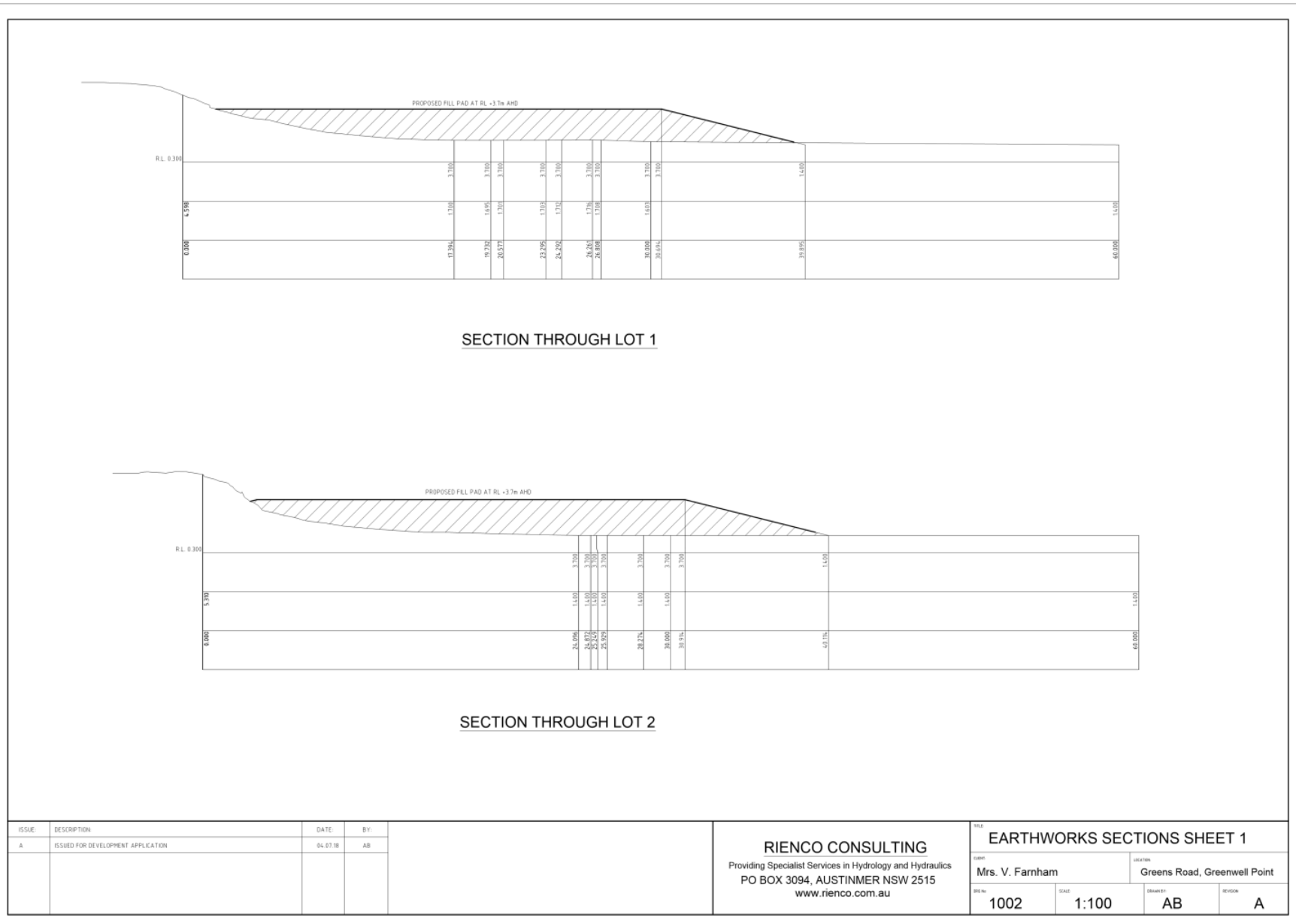
Planning, Environment & Development Group

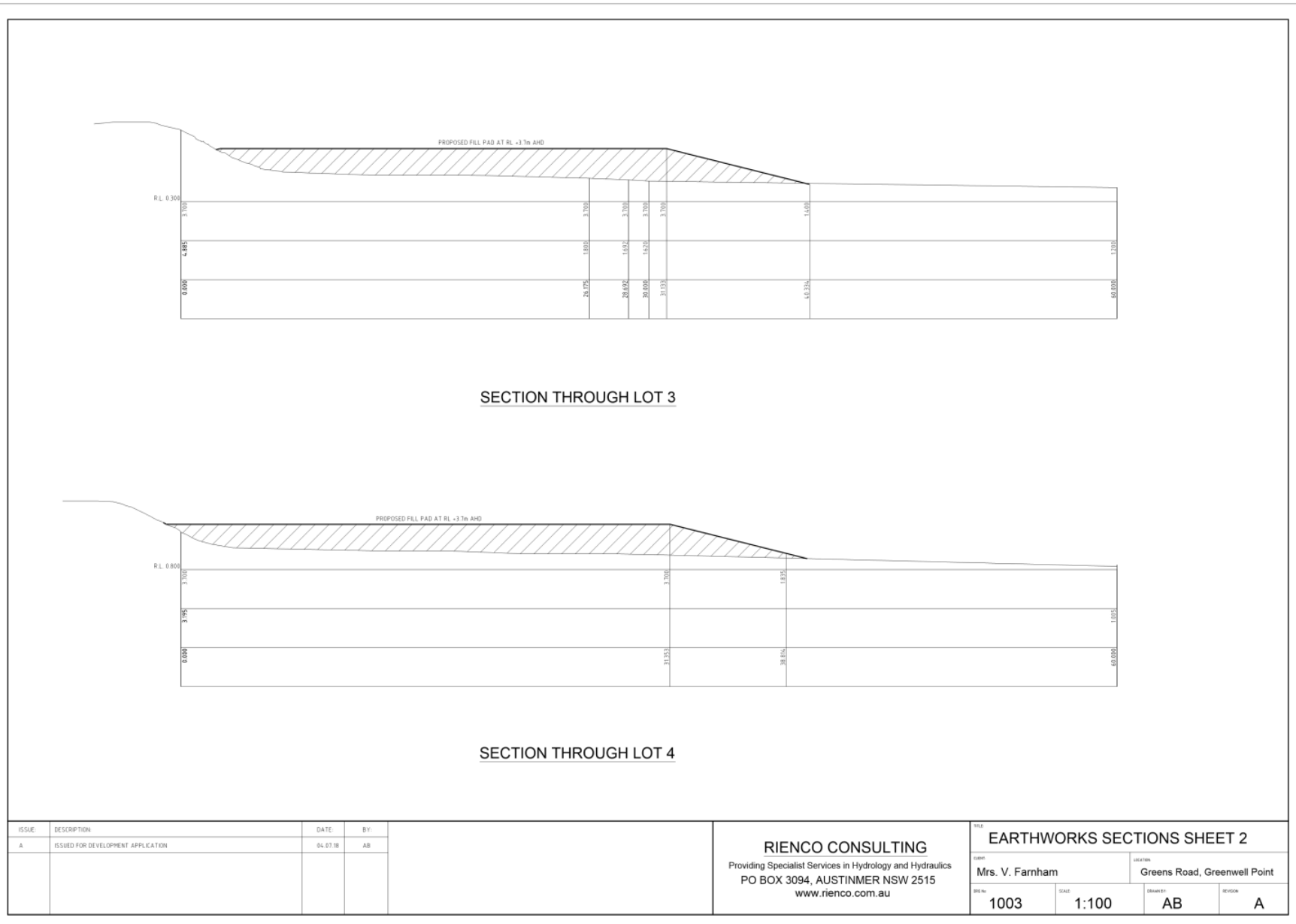
DE19.111 - Attachment 1

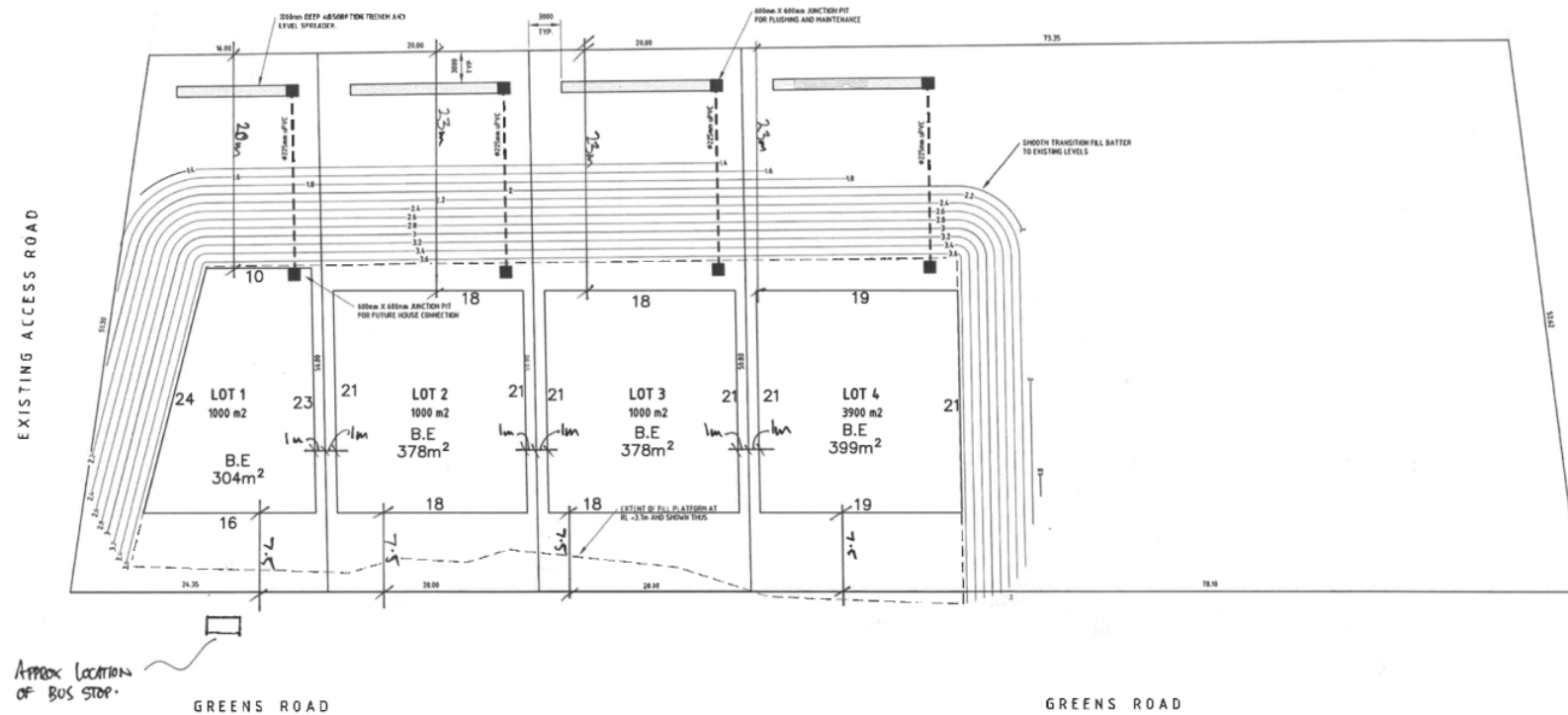




DE19.111 - Attachment 3







# STORMWATER CONCEPT PLAN

ISSUE	DESCRIPTION	DATE	BY
A	ISSUED FOR DEVELOPMENT APPLICATION	17-01-18	AB

**RIENCO CONSULTING**  
Providing Specialist Services in Hydrology and Hydraulics  
PO BOX 3094, AUSTINMER NSW 2615  
www.rienco.com.au

STORMWATER CONCEPT PLAN			
CLIENT Mrs. V. Farnham		LOCATION Greens Road, Greenwell Point	
REF No 1001	SCALE 1:200	DESIGNED BY AB	REVISION A



## DE19.112 Development Application SF10741 – 636 Murramarang Road KIOLOA – Lot 9 DP 245582

**DA. No:** SF10741/4

**HPERM Ref:** D19/344549

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

**Description of Development:** Two (2) lot Torrens Title subdivision

**Owner:** E Beard & S Clelland

**Applicant:** E Beard & S Clelland

**Notification Dates:** 30 May 2019 – 14 June 2019

**No. of Submissions:** Nil

### Purpose / Reason for consideration by Council

Variation to Chapter G8 – Onsite Sewage Management of Shoalhaven Development Control Plan (SDCP) 2014

- The development application (DA) proposes a variation to Chapter G8 – Onsite Sewage Management of *Shoalhaven Development Control Plan (SDCP) 2014*, to permit the provision of effluent pump out services to proposed lots to be created via the subdivision of land as proposed in SF10741.
- Provision of pump out services to new lots requires Council approval.
- Section 5.3 of Chapter G8 of *SDCP 2014* specifies “*new pumpout services are not to be provided to new subdivisions or new rezonings*”. As such, the matter is reported to Council for confirmation that the variation to *SDCP 2014* is supported.

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

That Council:

1. Support the request to permit the provision of new additional effluent pumpout services to proposed Lot 1 (Development Application SF10741 - 636 Murramarang Road, Kioloa)
2. Refer the application back to staff for determination.

### Options

1. Support the variation to *SDCP 2014* with respect to the provision of new pumpout services to proposed Lot 1:

Implications: This will enable the completion of the s4.15 assessment and determination of the application.

2. Not support the variations to *SDCP 2014*.

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Implications: The DA as currently submitted will not be able to be supported and would therefore be determined by way of refusal under delegated authority.

3. Adopt an alternative recommendation and provide direction to staff.

### Location Map



Figure 1: Location map

### Background

#### Proposed Development

On the 20 May 2019, Development Application (DA) No. SF10741 was lodged with Council. The DA is for a two (2) lot Torrens Title subdivision at 636 Murramarang Road, Kioloa (Lot 9 DP 245582) as described in the Statement of Environmental Effects (SEE) prepared by Planscapes Town Planning Consultancy and dated 19 April 2019. The subdivision is proposed pursuant to Clause 4.1 of *Shoalhaven Local Environmental Plan 2014 (SLEP 2014)*.

Plans of the proposed development are shown in **Attachment 1**.

#### Subject Land

The subject site is located at 636 Murramarang Road, Kioloa and is legally defined as Lot 9 DP 245582.

#### Site & Context

The development site:

- currently contains a commercial/retail building (food and drink premises) on the eastern portion of the site. This building is currently undergoing renovations and refurbishment as approved by DA18/1320 (as modified). DA18/1320 (as modified) also approves the

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use of the land immediately to the west of the existing commercial building for a car park for the food premises. All these existing structures and associated infrastructure are contained within proposed Lot 2. The western portion (proposed Lot 1) of the site is vacant.

- has a gentle slope to the east, towards Murramarang Road.
- is zoned RU5 Village and the property has a site area of 1,719.91m<sup>2</sup>.
- is mostly mapped as containing acid sulfate soils class 5, with a small portion of the eastern part of the site mapped as class 3.
- is mapped as bush fire prone land.

The surrounding area is residential in character with the development site adjoined by low density residential development to the north, a caravan park/tourist park to the east, community facilities (rural fire station and community hall) to the south and bushland to the west.

#### History

The subject property forms part of the Kioloa township. The lot was created in 1954 at the same time as the other residential lots to the north.

The subject site contains an existing commercial/retail building (food and drink premises) which is currently undergoing renovations and refurbishment as approved by DA18/1320 (as modified).

#### Post Lodgement

The following correspondence and actions have taken place with the applicant following the lodgement of SF10689:

20 May 2019	Application lodged with Council.
28 May 2019	Additional information requested by Council for applicant correct errors within submitted SEE
29 May 2019	Applicant submitted additional information in response to Council requests.
31 July 2019	Email sent to applicant advising that integrated referral payment through the ePlanning Portal was outstanding. Advised to organise payment to NSW Rural Fire Service.
2 August 2019	Integrated development fee paid to NSW Rural Fire Service
23 August 2019	General Terms of Approval issued by NSW Rural Fire Service

#### **Issues**

##### Issue – Shoalhaven DCP 2014 – Chapter G8 Onsite Sewage Management

#### **Section 5.3 – Effluent Management**

Section 5.3 of Chapter G8 of SDCP 2014 states that:

*The following is required to ensure that the installation of pumpout systems is environmentally and economically efficient:*

- *New pumpout services must be generally allowed on existing lots within unsewered residential or commercially zoned land within Shoalhaven that was existing before the adoption of Council's former Effluent Pumpout Policy on 28 August 2007.*

- *New pumpout services are not to be provided to new subdivisions or new rezonings.*
- *Pumpout services are not to be provided to multi-unit housing in villages not designated for future reticulation services. Future reticulation services are identified in Council's adopted 20 year financial and capital works forward plan.*

The proposed development relies on the provision of pumpout services to both lots. Proposed Lot 2 already contains an existing commercial/retail building and associated pumpout services/infrastructure. The current proposal will create an additional lot (Lot 1) that would be reliant on effluent pumpout services.

#### Applicant's Submission

The applicant has provided the following commentary in support to the proposed variation to Chapter G8 of SDCP 2014:

*The subject land as it is today, is a parcel that existed prior to the adoption of Council's former Effluent Pumpout Policy in 2007. If a house were built on the land prior to the subdivision taking place, it would be able to have an effluent pumpout system.*

*This is not a new subdivision in the sense of the abovementioned requirements, it is an infill subdivision of an existing parcel in an area which benefits from pumpout. The 'new subdivisions' mentioned above relates to urban expansion areas and the subdivision of larger parcels into numerous lots, its intention wasn't to apply to subdivision of this nature.*

*Council has approved numerous subdivisions since 1995 where the lots benefit from pumpout services. In this instance, the subdivision is primarily to cut off the café so that it can be separately owned and rated as a business.*

*The landowners are fully cognisant of the requirement for a restriction on the title for full cost to be borne by the developer / owner of lot 1 for the provision of pumpout services. We request therefore that this application be reported to Council in this regard.*

#### Discussion

- The western portion of the site is vacant and has the potential for a dwelling to be constructed on it.
- The proposed subdivision is consistent with the historic subdivision pattern of the residential area immediately to the north of the site.
- Based on the available land area and dimensions of the site, other methods of on-site effluent management are unfeasible.
- Shoalhaven Water has reviewed the application. Shoalhaven Water does not object to the proposal.
- There are no plans to connect the Kioloa township to the reticulated sewer or water network and it is unlikely that this would occur in the foreseeable future.
- As per Chapter G8 of SDCP 2014, new pumpout services must be generally allowed on existing lots within unsewered residential or commercially zoned land within Shoalhaven that was existing before the adoption of Council's former Effluent Pumpout Policy on 28/8/2007.



- The subject lot was existing prior to 2007 and has the potential for further development (e.g. construction of a residential dwelling on the western portion of the site). Effluent management for proposed Lot 1 through provision of additional effluent pumpout services is considered satisfactory having regard to the circumstances of the case.

### Planning Assessment

The DA will be assessed under s4.15 of the Environmental Planning and Assessment Act 1979.

### Policy Implications

#### Shoalhaven Development Control Plan 2014 (SDCP 2014)

Chapter G8 of *SDCP 2014* does not support the provision of new pump out services unless the environmental impacts are minor or the alternative carries a greater environmental risk. In this instance, the proposal is a reasonable solution noting that other options are not practical or achievable.

### Consultation and Community Engagement:

- No public submissions were received during the notification period.
- The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 25m buffer of the site.
- The notification was for a two (2) week period.

### Financial Implications:

In the event that Council decides to adopt the recommendation, the application will still need to have a favourable final s4.15 assessment to enable consent to be issued however the 'policy' issue concerning effluent disposal would be resolved.

It is also important to note Council resolved on 19 December 1995 that:

*If Council resolves to allow a new effluent pump out service for a particular circumstance which is not in accordance with policy then the pump out service be at the full cost of providing the pump out service and this will be noted on the Section 149 Certificate and Title Deeds (p.13, Chapter G8 of SDCP 2014)*

If the provision of effluent pumpout services is not supported (resulting in an unfavourable assessment), the applicant could potentially seek a review and / or appeal the decision in the Land and Environment Court. Legal action would have cost implications for Council.

### Legal Implications

Should the provision of effluent pumpout services not be supported and the application ultimately refused. The applicant could however, as mentioned above, choose to seek a review and / or may appeal to the Land and Environment Court.

### Summary and Conclusion

- The RU5 Village zoning of proposed Lot 1 creates an expectation that the land can be used and developed for residential or other permissible purposes.

- Whilst there are environmental risks associated with the provision of additional pump out service to proposed Lot 1, it is acknowledged that this arrangement is not out of place with the Kioloa township and is the only feasible option for development of the land.
- The original lot was created prior to the adoption of the Effluent Pumpout Policy in 2007.
- The proposal for pump out services is considered a suitable option in the circumstances of the case. The proposed variation to Chapter G8 of *SDCP 2014* is considered capable of support.

## DE19.113 Exhibition Outcomes & Finalisation - Planning Proposal PP018, Draft DCP Chapter N18 and Draft Planning Agreement - 510 Beach Road, Berry

**HPERM Ref:** D19/319484

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

**Attachments:** 1. Exhibited Explanatory Statement [↓](#)  
2. Post-Lightning Assessment of Scarred Tree [↓](#)  
3. Post Exhibition Version DCP Chapter N28 [↓](#)

### Purpose / Summary

- Report the outcomes of the combined public exhibition of Planning Proposal PP018 for Lot 4 DP 834254 (510 Beach Road) Berry and associated Development Control Plan 2014 Chapter N28 (Draft Amendment No 36) and Draft Planning Agreement No 14.
- Enable the amendments to Shoalhaven Local Environmental Plan (LEP) 2014 and Shoalhaven DCP 2014 to proceed to finalisation.

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

That Council:

1. Adopt and finalise the Planning Proposal (PP018) as exhibited with the changes outlined in this report.
2. Adopt and finalise Chapter N28 of Shoalhaven Development Control Plan (DCP) 2014 (Amendment 36) as exhibited with the changes outlined in this report.
3. Based on advice from the Environment, Energy and Science (EES) group of the NSW Department of Planning, Industry and Environment (DPIE) that Council is not required to be a party to the Planning Agreement, liaise with the proponent and EES to have Council removed from the final Planning Agreement.
4. To ensure that the legal mechanism for the transfer of the E1 land to NPWS is secured, only forward the Planning Proposal to DPIE for finalisation after the Planning Agreement has been signed by both parties.

### Options

1. Adopt PP018 and DCP Chapter N28 as exhibited with the changes recommended in this report. Not proceed to be part of the Planning Agreement as there is no requirement for Council to be part of it.

Implications: The proposed changes to the LEP and DCP controls resolve the relevant issues raised during the public exhibition phase. The proposed LEP and DCP controls are consistent with the environmental and land capability assessments and will deliver planning outcomes that are consistent with the adjoining land.

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2. Adopt the PP018 and DCP as exhibited with no changes. Proceed (or not proceed) to be part of the Planning Agreement that was also part of the exhibition package.

Implications: Not recommended as several issues raised in the public exhibition warrant changes to the exhibited LEP and DCP controls.

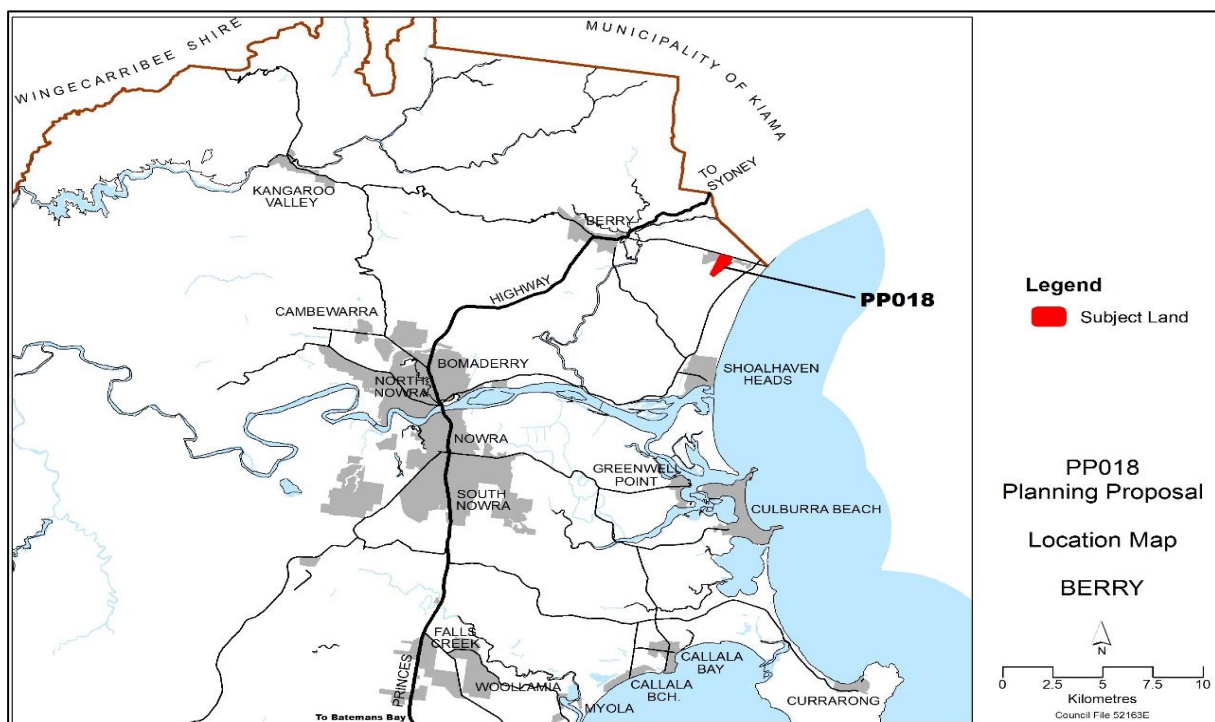
3. Adopt an alternative recommendation.

Implications: Depending on its nature, this could delay finalisation of this planning proposal.

## Background

### Subject Land

The subject land is Lot 4 DP 834254, at 510 Beach Road, Berry and is located east of the township of Berry as shown in **Figure 1** below.



**Figure 1 – Location of subject land**

### Planning Proposal Overview

Council initially received a proponent-initiated PP request for the subject land on 3 October 2015. The request sought to rezone the land from a mix of RU1 - Primary Production, and E2 - Environmental Conservation to:

- R5 - Large Lot Residential,
- E1 - National Parks and Nature Reserves,
- E2 – Environmental Conservation, and
- E3 - Environmental Management.

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The PP also proposed to transfer that part of the land within the Coomonderry Swamp to the NSW Government for incorporation into the Seven Mile Beach National Park. (It has since been confirmed that this transfer is to be facilitated through a planning agreement.)

On 18 January 2016, Council resolved to support the PP ‘in principle’ subject to:

- Revising the proponent’s proposed minimum lot size to ensure the size of future lots is consistent with adjacent subdivisions and can adequately accommodate on site effluent disposal.
- Revising the proponent’s proposed zoning to ensure appropriate environmental zoning for the swamp and buffer area and other ecologically significant areas on the subject land including, but not limited to, protection of Coomonderry Swamp/SEPP 14 wetland and ecologically significant areas such as the patch of forest known as ‘Jim’s Forest’ and Berry Wildlife Corridor.
- Resolving the proposed transfer of land to National Parks and Wildlife Service, and the possible need for a Voluntary Planning Agreement.

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

The Gateway determination was then subsequently received in June 2017, requiring information to be updated or prepared prior to public exhibition of the PP.

A report on the updated PP and a draft DCP was considered by Council’s Development and Environment Committee on 2 April 2019. Council resolved to:

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

## Public Exhibition

The PP (PP018) and supporting documents, including a draft DCP Chapter and a draft Planning Agreement, were publicly exhibited at Council’s Nowra Administration Building from 17 July to 16 August 2019. They were also made available on Council’s website, including via [Documents on Exhibition](#) and [Get Involved](#).

A notice was placed in the South Coast Register on 17 July 2019. Adjoining landowners, the Berry Forum and people who had previously made submissions were advised of the arrangements in writing.

The exhibited documents included:

- Explanatory statement (**Attachment 1** to this report)

- PP018: seeks to amend Shoalhaven Local Environment Plan (LEP) 2014, to rezone the land to a mix of large lot residential and environmental protection zones. The proposed LEP changes are consistent with adjoining zones and the land's environmental and cultural heritage values.
- New chapter (Chapter N28) in Shoalhaven Development Control Plan (DCP) 2014: proposed to provide additional site-specific objectives and controls to ensure that buildings are located north of the ridgeline and that development is sympathetic to the land's environmental and cultural heritage values.
- Draft Planning Agreement: seeks to facilitate the transfer of the southern part of the subject land that forms part of Coomonderry Swamp to the NSW Government for inclusion in Seven Mile Beach National Park.

It is noted that the draft Planning Agreement was prepared by the proponent to detail how the subject land transfer that is associated with this PP will occur. It also covers the potential transfer of two other land parcels owned by the proponent to the NSW Government that are outside the PP process.

## Public Exhibition - Submissions

Submissions were received from:

- The landowner/proponent
- Three adjoining landowners (two to the east and one to the west of the subject land)
- Berry Landcare Group
- Internal Council submissions

Government agency responses were received from:

- NSW Rural Fire Service (RFS)
- Environment, Energy & Science group of the NSW Department of Planning, Industry & Environment
- Endeavour Energy

These are summarised below, and copies of submissions are provided in the **Councillors' room** for review prior to the meeting.

### 1. Landowner: Aboriginal Cultural Heritage (D19/290624)

The landowner/proponent raised concerns as follows about the proposed LEP and DCP controls that were based on the outcomes of the Aboriginal Cultural Heritage Assessment (ACHA).

#### 1.1 Area of Potential Archaeological Deposit (PAD) – Stone Artefacts

*Inconsistency between the ACHA and the PP: Areas with moderate to high likelihood of subsurface Aboriginal artefacts. The possibility of any significant Aboriginal Artefacts being found during the construction of the subdivision is unlikely.*

#### 1.2 Aboriginal Scarred Tree

*The Aboriginal Scarred tree has been significantly damaged by fire and is now in a state which should exclude the tree from being heritage listed. The Scar Tree has been dead for an extended period of time, it has been damaged by fire and the climate and is now in a*

*dangerous structural condition. Removing the Scar Tree from the site appears to be the safest and best option.*

Council Staff Comments:

Refer to discussion later in report in 'response to submissions' under Aboriginal Cultural Heritage and proposed changes to the PP and DCP chapter.

**2. Adjoining Landowner: Internet Speeds (D19/287017 & D19/281263)**

*"... it is incumbent on Council to require the developers of the proposed 510 Beach Road subdivision to pay the costs involved to upgrade or augment Telstra's copper wire network along Beach Road so that there is no subsequent reduction or deterioration in the level of the internet service currently available..."*

Council Staff Comments:

This is not a matter that Council can control or resolve through the current planning processes. Any concerns about declining internet speeds need to be directed to the service provider in the first instance. The ACCC advises that if the service provider does not resolve the issue, a complaint should be lodged with the [Telecommunications Industry Ombudsman](#).

Developers are required to contribute to the cost of providing phone and internet infrastructure to their chosen carrier (e.g. NBN) in accordance with the Australian Government's Telecommunications Infrastructure in New Developments (TIND) policy. This will be further considered when the development of the subject land reaches the subdivision stage.

**3. Adjoining Landowner: Stormwater Runoff and Hydrology Adjoining Campbells Run (D19/281299)**

- *Already have significant problems with the water coming off the ridge. Concerned about increased runoff from at least 1 or 2 houses.*
- *We have a small spring on our property behind the house and we have had to replace a section of the hedge twice in front of the house because of the water running under the residence.*

Council Staff Comments:

Refer to discussion later in the report in 'response to submissions' under stormwater and groundwater and proposed change to the DCP chapter.

**4. Adjoining Landowner: Alignment of zoning / ridgeline and exclusion of buildings from Coomonderry Swamp (D19/280701)**

- *Inconsistency between stated intent of the PP to exclude buildings from the Coomonderry Swamp catchment and the PP and DCP mapping*

Council Staff Comments:

The alignment of the ridgeline has been validated and corrected using the spatial analysis tool in GIS and detailed contour mapping (1 m contour intervals). Changes to the maps in the PP and DCP are discussed later in this report.

## 5. Berry Landcare: Ecology / Wildlife Corridors (D19/281040)

- *Tree canopy along Beach Road is an important corridor for the local glider population including the locally endangered Greater Glider.*

### Internal Council Submissions

#### Environmental Services Section - Ecology (D19/248125)

- *Key ecological values within the site are identified in the report by Biosis.*
- *Development must be excluded from all areas within Coomonderry Swamp. 'Jim's Forest' is south of the ridgeline and should be E2 not E3 as proposed.*
- *All remnant vegetation should be protected from development.*
- *The proposal provides an opportunity to revegetate areas such as around springs and along ephemeral drainage lines (proposed to be E3) to protect water quality, increase vegetation in the locality and across the city to combat the impacts of climate change, and improve the amenity of future residents. Controls to ensure revegetation should be written into the LEP / DCP for the locality.*

#### Council Staff Comments:

Refer to discussion later in the report in 'response to submissions' under Stormwater and Groundwater; and Ecology and Proposed Changes to the DCP Chapter.

#### Environmental Services Section – Land Contamination (D19/248167)

- *The land is not currently flagged as potentially contaminated.*
  - *Comment: In accordance with the Phase 1 Contaminated site assessment, the land has been added to Council's Potentially Contaminated Land (PCL) register noting that any contamination downslope of the homestead (underground diesel tank) can be remediated to be suitable for its intended use subject to further assessment at the subdivision development application stage.*
- *Area affected by ASS are in the area where no development is proposed (edge of Coomonderry Swamp).*
- *'Jim's Forest' should be zoned E2 not E3 as proposed.*

#### Council Staff Comments:

A Phase 1 Contaminated Site Assessment completed over the land concluded that:

1. Most of the site has been used for agricultural purposes including a dairy operation and more recently grazing for beef cattle.
2. Some lands near the homestead and immediately downslope may have been contaminated by past practices, including an underground diesel tank.
3. The land can be remediated to be suitable for its intended use subject to further assessment at the subdivision development application stage.

The site has been added to Council's Potential Contaminated Lands Register to ensure this is further assessed and conditioned if appropriate at the subdivision development application stage.



### Environmental Services Section – Onsite Effluent Management (D19/248092)

- *The spring/well in the NW corner of the subject land is a bore and will need a 100 m buffer.*
- *The spring in the NE corner of the subject land has a pipe coming out of it and is a bore and will need a 100 m buffer.*
- *The Windmill in the Southern part of the property is a bore and will need a 100 m buffer, which will extend the buffer from Coomonderry Swamp.*
- *Figure 2 in Draft DCP Chapter N28 identifies what appears to be a 100 m buffer from the Windmill. However, the remaining two springs identified above that are considered to be a bore only appear to have a 40 m buffer. Two potential options to rectify this include:*
  - a. *decommissioning the NW and NW bores prior to re-zoning; or*
  - b. *increase the buffer around these bores to 100 m in Figure 2.*
- *A soil bore completed in the NW of the property confirmed that soils in this location are subject to periodic saturation and are unsuitable for effluent land management.*
- *The Shoalhaven Soil Landscape is potentially present in the NNE part of the property. The soils here were not examined to confirm the extent of the Shoalhaven Soil Landscape.*
- *Soil investigation should be completed in this location to confirm whether soils subject to periodic saturation are also present in this location and accordingly, whether the exclusion area in Figure 2 in Draft DCP Chapter N28 needs to be extended.*

### Council Staff Comments:

As noted above, the landowner may choose to either comply with the 100 m setback requirement in DCP Chapter G8 or decommission the bores. An acceptable solution has been added to the revised DCP Chapter N28 to ensure this is addressed at subdivision stage.

### Community and Recreation Section (D19/343601)

- *Draft DCP Chapter N28 does not include specific social objectives of connecting people and places. This is considered an omission and should be addressed - if not now, then possibly when the Rural Residential Strategy is being prepared and may precipitate a review of the DCP Chapter.*

### Council Staff Comments:

This submission raises an issue that is essentially outside the scope of this draft DCP Chapter, noting that it deals with a piece of infill rural residential development. The thrust of the submission (connecting people and place) will however be considered as part of the preparation of the new Local Strategic Planning Statement (LSPS). The LSPS along with the [Community Strategic Plan](#) (CSP) will consider embedding the principle or objective of connecting people and places, and will outline a broad vision for, amongst other things:

- well managed development protecting the special character of Shoalhaven's towns, villages and neighbourhoods, and
- infrastructure, parks and facilities supporting active, healthy and connected communities

This work will ultimately inform future potential amendments to the Shoalhaven DCP2014.

Shoalhaven Water (D19/344522)

- *Town water and sewerage are not available in the area.*
- *The land is rural in nature and it will not be serviced with water supply and/or sewerage in the foreseeable future.*
- *The future land parcels must be large enough to ensure that on-site sewage treatment systems can operate efficiently*

Council Staff Comments:

The individual future lots will be self-sufficient in terms of water and wastewater (onsite effluent) management.

**Government Agency Submissions**NSW Rural Fire Service (D19/213323)

- *No objection to the proposal provided the future subdivision complies with Planning for Bushfire Protection requirements including in respect of:*
  - *asset protection zones (APZ)*
  - *access*
  - *services*

Council Staff Comments

Noted and will need to be considered at the subdivision development application stage.

Environment, Energy & Science Group, NSW Department of Planning, Industry & Environment (D19/284645)

- *Support the proposed location of development on the northern side of the ridgeline supported by building and wastewater exclusion areas to protect the Swamp's catchment.*
- *Support the retention of 'Jim's Forest' in single ownership subject to management measures specified at DA stage.*
- *E2 zoning should apply to 'Jim's Forest' in the area currently identified as E3 and within the Swamp's catchment*
- *The exact location of the ridgeline and catchment boundary, and any associated refinements to zone boundaries, should be confirmed prior to rezoning.*
- *A native vegetation buffer in the E2 zone, which acts as a natural buffer between future NPWS land and the developable lots, should also be provided and secured at DA stage. A functional native vegetation buffer is also critical to ensuring connectivity of the broader environmental corridor linking the escarpment to Berry and Seven Mile Beach National Park. We recommend considering a provision in the DCP requiring native vegetation planting in non-developable areas of future lots within the E2 zone*
- *Any asset protection zones for new dwellings should be located wholly outside of the E2 zone and avoided in the E3 zone wherever possible to allow opportunities for revegetation.*

- *The draft VPA is still being refined between the applicant and NPWS and will be finalised following exhibition of the PP.*
- *In areas that have been mapped as having archaeological potential, we recommend archaeological test excavation occur as soon as possible to provide certainty to all parties about the extent and nature of the Aboriginal heritage sites and any management requirements. We note that the applicant should ensure appropriate time and funding resources are provided to prepare Aboriginal Cultural Heritage Assessments and any necessary permit applications.*
- *An Aboriginal Heritage Management Plan is recommended to manage the interface between the proposed heritage listed tree and the proposed residential subdivision. Finally, we request the opportunity to review the detailed Cultural Heritage Study once it is completed.*

#### Council Staff Comments

Refer to discussion later in the report in 'response to submissions'.

#### Endeavour Energy (D19/351621)

*Generally, no objection to the PP - previously provided a Technical Review Advice dated 24 August 2017, which generally remains valid.*

*The existing nearby pole mounted substations are unlikely to be able to service the proposed development. A new padmount substation will be required within the development. However, the proposed method of supply and the extent of the works required to the local network will not be determined until the final load assessment is completed. Endeavour Energy's preference is to alert proponents / applicants (and Council) of the potential matters that may arise as rezoning and development of non-urban areas continues to occur.*

*In due course the applicant for the future proposed development of the site will need to submit an application for connection of load via Endeavour Energy's Network Connections Branch to carry out the final load assessment and the method of supply will be determined.*

#### Council Staff Comments

Noted and will need to be considered at the subdivision development application stage.

### **Substantive Submissions - Response**

#### Aboriginal Cultural Heritage Assessment (ACHA) – Area of Stone Artefact Potential Archaeological Deposit (PAD)

The ACHA report identified an area of **Potential Archaeological Deposit (PAD)** in which 11 stone artefacts were excavated during the assessment. The ACHA report states that the PAD area is *likely to retain additional subsurface archaeological deposits* and recommends that:

- *Future development in the study area should seek to avoid or limit impacts to the stone artefact and PAD site.*
- *future proponents wishing to impact the stone artefact and PAD site within the study area should apply to OEH for an AHIP*
- *Approval for reburial of excavated artefacts [excavated during AMBS's assessment] should be sought as a condition of future AHIP applications in the study area.*
- *The PAD has ...low overall significance for Aboriginal heritage, and further archaeological investigation of the site is unlikely to increase the current scientific*

*understanding of the region and that ... establishment of a conservation area encompassing the site is not recommended.* Conservation area refers to a 'heritage conservation area'.

In conclusion, despite the low overall significance of the stone artefacts and PAD, an Aboriginal Heritage Impact Permit (AHIP) is legally required if excavation or ground disturbance is proposed. If no ground disturbance is proposed, an AHIP is not required.

The proposed changes to the DCP Chapter N28 include the addition of more detail to clarify the legal requirements concerning the PAD. Refer to **Table 2** below.

#### Aboriginal Cultural Heritage – Scarred Tree

An Aboriginal Scarred Tree was identified within the part of the subject land identified for development. The ACHA report prepared by AMBS recommended that this tree be listed in the LEP as a 'heritage item' because of its heritage significance.

The tree was however subsequently struck by lightning after the ACHA report was prepared and while this PP was under assessment. As a result, the tree was significantly damaged. When this matter was previously considered by Council, a further report was pending to help determine whether the remains of the tree still warrant heritage listing.

AMBS completed a post-lightning condition assessment of the scarred tree remains in September 2019. A copy of their report is provided in **Attachment 2**. AMBS concluded that:

- While the culturally scarred tree site has experienced significant impacts and loss of heritage value, it remains an Aboriginal Object protected under the National Parks and Wildlife Act 1974 (NPW Act). Under Section 90 of the NPW Act, it is an offence to destroy, deface, damage or desecrate an Aboriginal Object or Aboriginal Place, unless an Aboriginal Heritage Impact Permit (AHIP) has been issued.
- AMBS does not recommend inclusion of the culturally scarred tree site as a 'heritage item' in the Local Environmental Plan, as had been previously recommended.
- Consultation with the Jerrinja Local Aboriginal Land Council (LALC) has indicated that the tree retains moderate cultural significance to the local Aboriginal community, despite the significant physical damage and loss of some aspects of its scientific, historic and aesthetic heritage values. The Jerrinja LALC are aware that it is unlikely that the tree will survive indefinitely in its current location and identified that they were likely to support two management outcomes.
- The Jerrinja LALC have identified that their preferred options are either:
  - make the tree safe and retain it in place, and allowed to degrade naturally over time, or
  - that the tree be carefully trimmed and felled and removed to a keeping place nominated by the community for conservation and ongoing preservation.
- The Jerrinja LALC indicated that they would discuss the options internally and identify their preference for inclusion within the AMBS report, however, to date feedback has not yet been received.
- A copy of this report should be provided to the Jerrinja LALC for their review, input and feedback, and any additional information received should be appended to this report where appropriate.
- In the absence of advice from the Jerrinja LALC and their nomination of a suitable keeping place, AMBS recommends that the culturally scarred tree be trimmed to a height that will render it safe, and the remaining tree trunk be retained in place and

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allowed to decay naturally. The extent of the trimming of the tree should be limited to that necessary to prevent the risk of limb fall or collapse of the trunk and should be guided by advice from a suitably qualified arborist, however the portion of the trunk containing the cultural scars should remain.

- Future residential development in the study area has potential to impact the Aboriginal heritage site. To avoid the risk of accidental impacts during future development a buffer area around the site should be established during construction in the vicinity of the site. The buffer area should be as wide around as the trimmed tree remains high and should be clearly demarcated during future development activities to prevent accidental impacts arising from the works, possibly through the use of temporary fencing.
- Any impact to the Aboriginal heritage site, including trimming of branches or felling or removal of the tree, will require an approved AHIP granted by Office of Environment and Heritage (OEH). An application for an AHIP is required to be accompanied by an ACHA report specifically assessing the proposed impacts, prepared in consultation with the local Aboriginal community.

Based on the AMBS condition assessment report, it is now proposed to not list the tree remains in the LEP as a 'heritage item'. Changes are proposed to the draft DCP Chapter to remove ambiguity around when an Aboriginal Heritage Impact Permit (AHIP) will be required - refer to Table 2 below for more detail.

### Ecology – Wildlife Corridors

Submissions from Berry Landcare, Council's Environmental Services Section and DPIE (EES) suggest that there is an opportunity to improve wildlife linkages between Coomonderry Swamp, 'Jim's Forest' and vegetation along Beach Road. The Council staff submission also identified the opportunity to establish native vegetation along the drainage line.

The PP exhibition package included a [Flora and Fauna Assessment](#) (FFA) prepared by Biosis Pty Ltd on behalf of the proponent. The FFA concluded that the proposal will not significantly impact upon threatened communities or biota. This conclusion is based on limiting removal of native vegetation and habitat to 0.29 ha of Bangalay Sand Forest EEC.

The FFA also indicates that a Biodiversity Development Assessment Report (BDAR) will not be required at the subdivision stage. Notwithstanding the conclusions of the FFA, there is an opportunity to achieve a range of positive outcomes (including in respect of ecology, local amenity, water quality and visual impact) by establishing native trees/shrubs along:

- the north-eastern boundary linking Beach Road and 'Jim's Forest'
- the eastern boundary linking 'Jim's Forest' and Coomonderry Swamp
- the drainage line that flows north to Beach Road
- Beach Road (i.e. private land adjacent to the road reserve)
- the southern edge of the proposed E2 land, adjoining the proposed E1 land
- 30 m wide 'regeneration' buffer

An additional proposed control has been added to the draft DCP requiring a positive covenant to be established at subdivision stage. Refer to **Table 2**.

### Stormwater and Groundwater

The PP exhibition package included a [Groundwater Impact Assessment](#) prepared by Larry Cook Consulting Pty Ltd (2018). The Assessment identified two relatively small shallow

groundwater discharge zones (springs) on the northern side of the ridgeline. The submission (D19/281299) concerns the western-most of these springs.

The Assessment recommended the following setbacks from the springs be adopted for onsite effluent management:

- 15 m side slope
- 30 m upslope
- 50 m downslope

These recommendations were incorporated into the exhibited DCP Chapter.

The PP exhibition package included a [Water Cycle Assessment](#) (WCA) completed by SEEC on behalf of the proponent. The WCA does not identify the need for any specific stormwater-related controls for the subject land. The WCA proposes that a Stormwater Plan be prepared at subdivision stage to comply with the generic stormwater controls in DCP Chapter G2. It is noted however that the WCA does not discuss or address the springs.

The WCA provides basic stormwater management information which is generally satisfactory given that detailed stormwater design will be required at subdivision stage. Information will also be required to demonstrate how the water quality will be managed and fully address the controls in DCP Chapter G2.

To address concerns about the springs, controls have been added to the attached draft DCP Chapter N28 based on feedback from Council's Senior Flood Engineer. Refer to **Table 2** below.

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### Proposed Changes - Planning Proposal

The proposed changes resulting from the public exhibition are summarised in **Table 1** below.

**Table 1** - Proposed Changes to the Planning Proposal

Change	Comments
Zoning map: revise the E2 zone boundary to align it with the ridgeline separating the Coomonderry Swamp and Foys Swamp catchments. See <b>Figure 2</b> below.	<p>As alluded to in several submissions, the exhibited map unintentionally proposed some E3 and R5 land within the Coomonderry Swamp including 'Jim's Forest'.</p> <p>The alignment of the ridgeline was validated using the spatial analysis tool in GIS and detailed contour mapping (1 m contour intervals).</p> <p>This was contrary to Council's resolution on 18/1/16 and the 'Explanation of Provisions' in section 3 of the PP which specifically states that land within the Coomonderry Swamp catchment will be zoned E1 and E2.</p>
Minimum Lot Size map: revise the boundary between the 1ha and 2ha minimum lot size areas to match the ridgeline alignment. See <b>Figure 3</b> below.	This change is needed to ensure consistency between the minimum lot size and zoning maps.

Not list the Aboriginal scarred tree as a Heritage Item in the LEP.

As discussed above, the tree was badly damaged by lightning/fire – refer to the findings of the post-lightning condition assessment. The tree is however still protected under the NPW Act.

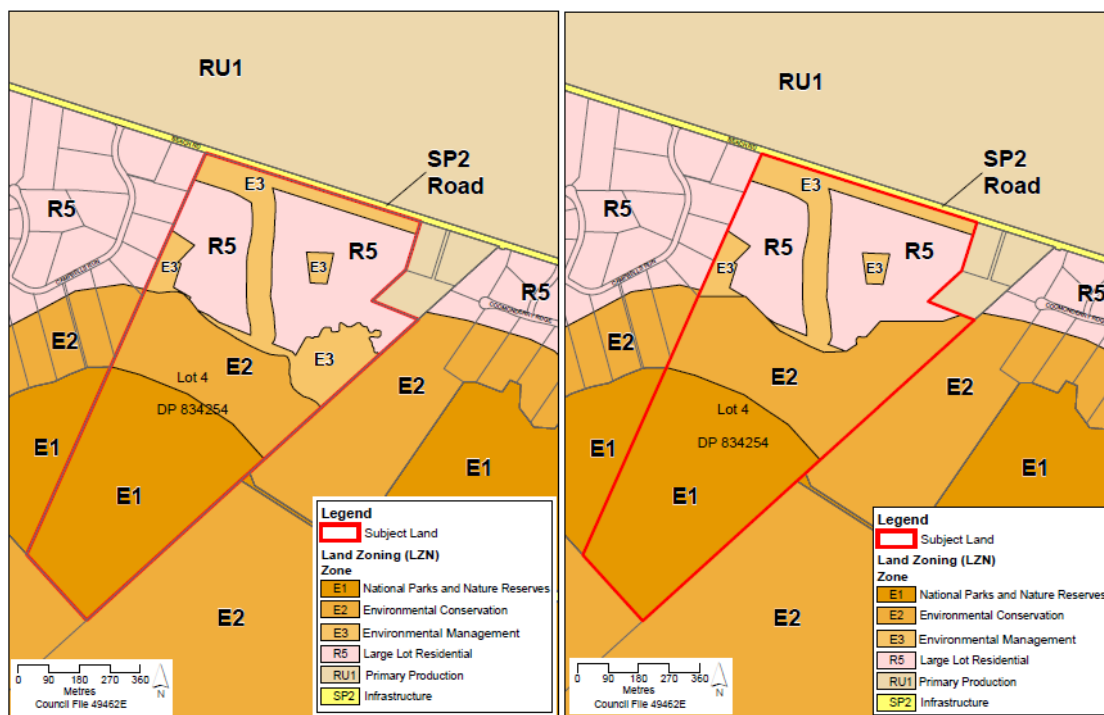


Figure 2 - Proposed zoning maps: exhibited (left) and final proposed (right)

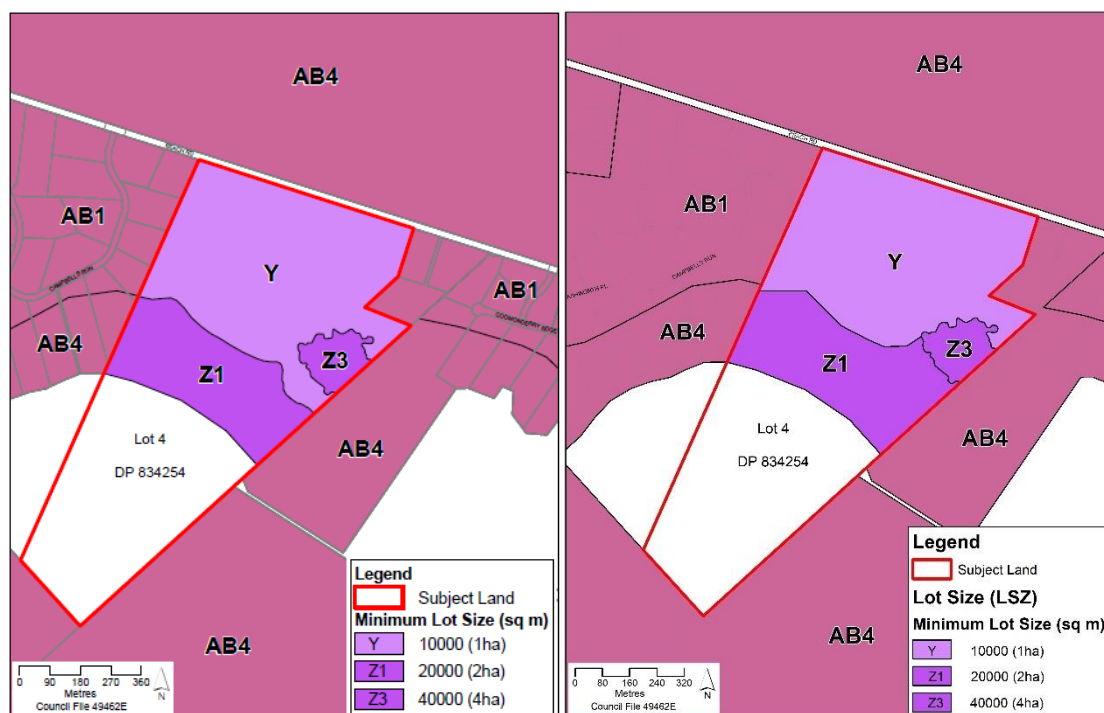


Figure 3 - Proposed minimum lot size maps: exhibited (left) and proposed (right)

DE19.113



### Proposed changes - DCP Chapter N28

The proposed changes to draft DCP Chapter N28 resulting from the public exhibition are summarised in **Table 2** below and shown in track-changes in **Attachment 3**.

**Table 2** - Proposed changes to DCP Chapter N28

Change	Comments
<b>Figure 2</b> - Wastewater exclusion map: align the wastewater exclusion area with the ridgeline	Ensure wastewater is not applied on land that drains to Coomonderry Swamp. Refer to discussion on the ridgeline under zoning map changes.
<b>Figure 3</b> - Building exclusion map: align the building exclusion area with the ridgeline	Refer to zoning map changes. Will ensure consistency.
<p>Aboriginal Cultural Heritage:</p> <ul style="list-style-type: none"> <li>• Provide options to remove/retain the scarred tree</li> <li>• Add detail on when an AHIP will be required in the area of Potential Archaeological Deposit (PAD)</li> </ul>	<p>As discussed above, changes are required to:</p> <ul style="list-style-type: none"> <li>• Reflect the recommendations of the post-lightning assessment of the scarred tree.</li> <li>• Improve clarity around the statutory requirements.</li> </ul>
Add provision requiring landscape planting of native shrubs and trees to facilitate wildlife movement between Beach Road, 'Jim's Forest' and Coomonderry Swamp and along the drainage line.	<p>In summary the proposed provisions are required based on:</p> <ul style="list-style-type: none"> <li>• Corridor width generally 10 m but can be averaged to ensure dwelling yield is not reduced and bushfire construction standard is BAL-29 or less.</li> <li>• Corridor along Coomonderry Swamp is 30 m wide (based on information provided by the proponent).</li> <li>• Tree/shrub planting corridors to be shown in a landscaping plan to be provided with the subdivision application.</li> <li>• Positive covenants to be established at subdivision stage.</li> <li>• Planting required at individual development application stage.</li> </ul> <p>These provisions will also provide a range of other benefits including visual, landscape amenity, water quality, hydrology, and privacy.</p>
Add provision to require the groundwater discharge zones to be appropriately drained at subdivision stage.	To minimise the risks associated with the groundwater discharge zones including potential adverse impacts on adjoining properties.



**Conclusion**

This matter is now at a point where Council needs to consider the outcome of the public exhibition period and determine how it wishes to proceed to finalise things. It is recommended that the PP and DCP Chapter be finalised consistent with the table of changes and associated material provided within the report, responding to the submissions received.

**Financial Implications**

This Planning Proposal has been funded by the proponent in accordance with Council's [Planning Proposal Guidelines](#) and fees and charges. Any outstanding fees will be payable prior to submitting the PP to DPIE/Parliamentary Counsel for finalisation.



**Public Exhibition 17 July to 16 August 2019**

#### Overview

Council is seeking feedback on a Planning Proposal (PP018) and related documents concerning Lot 4 DP 834254 (No. 510 Beach Road), Berry.

- PP018 seeks to amend Shoalhaven Local Environment Plan (LEP) 2014, to rezone the land to a mix of large lot residential and environmental protection zones. The proposed LEP changes are consistent with adjoining zones and the land's environmental and cultural heritage values.
- A new chapter (Chapter N28) in Shoalhaven Development Control Plan (DCP) 2014 is proposed to provide additional site-specific objectives and controls to ensure that buildings are located north of the ridgeline and that development is sympathetic to the land's environmental and cultural heritage values.
- A draft Planning Agreement seeks to facilitate the transfer of the southern part of the subject land that forms part of Coomonderry Swamp to the NSW Government for inclusion in Seven Mile Beach National Park.

Further explanation of the above documents is provided below.

#### Planning Proposal (PP018)

PP018 seeks to rezone the land from a mix of RU2 – Rural Landscape and E2 – Environmental Conservation to the following four zones (refer to Figure 1 on page 2):

**E1 - National Parks and Nature Reserves** is proposed for land within and adjacent Coomonderry Swamp that is to become an extension to Seven Mile Beach National Park.

**E2 - Environmental Conservation** for land that is within the surface water catchment of Coomonderry Swamp that will not become part of Seven Mile Beach National Park.

**E3 - Environmental Management** for land that is outside of the surface water catchment of Coomonderry Swamp that is otherwise constrained by environmental factors.

**R5 - Large Lot Residential** for the remainder of the site that is relatively unconstrained.

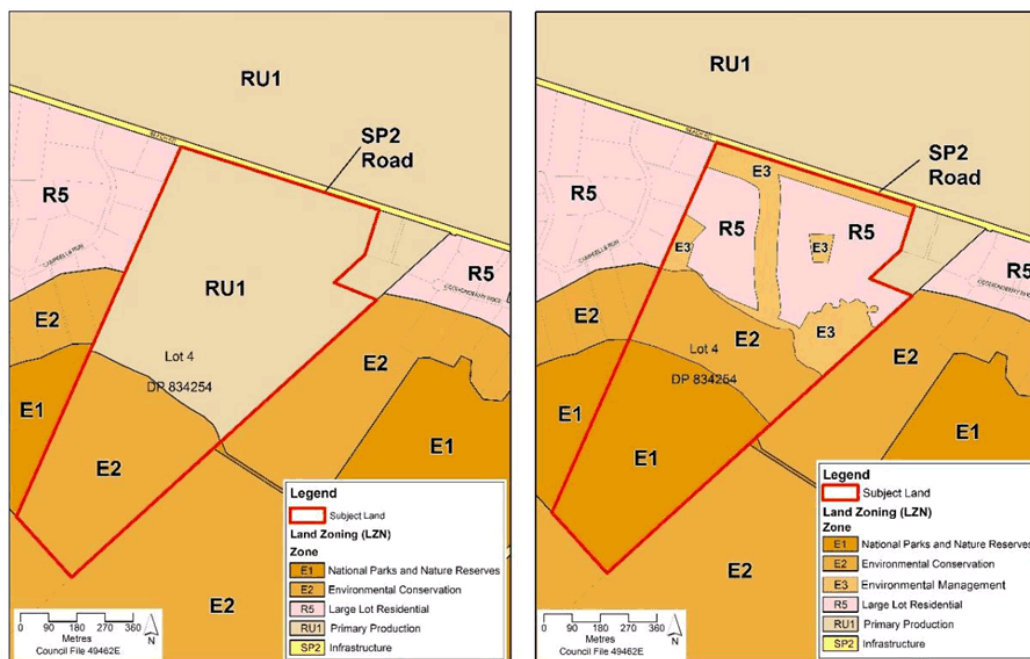


Figure 1 - Existing (left) and proposed (right) land use zoning

Other proposed changes to the LEP are described in Table 1 below.

Table 1 - Explanation of other proposed LEP changes including minimum lot size and heritage listing of Aboriginal scar tree

Proposed Change	Explanation
Apply no minimum lot size to part of the subject land to be zoned E1.	The part to be zoned E1 does not require a 'minimum lot size' in the LEP and so none is proposed.
Apply a 4 ha minimum lot size to part of the subject land known as "Jim's Forest".	To ensure that "Jim's Forest" is not subdivided.
Apply a 1 ha minimum lot size to land north of the ridge line, excluding "Jim's Forest".	This will enable development that is generally consistent with the existing rural residential developments on either side of the site.
Apply a 2 ha minimum lot size to land between the ridge line and the E1 zone.	To ensure the subdivision responds to the site constraints and environmental values, and to ensure that the resulting lots that extend onto the southern side of the ridge have an appropriate width and a development area for future dwellings, buildings etc outside of the catchment of the Coomonderry Swamp catchment.
Apply an Aboriginal Item listing to part of the site on the Heritage Map	An Aboriginal Scarred Tree was found within the part of the subject land identified for development. The assessment report recommended that this tree be listed in the LEP as a heritage item because of its heritage significance.

#### Proposed new chapter in Shoalhaven DCP 2014: Chapter N28

The aim of DCP Chapter N28 is to provide additional objectives and controls relating to land's environmental and cultural heritage values including:

- Locating buildings on the northern side of the ridgeline
- Aboriginal Cultural Heritage and the potential for artefact discoveries
- Water quality and the risk of effluent management areas contaminating surface and groundwater
- The protection of significant vegetation
- The protection of a riparian and wildlife corridor through the site

#### Planning Agreement

The draft Planning Agreement seeks to provide arrangements for transfer of the proposed E1 land along with Lot 7 DP 6123 and Lot 1 DP 571614 (both of which are under the same ownership as the subject land) The transfer of these lots to the NSW Government is unrelated to the PP.

#### Public Authority Consultation

##### NSW Office of Environment and Heritage (OEH)

Council has worked with OEH throughout this process and is conducting the draft Planning Agreement exhibition on their behalf. As noted above, the inclusion of Lot 7 DP 6123 and Lot 1 DP 571614 in the Agreement is not directly related to the PP.

##### NSW Rural Fire Service (RFS)

Council referred the PP to RFS as required and the RFS advised that it *"raises no objections to the proposal subject to a requirement that the future subdivision of the land complies with Planning for Bushfire Protection 2006."*

#### Exhibition Documents

The exhibition documents can be viewed online at [getinvolved.shoalhaven.nsw.gov.au](http://getinvolved.shoalhaven.nsw.gov.au) or at Council's Administration Centre at Bridge Road Nowra.

#### Have Your Say

You are encouraged to view the documents and provide written submissions during the exhibition period. Submissions should be made in writing and include Council's reference 52163E/1. All submissions must be received in writing by **5pm Friday 16 August 2019**.

**Post:** The General Manager, Shoalhaven City Council, PO Box 42, Nowra NSW 2541

**E-mail:** [council@shoalhaven.nsw.gov.au](mailto:council@shoalhaven.nsw.gov.au)

**Website:** via the form on Council's Get Involved Page [getinvolved.shoalhaven.nsw.gov.au](http://getinvolved.shoalhaven.nsw.gov.au)

#### Further information

For further information, contact Eric Hollinger of Council's Planning Environment and Development Group on (02) 4429 3320.

AMBS Ref: 18584

18 September 2019

Eric Hollinger  
Coordinator Special Projects  
Shoalhaven City Council  
PO Box 42 Nowra NSW 2541  
By email to [eric.hollinger@shoalhaven.nsw.gov.au](mailto:eric.hollinger@shoalhaven.nsw.gov.au)



Dear Eric

***Condition Report: Beach Road Scarred Tree, AHIMS site #52-5-0886***

AMBS Ecology and Heritage has been engaged by Shoalhaven Council to inspect and assess the current condition of an Aboriginal culturally scarred tree within a property at 510 Beach Road, Berry (see Figure 1 and Figure 2). The Aboriginal site is registered on the Office of Environment and Heritage (OEH) Aboriginal Heritage Information Management System (AHIMS) as Site #52-5-0886, and was originally recorded during archaeological survey prepared by AMBS in 2018.

AMBS has been informed that the tree was struck by lightning and caught fire on Saturday 12 January 2019. The landowner subsequently contacted the Rural Fire Service (RFS), who attended the property and extinguished the fire. The current inspection and assessment has been undertaken to identify the current condition of the site and its cultural features, and to reassess the significance and management of the site following the impacts.

***AHIMS Site 52-5-0886***

The site is located approximately 600m north east of Coomonderry Swamp, on the lower edge of a crest landform (GDA94/MGA Zone 56, 294964 east, 6148121 north). As recorded in 2018, The site comprised two oval-shaped scars on a dead, but still standing, eucalypt. The tree had been dead for a significant period, possibly in excess of 10 years, and did not have seed pods, leaves or other features which would allow its species to be further identified.

The tree retained two cultural scar features. One is located on the eastern facing side of the tree, measuring approximately 55cm high and 20cm wide. The other is on the southern facing side, and is approximately 25cm high by 15cm wide. Another scar is present on the western side of the tree, however the scar is triangular in shape and reaches to the ground, and is likely to be natural in origin.

***Current Condition***

An inspection of the site was undertaken on 20 February 2019 by AMBS archaeologist Christopher Langeluddecke and Jerrinja Local Aboriginal Land Council (LALC) representative Gerald Carberry, accompanied by landowner Richard Hall. Photographs comparing the current condition of the tree with the originally recorded condition of the site are enclosed with this assessment as Figure 3 to Figure 14.

*AMBS Ecology & Heritage*[www.ambs.com.au](http://www.ambs.com.au) [contact@ambs.com.au](mailto:contact@ambs.com.au) 02 9518 4489

Fragments of wood are present on the ground up to approximately 30m to the north west the tree as a result of the lightning strike, which is likely to have significantly damaged and destabilised the upper branches of the tree.

The tree shows evidence of extensive fire damage within the trunk and around the natural and cultural scars. The interior of the trunk and edges of the cultural scars have been significantly charred and damaged by the fire (see Figure 6, Figure 8, Figure 10 and Figure 12).

The trunk of the tree, which may have been partially hollow prior to the lightning strike and subsequent fire, has been predominantly hollowed out by the fire. The cultural and natural scars on the tree, which were the thinner and weaker part of its surface, have burnt completely through to the hollow trunk. The burnt through scars appear to have allowed air to enter the lower part of the trunk, which subsequently acted as a chimney and fed the internal fire.

The shape of the cultural scar on the southern side of the tree is still identifiable, however the scar is now completely hollow, and its edges have been charred between 5 to 10cm from the original edge of the scar, with additional charring extending up the trunk from the scar. The charcoal edge of the scar is highly fragile and friable.

The larger cultural scar on the eastern side of the tree is no longer possible to identify, and the entirety of the identifiable extent of the scar has been consumed by the fire. Additional damage to the tree at this point was caused during RFS efforts to extinguish the fire, and it appears that water hoses were placed inside this cultural scar to access fire inside the trunk.

Given the extensive damage to the tree, and the cultural scars, it is likely that exposure to the weather will cause ongoing degradation to the tree, and the remaining visible cultural scar on the southern side of the tree is likely to degrade completely. The damage to the upper branches of the tree from the lightning strike, and the significant fire damage inside the trunk, suggest that the tree is at risk of branches falling, or collapse of the trunk itself.

An arborist report prepared by Leigh Brennan of Tree Management Strategies on behalf of the landowner confirmed that the tree had extensive fire damage, and identified that the presence of an entry point and debris surrounding the tree indicated that the tree had been subjected to a lightning strike. The report stated that the damage had further compromised the tree's stability, and reinforced that the recommendations of their previously prepared Tree Risk Assessment remained valid. AMBS has not had the opportunity to view the Tree Risk Assessment report, and therefore cannot comment on its recommendations.

### ***Reassessment of Significance***

The original assessment of the heritage significance of site 52-5-0886 identified that the culturally scarred tree was considered to have high social, scientific and aesthetic value, and moderate historic value, and was therefore considered to have overall high significance for Aboriginal heritage value. This reassessment of heritage significance addresses the current condition of the site, following impacts and observed damage caused by the lightning strike and fire. This assessment has been undertaken in accordance with the OEH Code of Practice, which states that archaeological values should be identified and their significance assessed using criteria reflecting best practice assessment processes as set out in the Burra Charter.

Aboriginal heritage sites are considered to be of heritage significance if they meet one or more of the following criteria:

*Does the subject area have a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons? – social value*

Culturally scarred trees representative of past activity by Aboriginal people, and representatives of the Jerrinja LALC consulted with during and following the inspection of the site have indicated that the scarred tree site retains moderate cultural significance to the local Aboriginal community, regardless of its current condition.

*Is the subject area important to the cultural or natural history of the local area and/or region and/or state? – historic value*

Culturally scarred tree sites are representative of Aboriginal occupation of the landscape, and provide evidence of Aboriginal use of the environment. Scarred tree sites are rare in the local region, and provide direct, visible evidence of the place's Aboriginal history. However, the current condition of the site makes it difficult to visually identify the tree as culturally scarred, and the tree and scar remnants are unlikely to survive exposure to the weather in their current location indefinitely. As such, the culturally scarred tree site has low historic value for Aboriginal heritage.

*Does the subject area have potential to yield information that will contribute to an understanding of the cultural or natural history of the local area and/or region and/or state? – Scientific (archaeological) value*

The culturally scarred tree has been significantly impacted by fire, with one of the cultural scars visible but extensively damaged, and one scar destroyed. It is no longer possible to clearly identify the site as an example of Aboriginal tree scarring practices. As such, this site is considered to have low scientific (archaeological) value for Aboriginal heritage.

*Is the subject area important in demonstrating aesthetic characteristics in the local area and/or region and/or state? – Aesthetic value*

The fire damage to the scarred tree is such that one scar has been destroyed, and it is difficult to clearly identify the other scar. The culturally scarred tree site is therefore considered to have low aesthetic value for Aboriginal heritage.

#### *Summary Statement of Significance*

Impacts to the scarred tree from the lightning strike and fire have destroyed one cultural scar and significantly damaged the other, and have significantly reduced the heritage values of the site. While the culturally scarred tree is considered by the local Aboriginal community to retain moderate social value, the site is now considered to have low scientific, aesthetic and historic value.

#### **Recommendations**

While the culturally scarred tree site has experienced significant impacts and loss of heritage value, it remains an Aboriginal Object protected under the *National Parks and Wildlife Act 1974* (NPW Act). Under Section 90 of the NPW Act, it is an offence to destroy, deface, damage or desecrate an Aboriginal Object or Aboriginal Place, unless an Aboriginal Heritage Impact



Permit (AHIP) has been issued. The Act requires that reasonable precautions and due diligence be undertaken to avoid impacts on Aboriginal Objects.

Given the current condition of the scarred tree and reassessed level of heritage significance, AMBS does not recommend inclusion of the culturally scarred tree site as a heritage item on the Local Environmental Plan, as had been previously recommended.

Consultation with the Jerrinja LALC has indicated that the tree retains moderate cultural significance to the local Aboriginal community, in spite of the significant physical damage and loss of some aspects of its scientific, historic and aesthetic heritage values. The Jerrinja LALC are aware that it is unlikely that the tree will survive indefinitely in its current location, and identified that they were likely to support two management outcomes.

The Jerrinja LALC have identified that their preferred options would be that the tree be made safe, retained in place, and allowed to degrade naturally over time, or that the tree be carefully trimmed and felled, and removed to a keeping place nominated by the community for conservation and ongoing preservation. The Jerrinja LALC indicated that they would discuss the options internally, and identify their preference for inclusion with this report, however to date no feedback has yet been received. A copy of this report should be provided to the Jerrinja LALC for their review, input and feedback, and any additional information received should be appended to this report where appropriate.

In the absence of advice from the Jerrinja LALC and their nomination of a suitable keeping place, AMBS recommends that the culturally scarred tree be trimmed to a height that will render it safe, and the remaining tree trunk be retained in place and allowed to decay naturally. The extent of the trimming of the tree should be limited to that necessary to prevent the risk of limb fall or collapse of the trunk, and should be guided by advice from a suitably qualified arborist, however the portion of the trunk containing the cultural scars should remain.

Future residential development in the study area has potential to impact the Aboriginal heritage site. To avoid the risk of accidental impacts during future development a buffer area around the site should be established during construction in the vicinity of the site. The buffer area should be as wide around as the trimmed tree remains high, and should be clearly demarcated during future development activities to prevent accidental impacts arising from the works, possibly through the use of temporary fencing.

Any impact to the Aboriginal heritage site, including trimming of branches or felling or removal of the tree, will require an approved AHIP granted by OEH. An application for an AHIP is required to be accompanied by an ACHA report specifically assessing the proposed impacts, prepared in consultation with the local Aboriginal community.

Should you require any additional information or if I can be of assistance in any way please contact me on (02) 9507 489 or email [chris@ambs.com.au](mailto:chris@ambs.com.au).

Yours sincerely

Chris Langeluddecke  
Director Aboriginal Heritage  
AMBS Ecology & Heritage



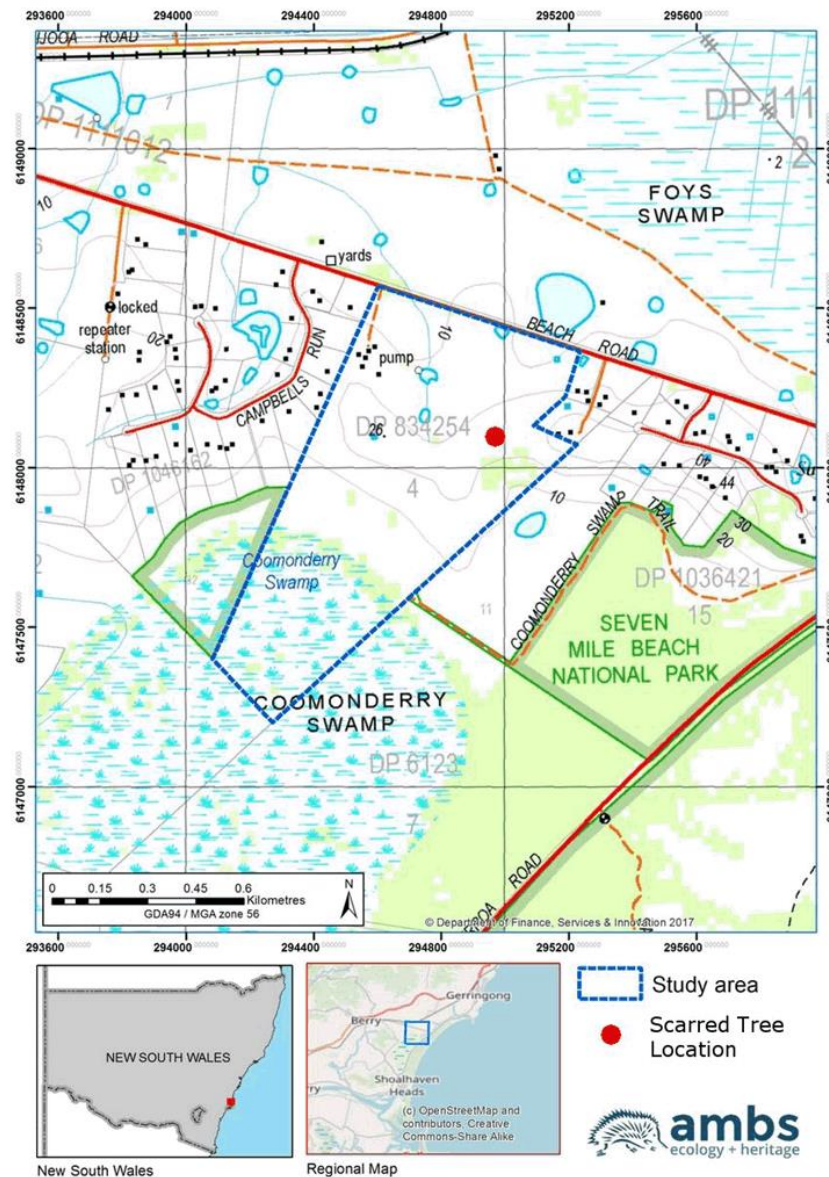
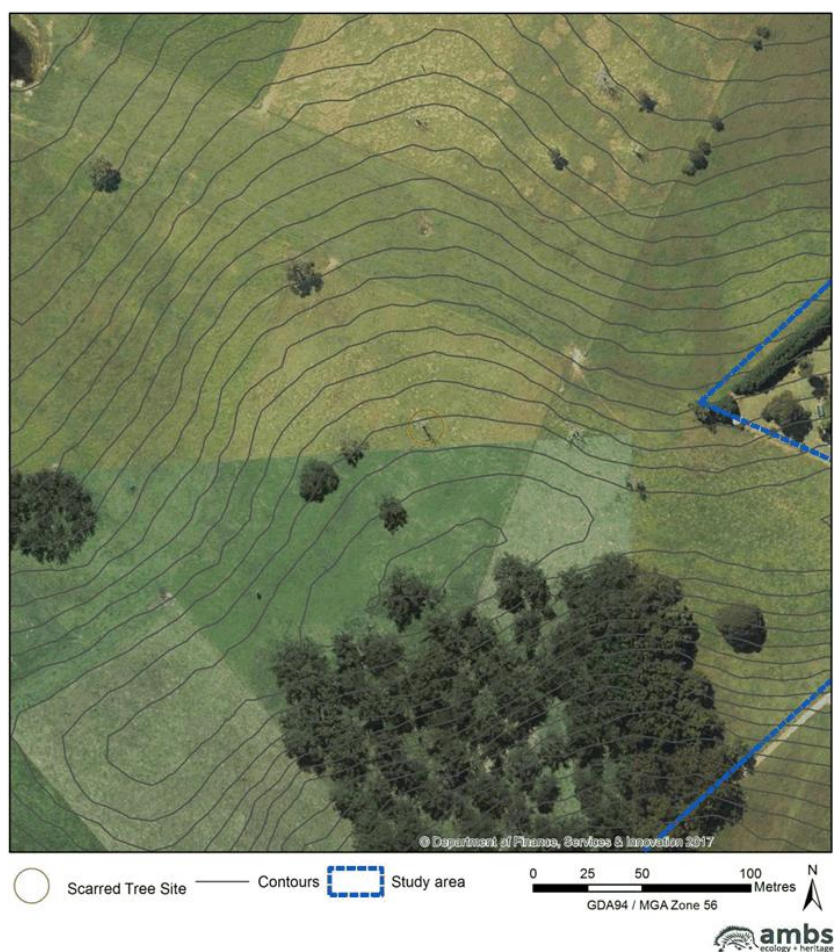


Figure 1 Beach Road Berry Scarred Tree location.



**Figure 2 Detailed aerial photo indicating the Beach Road Berry Scarred Tree location.**





Figure 3 Scarred tree as recorded during survey on 20/04/2018. View to south west.



Figure 4 Current condition of scarred tree as recorded 20/02/2019. View to south west.



Figure 5 Scar on eastern side of tree as originally recorded on 20/04/2018. View to west.



Figure 6 Current condition of scar on eastern side of tree as recorded on 20/02/2019. View to west.



Figure 7 Detail of scar on eastern side of tree as originally recorded on 20/04/2018. View to west.



Figure 8 Detail of current condition of scar on eastern side of tree as recorded on 20/02/2019. View to west.





Figure 9 Scar on southern side of tree as originally recorded on 20/04/2018. View to north.



Figure 10 Current condition of scar on southern side of tree as recorded on 20/02/2019. View to north.



Figure 11 Detail of scar on southern side of tree as originally recorded on 20/04/2018. View to north.



Figure 12 Detail current condition of scar on southern side of tree as recorded on 20/02/2019. View to north.



Figure 13 View of western side of scarred tree as recorded during survey on 20/04/2018. View to east.



Figure 14 Current condition of the western side of scarred tree as recorded on 20/02/2019. View to east.

Shoalhaven Development Control Plan 2014

**Draft Chapter N28: Berry – Beach Road**

**Table of Changes**

Section	Category	Recommended Change	Reason
4 Objectives	Revision	Add "...and enhance the land's environmental values in conjunction with allowing rural residential development" to objective ii.	Respond to submissions regarding wildlife corridors and tree planting.
5 Controls	New provision	Add acceptable solution to ensure any existing bores within 100 m of proposed effluent application areas are decommissioned prior to development.	To ensure the issue is addressed as part of the subdivision application consistent with DCP Chapter G8.
5 Controls	Revision	Update Aboriginal cultural heritage provisions.	To address landowner's submission and clarify legal obligations in relation to the PAD, and reflect the post-lightning assessment of the scarred tree.
5 Controls	New provision	Add performance criteria and acceptable solutions in relation to the groundwater discharge zones (springs).	To resolve concerns raised by adjoining owners regarding a groundwater discharge zone (spring) and to reduce the likelihood of drainage/stormwater problems occurring at/near the groundwater discharge zones.
5 Controls	New provision	Add performance criteria and acceptable solutions in relation to tree planting and wildlife corridors.	To resolve submissions requesting tree and shrub planting to facilitate wildlife movement, as well as achieve a range of other positive outcomes without impacting on lot yield.
6 Advisory Information	New legislation reference	Include reference to National Parks and Wildlife Act 1974	In response to proposed new A3.2.
Figure 2	Update map	Revise wastewater exclusion map.	To prevent wastewater application in Coomonderry Swamp catchment.
Figure 3	Update map	Revise building exclusion map.	To prevent buildings in Coomonderry Swamp catchment.
Figure 4	Update map	Revise Aboriginal cultural heritage map.	To clarify legal requirements in relation to the PAD and scarred tree.

Shoalhaven Development Control Plan 2014

**Draft Chapter N28: Berry – Beach Road**

## Draft Chapter N28: Berry – Beach Road

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#### Amendment history

Version Number	Date Adopted by Council	Commencement Date	Amendment Type
1			<u>Exhibited</u> Draft
<u>2</u>			

Shoalhaven Development Control Plan 2014  
**Draft Chapter N28: Berry – Beach Road**

## 1 Purpose

The purpose of this Chapter is to provide guidance in responding to the constraints of the subject land in its development for rural residential purposes.

## 2 Application

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

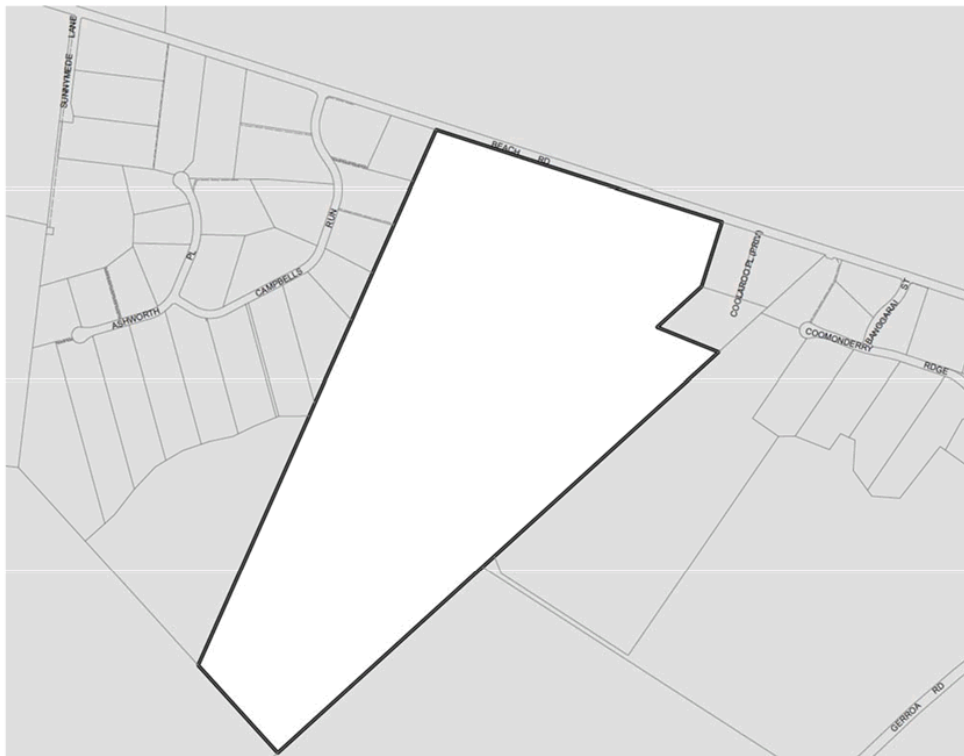


Figure 1: Subject Land Map

## 3 Context

The subject land was rezoned as part of a planning proposal in 2019-20XX to enable rural residential subdivision within appropriate parts of the subject land. Refer to Shoalhaven Local Environmental Plan 2014 (Amendment No. XXXXX).

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

Shoalhaven Development Control Plan 2014

**Draft Chapter N28: Berry – Beach Road**

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

## 4 Objectives

The objectives are to:

- i. Protect surface water and groundwater from environmental harm.
- ii. Protect significant **native vegetation** from environmental harm and enhance the land's environmental values in conjunction with allowing rural residential development.
- iii. Protect the Aboriginal cultural heritage values of the land.

## 5 Controls

Performance Criteria	Acceptable Solutions
P1 Onsite <b>effluent application areas</b> are located to prevent contamination of surface water and groundwater.	<p><b>A1.1</b> All <b>effluent application areas</b> are located outside of the exclusion area shown in <b>Figure 2</b>.</p> <p><b>A1.1A1.2</b> <u>Any existing bores are to be decommissioned prior to development occurring.</u></p>
<p>P2 <b>Buildings</b> are located to:</p> <ul style="list-style-type: none"> <li>Prevent contamination of surface water and groundwater.</li> <li>Ensure that bushfire <b>asset protection zones</b> can be accommodated without the need to remove significant <b>native vegetation</b>.</li> </ul>	<p><b>A2.1</b> All <b>buildings</b> are located outside of the exclusion area shown in <b>Figure 3</b>.</p>
P3 Areas that are likely to have <b>Aboriginal objects identified in Figure 4</b> are appropriately assessed and managed.	<p><b>A3.1</b> Development <del>on-land</del> within the <b>investigation area of Potential Archaeological Deposit (PAD)</b> shown in <b>Figure 4</b> <u>that will involve excavation or ground disturbance, only occurs after</u> shall not occur until:</p> <ol style="list-style-type: none"> <li>a. Satisfactory completion of an Aboriginal Cultural Heritage Assessment (<b>ACHA</b>); and</li> <li><u>b. If necessary, the issue of an Aboriginal Heritage Impact Permit (<b>AHIP</b>).</u></li> </ol> <p><b>A3.2</b> <u>Development does not occur in proximity of the Aboriginal scarred tree remains identified in Figure 4 unless any approvals required under the National Parks and Wildlife Act 1974 have been obtained.</u></p>



Shoalhaven Development Control Plan 2014

Draft Chapter N28: Berry – Beach Road

**Notes**

1. Any impact to the Aboriginal heritage site, including trimming of branches or felling or removal of the tree, will require an AHIP.
2. Any trimming of the scarred tree should be limited to that necessary to prevent the risk of limb fall or collapse of the trunk, and should be guided by advice from a suitably qualified arborist. The portion of the trunk containing the cultural scars should remain.
- 4.3. If the tree is to be retained onsite, temporary fencing shall be established prior to construction. The radius of the fenced area shall be at least the height of trimmed tree to prevent accidental damage.

P4 Discharge of flows from the groundwater discharge zones (springs) will be appropriately captured and drained and will not adversely impact on nearby properties, infrastructure or the environment.

Subdivision stage

- A4.1 Any proposed development within or adjacent to the groundwater discharge zone (spring) buffer areas (Figure 2) shall be supported by a detailed Geotechnical Report detailing how discharge of flows from the groundwater discharge zones (springs) will be captured and drained to a pipe network within the road reserve and/or the natural drainage line. The report will address:
- a. Tenure and management arrangements of any drainage works including maintenance schedules and establishment of easements.
  - b. Monitoring during and after construction.
- A4.2 Groundwater will not be discharged directly to open swales or roadside table drains.
- A4.3 Construction materials selected for proposed structures within the groundwater discharge buffer zone should be appropriate to withstand both chemical and physical attack.

Development of individual allotments

- A4.4 Development of individual allotments will not compromise the effectiveness of any drainage installed at subdivision stage to address the groundwater discharge zone (springs) buffer areas shown in Figure 2.

Shoalhaven Development Control Plan 2014

**Draft Chapter N28: Berry – Beach Road**

P5 Corridors of local native trees and shrubs Subdivision stage

are to be established to assist wildlife movement between Beach Road and Commonderry Swamp and along the drainage line.

A5.1 Tree/shrub planting corridors are identified in a landscape plan to be provided with the subdivision application as follows:

- a. Adjacent to Beach Road, 10m wide (total).
- b. Along the drainage line, 10m wide.
- c. Between Beach Road and Jim's Forest, 10m wide (average, refer to note 1 below).
- d. Between Jim's Forest and Coomonderry Swamp, 10m wide (average).
- e. Adjacent the E1 National Parks and Nature Reserves zone, 30m wide.

Development of individual allotments

A5.2 A rehabilitation and/or landscape plan prepared by / in consultation with a suitably qualified restoration ecologist, will be submitted with the development application for the dwelling and is to include:

- a. A map identifying the extent and dimensions of the corridor.
- b. Information regarding weed removal and site establishment.
- c. A planting schedule including proposed densities of locally occurring species.
- d. A schedule of works to be completed.
- e. A proposed monitoring plan.

**Notes**

1. 'Average' corridor width is to ensure dwelling yield is not impacted and construction standard does not exceed BAL 29.
2. Positive covenants will be required to be established at the subdivision stage including the planting and maintenance of corridors of local native shrubs and trees.
3. The level of detail required in the landscape/rehabilitation plan will depend on the existing condition and size of the site.
- 4.4 Berry Landcare may be able to assist with local native tube stock, guards etc.

Shoalhaven Development Control Plan 2014

**Draft Chapter N28: Berry – Beach Road**

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	2.5. Planting in relation to A5.2 is to be undertaken prior to occupation of dwellings.
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DE19.113 - Attachment 3

Shoalhaven Development Control Plan 2014

Draft Chapter N28: Berry – Beach Road



Figure 2: Waste~~w~~ater Exclusion Map

DE19.113 - Attachment 3

Shoalhaven Development Control Plan 2014

**Draft Chapter N28: Berry – Beach Road**



Figure 3: Building Exclusion Map

Shoalhaven Development Control Plan 2014

Draft Chapter N28: Berry – Beach Road



Shoalhaven Development Control Plan 2014

Draft Chapter N28: Berry – Beach Road

## 6 Advisory Information

### 6.1 Other legislation you may need to check

<b>Council Policies &amp; Guidelines</b>	<ul style="list-style-type: none"><li>• Nil</li></ul>
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<b>External Policies &amp; Guidelines</b>	<ul style="list-style-type: none"><li>• On-site Sewage Management for Single Households, Environmental and Health Protection Guidelines, 1998</li><li>• Planning for Bushfire Protection</li><li>• The Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW, 2010</li></ul>
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<b>Legislation</b>	<ul style="list-style-type: none"><li>• <a href="#">National Parks and Wildlife Act 1974</a></li><li>• Shoalhaven Local Environmental Plan 2014</li></ul>
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## DE19.114 Quarterly review for compliance matters

**HPERM Ref:** D19/317494

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

**Attachments:** 1. List of penalties and cautions issued July to September 2019 (under separate cover) [↗](#)

### 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 July to September 2019 (first quarter 2019/2020).

### 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 Review Panel and any Local or Land and Environment Court matters determined or progressing.

This report relates to July - September 2019 (first quarter).



## 1.0 Penalties issued during the period

A combined total of 1043 penalty notices were issued by the Teams during the period. These penalties have a face value of \$351,466. Historically Council stands to receive approximately 70% of this ticketed figure. A total of 283 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	51	\$136,920	38.5%	95
Compliance – Fire Safety	0	0	0%	1
Compliance – Pools	1	\$550	1%	10
Environmental Health	9	\$10,710	3%	3
Rangers – Animal issues	124	\$51,205	14.5%	17
Rangers – Environmental issues	16	\$9,070	2.5%	4
Parking	838	\$127,011	36%	150
Sewer Management Facility	4	\$16,000	4.5%	3
<b>Total</b>	<b>1043</b>	<b>\$351,466</b>	<b>100%</b>	<b>283</b>

### Penalties related to Compliance issues

The following details are provided in relation to the 51 compliance penalty notices issued:

- Bawley Point: The property owners constructed a two storey addition and first floor timber deck additions without obtaining a construction certificate or appointing a principal certifier. One penalty notice issued to two owners for development not in accordance with consent – class 1a or 10 building – Individual (\$1500) (Total \$3000).
- Brooman: One penalty notice issued to one owner for permitting a music stage/platform to be constructed upon the property without consent – Carry out specified development prohibited on land – any other case – Corporation (\$6000).
- Vincentia: One penalty notice issued to one owner for unauthorised construction of a deck, pergola, balcony and the relocation of a kitchen – Development without development consent – class 1a or 10 building – Individual (\$1500).
- Cambewarra: Seven penalty notices issued to one owner for construction of a farm shed, tennis cabana, storage shed, carport, outdoor gym pergola and two attached verandas to the house – Development without development consent – class 1a or 10 building – individual (\$1500) (Total \$10,500)

Four penalty notices issued to one owner for construction of a filled ramp and earthworks, driveway and hardstand area, earthworks within a riparian area and earthworks under buildings ancillary to the tennis court – Development without development consent – any other case – individual (\$3000) (Total \$12000).

Two penalty notices issued to the Builder for the construction of a Tennis Cabana and Storage Shed – Development without development consent – class 1a or 10 building – Corporation – (\$3000) (Total \$6000).

One penalty notice issued to the Builder for construction of a driveway and hardstand area - Development without development consent – any other case – Corporation – (\$6000)

One penalty notice issued to Plumber for unauthorised works in association with the Tennis Cabana - Development without development consent – class 1a or 10 building – individual – (\$1500).

One penalty notice issued to the Plumber relating to plumbing work done to a driveway and hard stand area - Development without development consent – any other case – individual – (\$3000)

Two penalty notice issued to the Plumber for not providing notice of work to plumbing regulator – individual - (\$550) (Total \$1100).

- e) Wattamolla: Two penalty notices issued to one owner for land clearing - Development without development consent – any other case – individual (\$3000) (Total \$6000).

Seven penalty notices issued to one owner for pollute water offences relating to works undertaken within or near a creek/causeway – pollute waters – individual – (\$4000) (Total \$28000).

Two penalty notices issued to one owner for Earthworks (road building) and works within a causeway – development without development consent – any other case individual – (\$3000) (Total \$6000).

- f) Tomerong: Five penalty notices issued to the owner for the installation of a shipping container to be used as a shed, building works associated with an ablution block extension, construction of a wedding shed, hayshed and pool cabana - development without development consent – Class 1a or 10 Building – corporation – (\$3000) (Total \$15000).

One penalty notice issued to the owner for the operation of a campground – development without development consent – any other case - corporation – (\$6000).

Three penalty notices issued to the owner for operating a sewage management system without approval – (\$330) (Total (\$990).

Two penalty notices issued to one owner for allowing wedding event and associated camping to proceed – fail to comply with the terms of a development control order – Corporation – (\$6000) (Total \$12000).

- g) Falls Creek: One penalty notice to one owner for the construction of an in-ground swimming pool – development without development consent – class 1a or 10 building – individual – (\$1500).
- h) Hyams Beach: One penalty notice issued to one owner for unauthorised alterations to existing building and associated timber deck – development without development consent – class 1a or 10 building – individual – (\$1500).
- i) Termeil: One penalty notice issued to one owner for failing to install a temporary swimming pool barrier – not comply with written direction – owner – (\$550).

- j) Callala Beach: Two penalty notices issued to one owner for construction of 2 site sheds for habitable purposes – development without development consent Class 1a or 10 Building – individual – (\$1500) (Total \$3000).

- k) Woodstock: One penalty notice issued to the owner for operating a sewage management system without approval – (\$330).

One penalty notice issued to the Builder in relation to building works – development without development consent – Class 1a or 10 Building – corporation – (\$3000).

- l) Basin View: One penalty notice issued to the Builder – non-compliance with development consent - development not in accordance with development consent – class 1a or 10 Building – (\$3000).

#### Warnings related to Compliance issues

A total of 95 warning notices were issued for compliance matters in the period and these equate to \$230,000 in ticket face value. Potentially the Compliance Team could have issued \$366,920 in penalties for the period. The caution rate is approximately 65%.

#### Penalties related to Rangers issues

- a) Illegal Dumping: One penalty notice was issued for dumping household waste on Moss Vale Road, Barrengarry Mountain. Offence – Transport waste to unlawful waste facility – (\$2,000). The perpetrator was ordered to clean up the waste and disposed of it to the Nowra Waste Facility.
- b) Fail to prevent dog escaping: Rangers issued 34 penalty notices for failing to prevent dogs escaping. On each occasion the dog owner is first educated on responsible pet ownership and potential measures to assist in securing their dog. Upon the animal escaping for a subsequent time, a penalty notice is issued. Each penalty has a face value of \$220 and this equates to \$7480 in total.
- c) Dog attacks: The number of dog attacks during the period was 63 with 18 still under investigation. This resulted in the issue of 4 fines totalling \$5,280. The dogs involved in these attacks have been given a “dangerous dog listing”.
- d) Stock on Road: On going issues with stock and horses being located unsecured on public roads has resulted in Rangers issuing 7 penalty notices to owners for cause or permit animal to be unattended. Each penalty has a face value of \$330 and this equates to \$2,310 in total.
- e) Opt in parking offences: A total of 506 parking penalties were issued under the reduced opt in amount of \$82 and this totalled \$41,492. Under the previous \$114 penalty amount this would have resulted in a total of \$57,684. This represents a \$16,192 difference in income.
- f) Warnings related to parking issues:- A total of 136 warnings were issued during the period and this equates to \$37,366 penalty notice face value.

#### 2.0 Penalty infringement panel reviews

During the period, the review panel met on 4 July, 1 August 2019 and 9 September 2019. There were nineteen (19) penalty infringement appeals considered during this period.

- (a) Development without development consent – Class 1a or 10 building – Individual (\$1500) and Development not in accordance with the Development Consent – any other case (\$3000)

This matter related to two penalties issued; one for the construction of the access bridge and the other for the occupation of the shed structures occurred without development consent.

Considerable works had been undertaken without the required construction certificate being issued for the access bridge. The unauthorised sheds are located within designated bushfire prone land without any consideration or protection provided.

Council staff had shown leniency by issuing a single penalty notice for all the offences in relation to development without development consent and by issuing a single penalty notice for all the offences in relation to development not in accordance with the development consent.

The panel considered the matter on 4 July 2019 and agreed each of the penalty notices should stand. Further, Councils Compliance Officers will monitor the progress of the current Development and Building Information Certificate applications to ensure further unauthorised works are not undertaken.

(b) Development without development consent – any other case –Individual (\$3000)

The penalty notices relate to the unauthorised occupation of an industrial unit located at Ulladulla. Both the owner and the tenant admitted to using the industrial unit for residential accommodation since February 2018 and each received a penalty.

- An industrial building was being used for residential accommodation (Land zoned IN1 – General Industrial).
- The owner was fully aware that the tenants were leasing the industrial building for residential accommodation since February 2018 and made no effort to stop this unlawful use.
- No development consent had been issued to use the industrial building for residential accommodation.
- The industrial building did not contain a smoke alarm or other fire safety measures required for residential use and this triggered immediate health and fire safety concerns (imminent threat to life).
- Residential accommodation is a prohibited activity pursuant to the SLEP 2014 in land zoned IN1 – General Industrial.

Council worked with and showed leniency to the owner and the tenants in the following manner:

- An Emergency Stop Use Order was not issued by Council because the occupants offered to install temporary smoke alarms and subsequently remove the sleeping facilities from the subject premises.
- A formal caution had been issued to one of the tenants.
- Further penalties were not issued to the owner for the lack of essential fire safety measures in the industrial building.

The tenant is now renting a residential premise in the Shoalhaven area and is no longer offending. It was considered that a caution to the tenant was the correct decision in this instance.

The panel considered the matter on 4 July 2019 and determined that penalty notices should stand for the owner and the penalty notice to the tenant be withdrawn and a formal caution be issued.

(c) Fail to comply with terms of development control order – individual (\$3000).

The owners had carried out unauthorised works and they had received penalties for that activity. They were then given a formal direction not to carry out any further works on the works. The owners did not comply with this direction and each was issued with further penalties for failing to comply with the direction.

The panel were advised:

- Both owners were served the formal stop work order,
- Both owners were fully aware of Councils requirements and chose not to abide by the terms of the order,
- Both owners were equally involved in the decision to carry out the work,
- This is the second time the owners had breached the terms of a formal order.
- The works were completed on a Heritage Item without prior approval and without consideration or oversight from an Archaeologist or Heritage Consultant. Relics may have been discovered, exposed, moved, damaged or destroyed.
- Both owners made a business decision to ignore the formal stop work order to meet their own personal deadlines. Substantial excavation works had been undertaken without prior approval from Council.

The panel considered the matter on 4 July 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 penalties should stand.

(d) Development without development consent – class 1a or 10 building – Individual (\$1500).

Council's Compliance Officers became aware of the unauthorised structures on Council reserve following a phone call from a member of the public concerned with the amount of unapproved merchandise stands creating trip hazards in Huskisson.

On two occasions Council contacted the owner of the business advising that the merchandise, sign and cart would need to be removed from Councils land until such time as Development Consent approval was given.

A further site inspection identified the structures still on Council's road reserve. One penalty notice was issued to the business owner. Council staff had shown leniency for not issuing \$1,500 penalty notices for each day the merchandise was identified on Council reserve. This non-compliance went on for several months.

The panel considered the matter on 4 July 2019 and agreed that in this instance an official caution was warranted. The penalty notice was withdrawn and a formal caution has been issued.

(e) Fail to comply with terms of development control order – individual (x2) (\$6000).

Council has received numerous complaints since early 2016 relating to the fire damaged and partly demolished dwelling located at Mollymook Beach.

Council issued orders to both owners to demolish the damaged and dilapidated building.

Council has previously received legal advice enabling multiple penalty notices being issued for the same offence relating to a breach of a development control order. This advice enabled Council to issue one development control order and multiple penalty notices under that order for the same offence, without the requirement of issuing a new development control order after each penalty notice.

Council has received subsequent legal advice contradicting the original advice. As such Staff recommended both penalty notices be withdrawn due to the updated legal advice.

The Review Panel considered the matter on 1 August 2019. The Panel was satisfied with the Staff recommendation and the penalty notices were withdrawn.

(f) Development without development consent – class 1a or 10 building – Corporation (\$3000).

During a mandatory on-site sewer management facility inspection, it was identified that the dwelling was under-going demolition and construction works. A review of Council records revealed no formal approvals were in place for these works and the matter was referred to the Compliance Team for investigation.

This matter relates to the unauthorised demolition and reconstruction of a 90m<sup>2</sup> detached shed (Class 10a building). The main dwelling was partially demolished and substantially rebuilt without development consent, a construction certificate or the appointment of an Accredited Certifier.

It was determined the property owner allowed considerable unauthorised works to be undertaken on the property.

Council staff had shown leniency by issuing the owner with two formal cautions rather than additional penalty notices.

The Panel considered the matter on 1 August 2019 and agreed the single penalty should stand.

(g) Development without development consent – class 1a or 10 building – Corporation (x2) (\$6000).

This matter relates to the Builder who undertook the unauthorised development in the review listed in (f) above. The Builder had been issued with two penalty notices.

Council staff recommended both penalty notices should stand for the following reasons:

- The builder has completed considerable unauthorised works. A firm but fair message should be sent to both the property owner and the builder.
- The builder has enabled the owner to undertake the works and should be held accountable. This is the builder's core area of business and he should have taken the time to educate himself on the legislative framework that he works under. Particularly the requirements of the SEPP (Exempt & Complying Codes), which he could have used to demonstrate to the property owner that consent was required prior to commencing works.
- The builder has profited from the works undertaken to date and has admitted to making a business decision to continue demolition and reconstruction works once he formed the view Council approval was required.

The Panel considered the matter on 1 August 2019. The panel acknowledged the representations made and the hardship being experienced by the Builder and opted to withdraw one of the penalty notices. The other penalty notice was to stand.

(h) Pollute Waters – class 1 officer – Corporation (x2) (16,000) and fail to comply with Prevention Notice - class 1 officer – Corporation (\$8000)

A heavy rain event in November 2018 triggered the overflow of a detention basin on the property located in Bomaderry. Sediment laden water discharged from the property through inadequate sediment and erosion controls onto Cambewarra Road and the Princes Highway. Formal cautions were issued to the organisation in relation to this breach of the Protection of the Environment & Operations Act (POEO Act).

Investigation into the breach revealed that the sediment and erosion controls were not executed onsite in accordance with the Environmental Site Management Plan approved by Council.

To address these deficiencies, Council issued a prevention notice to the organisation requiring additional sediment controls and maintenance of existing controls to be

implemented immediately. No action was undertaken on site by the organisation as a result of the prevention notice.

The following weekend, after these works were completed, there was another rain event and strong winds. The sediment and erosion control measures that had been implemented failed, and the strong winds damaged the banners secured to the boundary fence creating a further water pollution event. This resulted in the issuing of three (3) penalty notices which were the subject to the review.

Council staff recommended:

- Penalties to be withdrawn as they were issued contrary to law due to the incorrect payment timeframes printed on the notice. This position is based on legal representation.
- The penalties be reissued with the correct time frames.

The Panel considered the matter on 9 September 2019 and agreed with Council staff recommending that all penalty notices be withdrawn. It was further recommended that two new penalty notices be issued and one formal caution be issued. The new penalty notices reflected the 28 day requirement.

(i) Development without development consent – class 1a or 10 building – Individual (\$1500).

The owner of a property located in Bangalee advised Council that his tenant has installed an above ground pool without approval from himself or a consent authority.

Council's Compliance Officers investigated the property and found the above ground pool, associated timber deck and swimming pool barrier have been installed without prior approval from a consent authority.

A review of Council's records found that the tenant was issued with a formal caution in September 2015 for the installation of the same swimming pool on the same property. This pool was dismantled in 2015 as a result of that investigation.

Council staff have shown leniency by issuing a formal caution in 2015 for installing a swimming pool without consent from a consent authority. At that time Council advised the tenant of the need to obtain approval prior to erecting the pool.

The Panel considered the matter on 9 September 2019. The Panel recommended that the penalty should stand. This matter has since been Court elected and it is set for mention on 1 November 2019 in Nowra Local Court.

(j) Development without development consent – any other case – Individual (x2) (\$6000) and Pollute Waters – class 1 officer – Individual (\$4000)

This investigation was initially brought to Council's attention in May 2019 by a neighbour of a property located in Wattamolla. A photograph was produced depicting significant earthwork cuttings which the neighbour stated was part of larger works being conducted by the owner of the neighbouring property.

A review of the Council records revealed no development consent existed for these works. Investigations identified the following:

- Six (6) creeks had been filled with earth using an excavator. Some of the creeks had a 350 mm pipe in them in an attempt to build a culvert. These works were unauthorised and caused significant land and water pollution.
- Approximately one (1) hectare of land had been cleared at the northern end of the property. This activity was completed with the stated purpose of building a dwelling at a future time. A significant number of trees had been felled on the property. These works were unauthorised and caused significant land pollution.

- During a subsequent inspection in May 2019; another smaller cleared area was located. Adjacent to this clearing, a creek flowing out of Budderoo National Park was dammed with earth and rubble. These works were unauthorised and caused a significant water pollution event.
- During a further inspection in June 2019, Council officers located a series of unauthorised earthworks in a right-of-carriageway. The works consisted of six (6) separate earthworks done on switchback turns with the stated intention of widening the right-of-carriageway to enable passage of a larger vehicle. These works were unauthorised and had potential to cause significant water pollution.
- A further unauthorised development had also been done by filling a creek crossing at the bottom of the right of carriageway and covering it with shale-like stone. These works were unauthorised and caused significant water pollution.

As a result of this incident a total of 11 penalty notices had been issued with a face value of \$30,000. Council had also issued 28 cautions with a face value of \$100,000.

The submission made on behalf of the owner's Solicitor identified hardship and this was having an impact on him completing the required rehabilitation works. Council staff recommended the three penalty notices the subject to this review be withdrawn on those grounds.

The Panel considered the matter on 9 September 2019. The panel agreed Council is focussed on the rehabilitation of the site and it is considered that the costs associated with the penalties would be best spent on those works. The Panel determined to withdraw the three penalties and formal cautions were issued.

(k) Development not accordance with consent – class 1a or 10 building – Individual – (\$1500)

The penalty related to the construction alterations and additions without a construction certificate.

Council received a development application for a proposed dwelling extension and deck area in August 2018. Council's Building Surveyor assessing the development application identified unauthorised works when comparing the proposed development against the historic approved Building Application.

- An attached unauthorised first floor deck and associated stairway access had been constructed upon the premises without approval.
- A 3.8m X 7.5m concrete slab attached to the dwelling constructed for the garage extension.

Council had issued six formal warning notices and two penalty notices for these offences. One of the owners requested that a penalty be withdrawn.

Council has shown considerable leniency by not issuing separate penalty notices for all breaches. Council staff recommended the penalty stand.

The Panel considered the matter on 9 September 2019 and concluded that the penalty should stand.

### 3.0 Other activities by Ranger Services

- a) Illegal dumping education: Rangers in collaboration with Illawarra Shoalhaven Joint Organisation (ISJO) commenced an education campaign aimed at providing the public with information on our 'Community Recycling Centres' across the LGA. The campaign identifies and promotes where assorted items can be disposed of free of charge. The campaign is also focussed on encouraging our community to report illegal dumping and providing information on how to report alleged offences.



The campaign has seen Rangers visit hardware stores around the LGA providing advice and information to the building industry.

- b) Mollymook Beach patrols: Rangers conducted 67 patrols of Mollymook Beach in the period. This included three on leash areas and 64 prohibited areas. During these patrols eight dogs were sighted and six people were spoken with about their dogs. As a result, one verbal caution, one official warning and five penalty notices to the total value of \$1650 were issued.

This beach features highly on the complaints register. Patrols will continue in an effort to educate pet owners about responsible pet ownership and the regulations.

- c) Other beach patrols: Rangers have completed 145 patrols of other beaches in the area during the period. The beaches patrolled have included Shoalhaven Heads, Culburra Beach, Abrahams Bosom Beach, Collingwood Beach, Shark Net Beach, Nelsons Beach, Moona Moona Beach, Moona Moona Creek, Blenheim Beach, Narrawallee Beach, Berrara Beach, Conjola Lake Ocean Beach and Spit, Tabourie Point Beach, Bawley Point Beach and Burrill Beach.

Beach patrols will pick up in the next 2 quarters as historically these will see an increase in usage during the warmer months.

- d) Shorebirds: A meeting with stakeholders was held on 11 September 2019 to discuss strategies for the shorebird recovery programme including patrols for dogs on beaches. Council will collaborate with National Parks and Wildlife Services on this programme.

Representatives from Wollongong, Shellharbour and Kiama Councils attended the meeting. Both Eurobodalla and Bega Councils were also involved in an effort to share the responsibility of helping to protect the shorebirds.

Council stakeholders include Ranger Services, Executive Strategy, Tourism, Tourist Parks, Sustainability, Community & Recreation and Parks Operations.

Strategies to develop for annual programme include:

- Creating networks and processes to share information and create solutions.
- Media campaign targeting both tourists and local residents including television and radio, social media and information on Council's website in line with National Parks' Communication Plan.
- Address ongoing complaints from the public about problems with dogs not under control in public places, including shorebird nesting areas, which escalates during holiday season. This would include additional ranger patrols after hours.
- Beach visits by Rangers and shorebird volunteers to provide education, information and enforcement where necessary.
- Providing information to holiday accommodation and surf clubs about shorebirds and threats to their breeding success.
- Ensuring signage and fencing is in place.

Community expectation continues to increase and Council will provide resources in conjunction with National Parks to protect breeding sites.

- e) Additional casual Assistant Rangers: Three casual Assistant Rangers have been recruited to address the increased workload during the busy holiday period from November to January inclusive.

#### 4.0 Land and Environment Court matters

##### Jerberra Estate – Hearing – Contempt Proceedings – Garry Knight.

Unauthorised works were undertaken by the owner Garry Knight and he had failed to comply with Council's direction to remedy the situation. This matter was taken to the Land and Environment Court in 2014 where the Court issued orders for the works to be completed.

The owner then failed to comply with the Court orders and this resulted in contempt of Court proceedings against him.

The matter was heard on 27 May 2019. The landowner attended Court on this occasion and entered a guilty plea to the contempt of court. 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.

The landowner was ordered to reimburse the Council \$17,270.25 towards the costs incurred in carrying out the clean-up of the site.

The landowner pleaded guilty to the contempt and incurred a fine of \$12,750 which was significantly reduced to \$1000 based on the owner's immediate financial circumstances and realistic prospect of his ability to pay such penalty (*Note:- the fine issued by the Court is paid to Consolidated Revenue and not Council*).

Council sought legal costs in this matter. The landowner was ordered to pay Council's legal costs in a gross sum of \$158,387.38.

#### 5.0 Local Court matter

There was only one Local Court matter in the period and this related to the prosecution of the Australian Hotel for unclean food premises.

On 18 September 2019, the Nowra Local Court issued the Hotel with a fine of \$6000. The Hotel was also required to pay \$4000 towards Council's costs.

## DE19.115 Shoalhaven City Council - Mobile Food Vans in the LGA - Private and Public Lands - SEPP Exempt & Complying Development - Business Impacts

**HPERM Ref:** D19/342833

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

**Attachments:** 1. Letter to NSW State Government, Mobile Food Vans - Private & Public Lands [↓](#)  
2. Response from NSW Government / Planning Industry & Environment, Mobile Food Vans - Private & Public Lands [↓](#)

### Purpose / Summary

This report advises on the response received from NSW Department of Planning Industry and Environment concerning mobile food vans on private and public lands.

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

Council receive and note the response from the NSW Department of Planning Industry and Environment concerning the mobile food vans on private and public lands.

### Background

At its Ordinary meeting held on 2 July 2019 Council resolved to do the following (MIN19.466):

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.*

Council wrote to The Honourable Robert Stokes MP, Minister for Planning, Industry and Environment on 18 July 2019 in accordance with the resolution (refer attachment 1). The NSW Department of Planning Industry & Environment responded to Council on 16 September 2019 (refer attachment 2). Essentially, the Department have advised as follows:

- (a) The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) allows mobile food and drink outlets to be carried out on private or public land without planning approval, as exempt development, provided they meet the relevant development standards.
- (b) The general requirements of the development standards that are detailed in the Codes SEPP for mobile food and drink outlets.
- (c) The provisions were introduced to support daytime and evening activities and experiences in the community and to cater for people looking for inexpensive and convenient food and drink options.

DE19.115

- (d) Mobile food and drink outlets play an important role in activating public spaces.
- (e) While the planning system has regard to the economic impacts of a development, it does not usually impose development standards that address restraint of trade, to prevent or reduce competition between businesses.

This advice is presented to Council for their information.

Council Reference: 52631E (D19/228515)

The Hon Robert Stokes MP  
Minister for Planning, Industry and Environment  
GPO Box 5341  
Sydney NSW 2001

Dear Mr Stokes,

**The impact of mobile food vending vehicles upon existing business.**

At Council's Development & Environment Committee meeting held on 2 July 2019, Councillors discussed the requirements for Mobile Food Vending Vehicles on private lands and the impact this having on existing business in our area. A copy of the Council Resolution is attached for your information.

As you would be aware, the State Environmental Planning Policy (Exempt & Complying Development Codes) 2008, provides exemptions for mobile food vending vehicles when they are positioned on private land. Basically, these vehicles can set up alongside existing business in our towns and villages and they are suffering as a consequence.

In contrast to the requirements of the SEPP, Council's policy for vehicles parked on the roadway or within Council owned or managed land is more considerate of existing businesses. Under Council's policy, the vendors are not permitted within 700 metres from similar operators and this supports our business'.

Council would seek your consideration for a review of the SEPP requirements to bring them in line with Council's position for public lands. This would certainly assist local business in regional towns and villages.

If you need further information about this matter, please contact Colin Wood, Planning Environment & Development Group on (02) 4429 3454. Please quote Council's reference 52631E (D19/228515).

Yours faithfully



**Phil Costello**  
**Group Director, Planning, Environment and Development**  
18 July 2019



**Planning,  
Industry &  
Environment**

Shoalhaven City Council

Received

16 SEP 2019

File No.

52631E

MDPE19/2522

Referred to:

P. Costello

Mr Phil Costello  
Group Director, Planning, Environment and Development  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541

Dear Mr Costello

Thank you for your correspondence to the Hon Rob Stokes MP, Minister for Planning and Public Spaces, about mobile food vending vehicles. The Minister asked me to respond on his behalf.

I appreciate your concerns about mobile food and drink outlets on private land impacting on local businesses and note your suggestion to require vendors not to be permitted within a specified distance of similar operators.

As you are aware, the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) allows mobile food and drink outlets to be carried out on private or public land without planning approval, as exempt development, provided they meet the relevant development standards.

The development standards include limiting the number of food vans on private property to one van only, requiring that the development not restrict any vehicle or pedestrian access to or from the land or entry to any building on the land, having the consent of the land owner, having any approval required under section 68 of the *Local Government Act 1993* if located on public land, and requiring that the development not contravene any conditions of a development consent for any other use carried out on the land.

These provisions were introduced to support daytime and evening activities and experiences in the community and to cater for people looking for inexpensive and convenient food and drink options. Mobile food and drink outlets also play an important role in activating public spaces. While the planning system has regard to the economic impacts of a development, it does not usually impose development standards that address restraint of trade, to prevent or reduce competition between businesses.

I appreciate receiving your feedback. If you have any more questions about the Codes SEPP, please contact Ms Lynne Sheridan, Director, Codes and Design, at the Department on 9274 6423.

Yours sincerely

Luke Walton  
Acting Executive Director  
Planning Policy

## DE19.116 Draft Shoalhaven Tree and Vegetation Vandalism Prevention Policy - Post Exhibition Consideration and Finalisation

**HPERM Ref:** D19/318186

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

**Attachments:** 1. Summary of Submissions for Shoalhaven Tree and Vegetation Vandalism Prevention Policy [↓](#)  
2. Draft Shoalhaven Tree and Vegetation Vandalism Prevention Policy (under separate cover) [⇒](#)

### Purpose / Summary

To consider the submissions received as a result of the public exhibition of the draft Shoalhaven Tree and Vegetation Vandalism Prevention Policy and to consider the finalisation of the Policy, in accordance with Council resolution MIN19.490.

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

That Council:

1. Adopt the draft Shoalhaven Tree and Vegetation Vandalism Prevention Policy as exhibited, with amendments following consideration of Summary of Submissions for Shoalhaven Tree and Vegetation Vandalism Prevention Policy received during public exhibition as highlighted in Attachment 1;
2. Notify the adoption of the Policy to all who made a submission and CCBs;
3. Notify the adoption of the Policy via media release and provide a link on Council's website to the new Policy;
4. Advise key stakeholders, including relevant industry representatives, of this decision, and when the Policy will be made effective; and
5. Amend Council's Foreshore Reserves Policy and Compliance Policy to reference the Shoalhaven Tree and Vegetation Vandalism Prevention Policy.

Options1. As recommended.

Implications: This is the preferred option as it will address the growing concern of vegetation vandalism in the Shoalhaven. The Policy focuses on four key strategies of education; monitoring, recording and prevention; regulation and enforcement; and rehabilitation with the aim of engaging and involving the community.

2. Adopt an alternative recommendation.

Implications: If the alternative recommendation involves amendments other than those proposed in this report, depending on the extent of any changes that may be made to the exhibited version of the Draft Policy, re-exhibition may be appropriate. This may postpone the finalisation of the Draft Policy.

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3. Not adopt the recommendation.

Implications: This option is not preferred as Council would continue to have no policy in place to direct and manage tree and vegetation incidents across the Shoalhaven. This means that incidents of vandalism would be considered on a case-by-case basis without a guiding framework or consistent approach.

## Background

On 23 July 2019, Council resolved (MIN19.490):

That Council:

1. Place the Draft Shoalhaven Tree and Vegetation Vandalism Prevention Policy on public exhibition for a period of 28 days; and
2. Receive a report following the exhibition period outlining submissions received and any recommended amendments to the Draft Policy prior to adoption by Council.

## Community Engagement

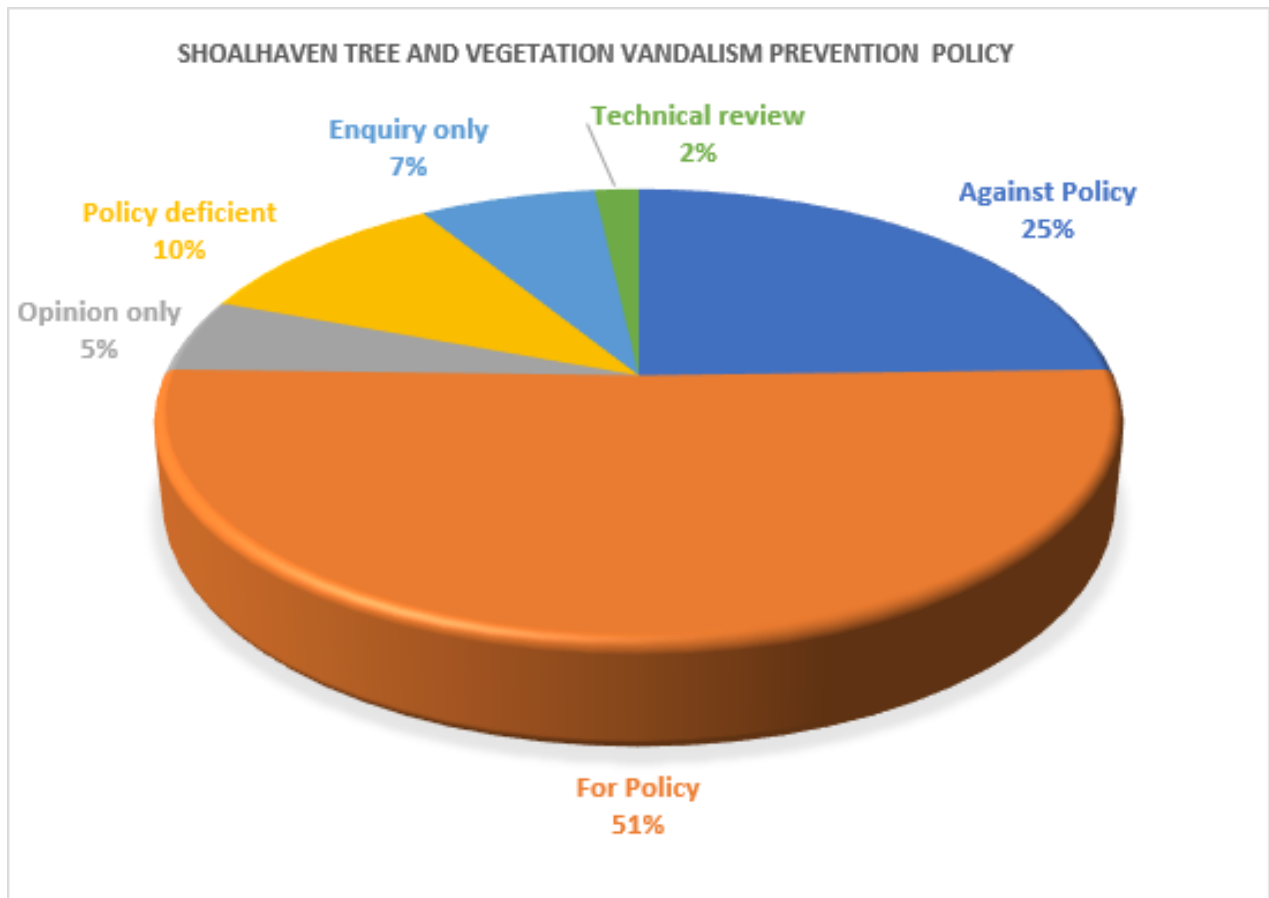
The Policy was publicly exhibited for a period of 30 days from Tuesday 30 July to Wednesday 28 August 2019 (inclusive).

The draft policy was exhibited via the following:

- Council's Community Engagement platform, *Get Involved Shoalhaven* - <https://getinvolved.shoalhaven.nsw.gov.au/tree-and-vegetation-vandalism-prevention>
- Council's website - *On Exhibition* page <https://www.shoalhaven.nsw.gov.au/My-Council/Public-exhibition/Documents-on-exhibition>;
- Notice sent to all CCBs;
- Council's Facebook page;
- Poster advertising the exhibition in the foyer of Nowra Administration Building;
- Council's newsletter; and
- Hardcopies of the document were placed in Council's Administration Buildings in Nowra and Ulladulla.

As a result of the exhibition, fifty-seven (57) formal submissions were received. **Graph 1** is a representation of the types of submissions received.



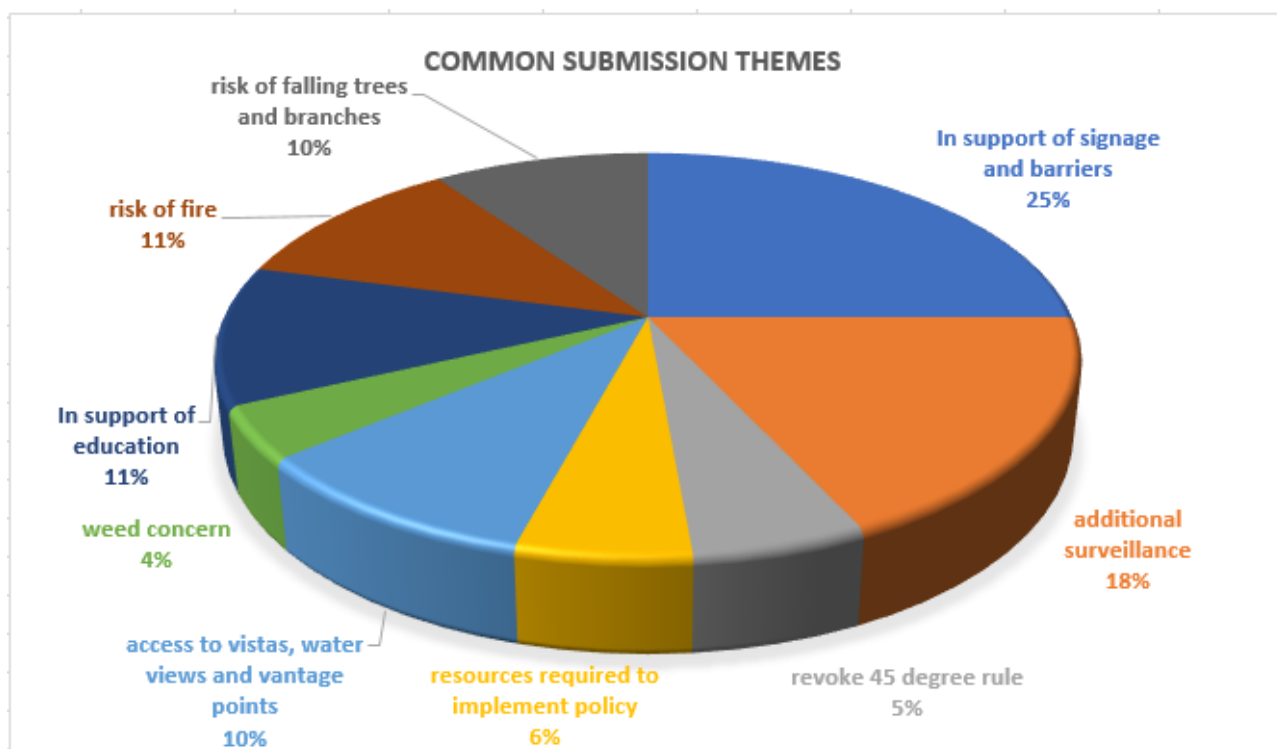


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**Graph 1: Types of submissions received during the exhibition phase**

- For Policy: submissions that considered the Policy satisfactory and were supportive of the Policy.
- Against Policy: submissions that did not support the Policy.
- Policy Deficient: submissions that considered the Policy to be deficient and potentially not robust enough to act as a deterrence.
- Opinion only: submissions that did not directly address the Policy, however general opinion regarding vegetation vandalism was provided.
- Enquiry only: submissions that were an enquiry only and did not directly relate to the Policy.
- Technical Review: submission that provided a technical review by Council's internal Strategic Planning team.

A representation of the most common themes raised in the submissions received by Council is shown in **Graph 2**.



**Graph 2: Common Submission Themes**

In support of signage and barriers: 25% of submissions considered the use of signage and barriers (including signs, banners, and physical barriers) as an effective way of deterring ongoing vandalism.

Additional Surveillance: 18% of submissions considered the installation of surveillance such as CCTV cameras and compliance officers as an effective way of deterring ongoing vandalism.

In support of Education: 11% of submissions considered ongoing education including education in schools and through the distribution of pamphlets as an effective way of deterring ongoing vandalism.

Risk of Fire: 11% of submissions were concerned that the Policy did not consider the risk of fire.

Access to vistas, water views, vantage points and mobility of impaired people: 10% of submissions emphasized the importance of views and accessibility to them.

Risk of falling trees and branches: 10% of submissions identified falling trees and branches as a significant cause of power failures, bushfires, property damage, injury and death.

Resources required to implement policy: 6% of submissions were concerned about the ongoing provision of resources by Council to ensure the effective implementation of the Policy.

Revoke 45-degree rule: 5% of submissions considered exemption 5.2.3(d) in the Shoalhaven DCP Plan 2014 – Chapter G4, Tree & Vegetation Management should be revoked.

Weed concern: 4% of submissions were concerned about weeds in the Shoalhaven and their potential to block views and reduce biodiversity.

A detailed summary of the submissions, including a Council staff response for each is provided in **Attachment 1**.

Copies of the actual submissions will also be available for review in the **Councillor's Room** prior to the meeting.

### Post-Exhibition Amendments

Following consideration of the key themes and issues raised in the 57 submissions, amendments to the draft policy are recommended. These amendments are shown by the track changes in **Attachment 2**.

The recommended post exhibition amendments to the draft Policy are summarised briefly below:

Section in Policy	Recommended Change and Reason
<b>2.Objective</b>	Opening statement moved from 'Objective' to 'Introduction' as this was considered a general statement rather than an objective.
<b>3.Policy Statement</b>	Removed the opening paragraph as it was considered superfluous information.
	Remove reference to 'public and private land' to emphasize that the policy applies to <b>all land</b> except for state forests, defence land, land reserved or acquired under the National Parks and Wildlife Act, Marine Parks and National Parks.
<b>3.1 Scope</b>	Emphasize that the Policy <u>prevails over</u> all other policies rather than supersedes.
<b>3.2 Background</b>	Include 'public and private land' in opening paragraph to emphasise that the Policy is applicable to all land.
	Include sentence in fourth paragraph <u>with the potential to create polarisation and conflict within the community</u> to highlight additional problems created by acts of vandalism.
<b>4.Provisions</b>	Reference to 'public land' deleted to de-emphasize focus on a particular type of land.
<b>4.2 Definitions</b>	Removed superfluous information under the definition of 'Tree'.
	Reference to <u>removal (dead or alive)</u> included under <b>4.2 Definitions: Tree and Vegetation Vandalism</b>  The Local Government Act 1993 s 629 specifies that it is an offence to wilfully or negligently injure, damage or unnecessarily disturb any plant, animal, rock or soil in a public place. Additionally, a person, without lawful excuse who removes a plant, animal, rock or soil from a public place is guilty of an offence.
<b>6.1 Community Education</b>	Update reference to mowing within Council reserves to provide clarity.
<b>6.2 Monitoring, Recording and Prevention</b>	Remove Point 5 'Record the number of incidents and requests reported by members of the community'. Record keeping is already captured in Point 1.
	New Point 5: Retain poisoned vegetation on site unless assessed as a safety hazard rather than remove after 12 months. Retention recognises the importance of dead wood and stags as important habitat for wildlife.

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<b>Appendix 2</b>	<p><b>Tree and Vegetation Vandalism</b></p> <p>Include <u>Background Information</u> in the title to clarify that the information provided in this appendix is additional information to the main body of the Policy.</p> <p>Removal of superfluous information: <i>Recognition of the broad tree and vegetation vandalism issues being experiences in the Shoalhaven as a result of Council passing a resolution to develop a robust tree and vegetation vandalism policy.</i></p> <p><b>Policy responses</b></p> <p>Remove reference to “ANZ Standard (Draft) or similar”. The type of calculation used will depend on the type of vegetation loss i.e. one tree or an area of vegetation.</p>
<b>Appendix 3</b>	<p>Update legislative framework table to reflect reference to Environmental Planning and Assessment Act 1979 rather than the Shoalhaven Development Control Plan.</p> <p>Update table identifying other areas not managed by Council.</p>
<b>Appendix 6</b>	<p>Include reference to <u>private land</u> in opening paragraph.</p> <p>Under Low and Medium Impact Events: Include wording <u>until rehabilitated tree or vegetation has been assessed to be adequately re-established</u>. The retention of signage until vegetation has been adequately re-established may discourage further vandalism from occurring.</p> <p>Under High Impact Events: change number of trees and vegetation in rehabilitation works from three to five to provide consistency with section 6.2 Monitoring, Recording and Prevention.</p>
<b>Appendix 7</b>	<p>Include <u>loss of birdlife and other native species</u> in the example template letter to further educate impact of vandalism on the environment.</p> <p>Change number of trees and vegetation in rehabilitation works from three to five which provides consistency with section 6.2 Monitoring, Recording and Prevention.</p>
<b>Appendix 9</b>	<p>Update tree education sign to show tree growing on land rather than water.</p>

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## Policy Implications

The Policy seeks to prevent vegetation and tree vandalism in a logical structure that provides a guiding framework to Council staff and the public. Should the Policy not proceed, these fundamental growing concerns of the community will not be addressed.

If the Shoalhaven Tree and Vegetation Vandalism Prevention Policy is adopted, the Shoalhaven Foreshore Reserve Policy and Compliance Policy will need to be updated and show the links between Council's policies that relate to the management of trees and vegetation as well as Council's Compliance Policy.

**Financial Implications**

The finalisation of the draft Policy will continue to be resourced within the existing Environmental Planning and Development budget.

**Risk Implications**

There are risks in not taking action to implement a citywide Policy in the Shoalhaven. Vegetation vandalism occurring in the Shoalhaven is extensive and ongoing. A lack of action from Council may also be seen by the community as 'doing nothing' in terms of implementing Council's previous resolutions to adopt a robust Policy and addressing the community submissions Council has received in recent years requesting that vegetation vandalism occurring at Collingwood Beach and other hotspots across the Shoalhaven be addressed.

## Summary of Exhibition Submissions

### Shoalhaven Tree and Vegetation Vandalism Prevention Policy

### Public Exhibition: 30 July 2019 – 28 August 2019

Section in Policy	Summary of Submissions	Number of submissions	Response to Submission
1. Introduction	N/A	N/A	N/A
2. Objective	The objective section is too long and does not just cover objectives. Paragraph 1 is an introduction and should be headed as such.	1	<b>Supported.</b> Introduction section created and paragraph 1 included in new section.
3. Policy Statement	The first sentence is largely redundant as it appears to repeat the objectives	1	<b>Supported.</b> Sentence removed.
	<b>Section 3.1 Scope</b> The last paragraph states that the policy applies to all instances of tree and vegetation vandalism and that the policy overrides all conflicting policies. Suggest replace “supersedes” with “prevails”	1	<b>Supported.</b> Change completed.
	<b>Section 3.2 Background</b> Amend section to read: 1) “This Policy has been developed in light of persistent tree and vegetation vandalism on Council owned or managed public reserves <i>and private land</i> throughout the Local Government Area”. 2) “There is also a social cost to vegetation vandalism with impacts on public health including mental health and general wellbeing, <i>and polarisation and conflict within the community</i> ”. 3) The vegetation growth on public land is important for all the thousands of ratepayers and visitors that use the beach. Vegetation growth diminishes the views, from the beach, of the expanding residential developments on the	2	<b>Point 1 Supported:</b> Policy amended to include private land in order to provide consistency with the Policy Statement.  <b>Point 2 Supported:</b> Amendment included in the Policy  <b>Point 3 Not Supported:</b> This is considered a foreshore management reserve issue.

	coastal dunes that have been approved by Council.		
<b>4. Provisions</b>	<p><b>Section 4.1 Policy Principles</b></p> <p>1) In reference to point 2, vandalism on private land is a problem also. There should be a mechanism for compensating the loss through planting elsewhere</p> <p><b>Section 4.2 Definitions</b></p> <p>2) Would weeds such as lantana, bitou, fireweed and ground sorrel will now be illegal to clear?</p>	2	<p><b>Point 1:</b> As detailed in the Tree and Vegetation Management – DCP Chapter G4 (private land) Council is authorised to fine and enforce rehabilitation of private lands that have been illegally cleared. No changes need to be made to this Policy.</p> <p><b>Point 2:</b> It is illegal for members of the public to remove weeds from public land unless authorised by Council. No changes need to be made to this Policy.</p>
<b>5. Legislative Provisions</b>	Policy is punitive in that low impact events responses include issuing Penalty Infringement Notices and pursuing prosecution in the Local Court	1	The issuing of Penalty Infringement Notices and pursuing prosecution within the Local Court system is in line with the jurisdiction framework provided in Appendix 3. No changes need to be made to this Policy.
<b>6. Strategy Responses</b>	<p><b>Section 6.1 Education</b></p> <p>1) The community need to be aware how trees and vegetation provide biodiversity support, erosion control and oxygen production</p> <p>2) Section should be expanded to include community consultation</p> <p>3) Public naming of those found guilty of deliberate vandalism</p> <p>4) Council to consider an education programme in conjunction with local schools that would assist with future protection</p> <p>5) Education through pamphlets is useful if the wording is 'suggestive' rather than 'authoritative'.</p> <p>6) Fully support this policy through education and pressing charges against offenders.</p> <p>7) Section 5.1 states "Information about rehabilitation and other positive outcomes, as well as successful prosecutions and enforcement actions may be publicised" under what circumstances will it be publicised.</p>	8	<p><b>Point 1:</b> Biodiversity, erosion control and oxygen production are already covered point 2 of section 5.1 Education</p> <p><b>Point 2:</b> The Policy outlines a consistent regulatory and rehabilitation response to vandalism.</p> <p><b>Point 3: Included.</b> Refer to point 4 under Section 5.1 Education which states "<i>successful prosecutions and enforcement actions may be publicised</i>"</p> <p><b>Point 4:</b> Beyond the scope of the Policy, however Council is involved in environmental education for school children e.g. Threatened Species Competition and Environmental Expo.</p> <p><b>Point 5: Noted</b></p> <p><b>Point 6: Noted</b></p> <p><b>Point 7:</b> It is anticipated that where sufficient evidence is available to pursue prosecution in the NSW Land and Environment Court, the outcomes for a major incident would be publicised – refer to <b>Appendix 6 Proposed Response Measures for Low, Medium and High Impact Vandalism Events.</b></p>

	<p>8) “unauthorised mowing and slashing of native vegetation”. I would like to see this issue raised somewhere in the document</p> <p>9) This section should be expanded to include community consultation so that Council might better understand the reason for tree clearing</p> <p>10) The behaviour of ‘tree vandals’ has been unrelenting, wilful and quite confronting over a number of years, bringing into question the effectiveness of education at this point. BLS recognizes the draft policy inclusion of education strategies but these may have to be even more targeted.</p> <p>11) The education component of the policy is biased and makes no reference to the point of view of people who believe foreshore vegetation can both exist and be managed without impacting on the people affected by dense, tall foreshore planting. Such people should be considered in respect of their visual amenity, property values and security against potential risks.</p>		<p><b>Point 8:</b> Reference is made to unauthorised mowing in <b>Section 3.2 Definitions</b> and <b>Section 5.1 Education Point 7.</b></p> <p><b>Point 9:</b> This Policy has been drafted through a process of community engagement and consultation via the Collingwood Beach Dune Vegetation Reference Group meetings involving community members and councillors as well as a Councillor Workshop. The Draft Policy was also on public exhibition for 30 days for community feedback.</p> <p><b>Point 10: Noted</b></p> <p><b>Point 11:</b> Council does not engage in selectively increasing private property values through the active management of vegetation. Any potential risk posed by trees and vegetation on Council managed lands is assessed for risk and acted upon if deemed necessary.</p>
	<p><b>Section 6.2 Monitoring, Recording and Prevention</b></p> <ol style="list-style-type: none"> <li>1. CCC cameras would be a major deterrent</li> <li>2. Surveillance should be used</li> <li>3. Motion cameras should be used be placed in sensitive areas.</li> <li>4. Installation of permanent cameras in “hot spots”</li> <li>5. Rangers/ Compliance officers patrol areas where vandalism is high</li> <li>6. Install sensor lights</li> <li>7. Council should keep a photographic record of the foreshore vegetation and all foreshore residential property owners should be made aware of this.</li> </ol>	13	<p><b>Points 1 to 4:</b> It was resolved at the Development and Environment Committee meeting of Council on 5 March 2019 (MIN19.110) that Council does not support the installation of surveillance cameras along Collingwood Beach. However, due to the number of submissions it is recommended that the use of CCTV cameras for example to re-considered.</p> <p><b>Point 5: Section 3 Regulation, Enforcement and Rehabilitation</b> of the Policy states the following:</p> <p><i>“In order to promote consistency among Council officers when investigating and responding to vandalism events, a guideline protocol has been developed that is included in Appendix 4. Council’s implementation of this protocol will ensure quick and consistent assessment of damage and determination of an appropriate response strategy. To</i></p>



		<p><i>support the effective implementation of this protocol, clear delineation of staff responsibilities within the process, and clear lines of communication need to be established between staff involved. This will ensure implementation of clear and consistent responses by council and assist in ensuring that staff and other resources required to initiate and implement a response are available."</i></p> <p><b>Point 6 Not Supported:</b> The use of sensor lights as a form of deterrence could be disruptive to members of the community as these could be set off indiscriminately during windy conditions (moving vegetation) and movement of nocturnal wildlife.</p> <p><b>Point 7: Section 2 Monitoring and Prevention</b> states the following:</p> <p><i>"Monitoring vegetation condition by various methods e.g. photographs or aerial photography".</i></p> <p>Additionally, Council officers will conduct doorknocks and letterboxing in areas affected by vandalism.</p>
<p><b>Section 6.2 Monitoring, Recording and Prevention</b></p> <ol style="list-style-type: none"> <li>1. Inconsistent numbering of trees/shrubs which should be planted to replace the number vandalised – refer to Section (5 to 1 ratio) and Appendix 6 (3 to 1 ratio).</li> <li>2. Suggest the proposed threat of "plant 5 trees for every vandalised tree" could be reconsidered.</li> </ol>	4	<p><b>Point 1 Supported:</b> Inconsistency amended in Appendix 6 under High Impact Events from a ratio of 3:1 to 5:1.</p> <p><b>Point 2:</b> Collingwood Beach Dune Vegetation Reference Group Meeting held on 26 April 2019 endorsed replacement of 5 trees for every one that has been vandalised – D19/143775. A Councillor Workshop held on the 6th of June 2019 determined that a re-planting ratio of 5:1 was satisfactory.</p>
<p><b>Section 6.2 Monitoring, Recording and Prevention</b></p> <p>Signage and barriers:</p> <ol style="list-style-type: none"> <li>1) Erect signage where vandalism has occurred</li> <li>2) More obvious signage required</li> <li>3) The signage (Appendix 9) is important and should be kept in place until the replacement vegetation becomes established</li> </ol>	18	<p><b>Point 1 to 7:</b> The table below is extracted from <b>Appendix 6 Proposed Response Measures for Low, Medium and High Impact Vandalism Events</b>. The highlighted yellow sections identify the proposed measures for low, medium and high impact events. The size of the signage used will depend on the extent of vandalism and may be either a metallic sign or a soft canvas banner – refer to <b>Appendix 9</b> for an <b>Example Signage Template</b>.</p>

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			<table><tr><td></td><td>rehabilitation works</td></tr><tr><td></td><td>F) Offer rewards for information</td></tr><tr><td></td><td>G) Pursue action in the Local Court or Land &amp; Environment Court where evidence exists</td></tr></table>		rehabilitation works		F) Offer rewards for information		G) Pursue action in the Local Court or Land & Environment Court where evidence exists
	rehabilitation works								
	F) Offer rewards for information								
	G) Pursue action in the Local Court or Land & Environment Court where evidence exists								
			<p><b>Point 8 to 10:</b> Due to the number of submissions requesting some form of view impediment in vandalised areas, it is recommended that the use of physical barriers be re-considered should the actions proposed in the current Policy not be an effective deterrent to tree and vegetation vandalism.</p>						
	<p><b>Section 6.2 Monitoring, Recording and Prevention</b> Items 5 and 6 should be deleted from this policy. This is just too negative.</p>	1	<p><b>Not supported:</b> Item 5 under <b>Section 6.2 Monitoring, Recording and Prevention</b> was reviewed during the Collingwood Beach Dune Vegetation Reference Group Meeting held on 26 April 2019 endorsed replacement of 5 trees for every one that has been vandalised – D19/143775. A Councillor Workshop held on the 6th of June 2019 determined that a re-planting ratio of 5:1 was satisfactory.</p> <p>Item 6 is in accordance with the example signage template provided in <b>Appendix 9</b>. A consensus regarding sign content was made during the Councillor Workshop held on the 6th of June 2019.</p>						
	<p><b>Section 6.3 Regulation and Enforcement</b> Amend 6.3 (1) to read Council will follow the Investigation and Response Protocols included in Appendices 4-6 when responding to tree and vegetation vandalism events.</p>	1	<p><b>Supported:</b> Section amended accordingly.</p>						
<b>7. Resources</b>	<p>The policy needs resources (e.g. funding) for its implementation, maintenance and to ensure it remains viable.</p>	4	<p>Council will need to allocate budget to implement the Policy.</p> <p><b>Section 6 Resources</b> states the following:</p>						

			Resources required for Council to implement this policy include: 1. Educational materials (e.g. brochures, multi-media, displays, posters) 2. Management plans and rehabilitation strategies 3. Correspondence templates (e.g. for letter drops) 4. Signage 5. Investigative and regulatory staff 6. A database to record and monitor vandalism events 7. Access to endemic plants suitable for use in rehabilitation 8. Team and community training to carry out rehabilitation
<b>8. Implementation</b>	N/A	N/A	N/A
<b>Appendix 2 tree and Vegetation Vandalism</b>	<ol style="list-style-type: none"> <li>1. It is unclear why this is an 'Appendix' and not incorporated into relevant sections of the Policy itself. There is a lot of valuable information that should be included in the policy</li> <li>2. The content in Appendix 2 should be included in the relevant section of the policy or referred to in that section.</li> <li>3. The footnote in Appendix 2 be referenced in 5.1 (3)</li> <li>4. The following sentence is not clear "Recognition of the broad tree and vegetation vandalism issues being experienced in the Shoalhaven as a result of Council passing a resolution to develop a robust tree and vegetation vandalism policy"</li> <li>5. These photos show severe vandalism. I do not support vandalism, but I do question photo 1. It is obvious going by the attached photos that the current vandalism policy is not working and in my opinion the proposed policy has not come up with any positive solutions either</li> </ol>	3	<p><b>Points 1 and 2 Not Supported:</b> In order to keep the document concise, the information provided in <b>Appendix 2</b> is considered additional background information and is referred to in section <b>2.2 Background</b> of the Policy.</p> <p><b>Point 3 Supported:</b> Reference included in the Policy</p> <p><b>Point 4 Supported:</b> Sentence removed from the Policy</p> <p><b>Point 5.</b> The photos presented In <b>Appendix 2</b> are a random selection of different types of vandalism that has occurred across the Shoalhaven. The Shoalhaven Local Government Area has not previously had a vandalism prevention policy in place and therefore it is yet to be determined whether it will be sufficient to deter vandalism.</p>
<b>Appendix 3 Legislative Framework</b>	The fine amounts must be punitive enough to ensure deterrence and provide adequate compensation for Council costs for revegetation and rehabilitation	1	Fine amounts are not determined by Local Council but by State Government.

	<p>Section 4.3b of the EP&amp;A Act relates to prohibitions in environmental planning instruments (EPI). Section 4.2 of the EP&amp;A Act specifies penalties for development undertaken without consent/ where the development was not undertaken in accordance with a consent. The table notes that the offence for both is the DCP. Recommend that the offence content is replaced as follows:</p> <ol style="list-style-type: none"> <li>1. In relation to s4.2 – Development undertaken without development consent and/or development not carried out in accordance with a consent or environmental planning instrument.</li> <li>2. In relation to s4.3b – Prohibited development undertaken.</li> </ol>	1	<b>Supported.</b> Section amended accordingly.
<b>Appendix 6 Proposed Response Measures for Low, Medium and high Impact Vandalism Events</b>	Physical barriers to block views should be included in Appendix 6	1	Due to the number of submissions requesting some form of view impediment in vandalised areas, it is recommended that the use of physical barriers be re-considered should the actions proposed in the current Policy not be an effective deterrent to tree and vegetation vandalism.
<b>Appendix 7 Example Template Letter for Letterboxing</b>	<ol style="list-style-type: none"> <li>1. Add a paragraph explaining the practical ramifications of the destruction, e.g. the increasing loss of trees and vegetation equates to a loss of birdlife and habitat of other species.</li> <li>2. Add a paragraph that makes it clear our natural environment is being damaged for the sake of a view, and the increasing loss of trees equates to the loss of birdlife and other native species</li> </ol>	2	<b>Point 1 and 2 Supported, in part:</b> the following wording <i>“loss of birdlife and other native species”</i> included in template letter in Appendix 7.
<b>Appendix 9 Example Signage Templates</b>	The tree on page 24 is growing in the ocean	1	<b>Supported.</b> Sign has been amended accordingly.
<b>Additional Issues raised</b>	<ol style="list-style-type: none"> <li>1. Reconsider the plants used for dune reclamation</li> <li>2. Plant grasses and creepers rather than shrubs and large trees</li> </ol>	5	As part of the <b>Collingwood Beach Dune Vegetation Two-Year Trial Action Plan</b> adopted in September 2018 Trial Site 1 has been replanted with native vegetation. The rehabilitation practices follow the Coastal Dune Management Manual best practice guidelines to ensure dune stabilisation.

	<p>3. Mass planting of fast growing and dense vegetation without consultation and consideration can be provocative and alienates some sections of the community</p> <p>4. The policy should cover the remedy where inappropriate plantings are made to remove pathway and property views.</p> <p>5. A list of appropriate low growing vegetation that can be planted, that would not block views should be compiled and utilised in areas where views are available. This would help prevent vandalism in those areas.</p>		The outcome of this trial will be determined in September 2020.
	Council must prosecute tree vandals where they can be identified	1	<b>Section 3.1 Policy Principles</b> states that <i>"the identification and prosecution of perpetrators of tree and vegetation vandalism should be pursued consistently throughout the Shoalhaven"</i>
	Remove weeds that block views e.g. pittosporum, casuarina	2	Council implements a large range of works to control environmental weeds on Council managed lands. Unauthorised removal of native vegetation in natural area reserves is an illegal act. Pittosporum and casuarina species are native vegetation species.
	Remove weeds from waterfront reserves that destroy habitat and resources for native species	1	Council implements a large range of works to control environmental weeds on Council managed lands. These works may involve controlling noxious weeds or other weeds not declared noxious. This is often done in conjunction with Bushcare volunteers.
	How will this policy apply to public lands	1	Please refer to relevant sections of the Policy such as <b>Section 3.1</b> and <b>Appendix 6</b> .
	The Foreshores Reserve Policy notes 'where Council is required to revegetate foreshore lands following unauthorised removal of vegetation, such revegetation will be done in consultation with surrounding property owners with the aim to restore the status quo' There is no reflection of this consultation approach in this draft policy.	1	The "status quo" means replacement of vandalised vegetation – not a selective planting regime according to surrounding property owners' preference for enhanced views through replacement plantings.
	How does this policy take account of trees on nature strips where residents may from time to time trim trees?	1	Council's <b>Tree Management Policy – Public Land</b> Section 4.2 states <i>"Shoalhaven City Council will consider applications from members of the public for pruning or removal of trees on Council owned or managed lands"</i>
	Involving the community and working with the community through consultative	1	<b>Section 5.1 Education Point 6</b> refers to the direct involvement of the community in the maintenance and

	processes will achieve longer term harmony and support.		protection of trees and vegetation, and in the rehabilitation of damaged areas.
	General editorial adjustments throughout body of Policy	3	Appropriate amendments included in the Policy
	<ol style="list-style-type: none"> <li>1. The draft Tree and Vegetation Vandalism 'Policy statement' says that it will apply to "all public and private land within the Shoalhaven Local Government Area". How can that possibly co-exist with the current 45 degree exemption rule that allows such vandalism. The draft policy defines Tree and Vegetation Vandalism as "<i>poisoning, burning, removal, ringbarking and unauthorised mowing pruning and slashing</i>". Residents are allowed to undertake all of the above on private land under the 45 degree exemption rule.</li> <li>2. Councils own policy the 45 degree rule promotes cutting down of trees on private land. Revoking this policy would send a message that Council is concerned about the protection and preservation of trees.</li> <li>3. Remove Exemption 5.2.3(d) Shoalhaven DCP Plan 2014 – Chapter G4, Tree &amp; Vegetation Management that allows the landholder (most urban blocks) to lop, top, poison any tree for any reason on their property without any application to Council.</li> </ol>	4	Exemption 5.2.3(d) Shoalhaven DCP Plan 2014 – Chapter G4, Tree & Vegetation Management is beyond the scope of this Policy.
	Permanently retain dead vegetation (as long as not a public hazard) as it is also important habitat value for wildlife. Retaining dead vegetation highlights that those poisoning or damaging vegetation will not be rewarded	1	<b>Supported:</b> Amended <b>Section 5.2 Monitoring, Recording and Prevention</b> to not remove any poisoned tree or vegetation from site unless assessed as a safety hazard.
	Reports of vandals much be provided with some confidentiality	1	<b>Section 2 monitoring and Prevention</b> states that " <i>The community can be confident that, when they report incidents, they will be followed up promptly, effectively and confidentially by Council</i> "
	How will this policy apply to private lands	1	Council will investigate the removal of trees if consent is required but was not previously obtained prior to vegetation removal.

	If our memories are correct we recall that on purchasing our property we received a package of Council documentation. Clear anti-vandalism information should be in any such packaging.	1	Noted and appropriate Council department notified.
	Providing rewards (assumed to be monetary) for “dobbing in” other community members is definitely not a way to promote good community values.	1	The example signage template provided in Appendix 9 encourages community members to step forward with information to help Council investigate possible acts of vandalism and it may also encourage potential perpetrators to think twice about committing an act of vandalism.
	Would Council consider allowing people to prune back bushes to maintain the view, or carrying out regular pruning themselves.	1	Council does not permit removal of vegetation on public land to maintain a view by the public. Property owners can maintain vegetation on their properties as per <b>DCP Plan 2014 – Chapter G4, Tree &amp; Vegetation Management</b> . Low growing vegetation occurring on private property is permitted to be maintained to facilitate views.
	Road verges should be added to Council land where this policy should be enacted. All too often tree/vegetation on Council verges are poisoned or removed in front of, or over the road from new or pending developments or where new house ownership occurs.	1	This Policy applies to all land within the Shoalhaven including road verges.
	Much of the tree removal in autumn and winter is associated with firewood collection. The removal of standing and fallen trees (wildlife habitat and erosion control) for firewood is common at this time. If the policy could be amended to recognise the removal of living and dead (standing) trees and fallen trees it would be helpful.	1	<b>Supported:</b> Reference to ‘removal (dead or alive)’ included under <b>4.2 Definitions: Tree and Vegetation Vandalism</b>  <b>The Local Government Act 1993 s 629</b> specifies that it is an offence to wilfully or negligently injure, damage or unnecessarily disturb any plant, animal, rock or soil in a public place. Additionally, a person, without lawful excuse who removes a plant, animal, rock or soil from a public place is guilty of an offence.
	We request that the Shoalhaven City Council take responsibility for the animals that no longer have roosting, feeding and nesting sites, from which they can sustain healthy populations into the future. The most obvious of these local residence include our endangered Black Cockatoos, various species of micro-bats, sugar gliders, flying foxes and possums who all play vital roles in ecosystem health as pollinators, seed distributors and the like.	1	This Policy was drafted in recognition of the value of natural habitat to fauna and flora and as a way forward to curb vandalism in the Shoalhaven.
	Enquiry Only <ul style="list-style-type: none"> <li>Council to investigate new access road created in crown land in North Bendalong</li> </ul>	4	Not applicable to the policy however referred onto the appropriate Council departments for further investigation.



	<ul style="list-style-type: none"> <li>Inappropriate plantings (Banksia) with no consultation. Plantings requested to be removed.</li> </ul>		
	Delete reference to a “significant tree register” in appendix 5	1	<b>Supported:</b> reference removed from Policy
	The draft policy fails to acknowledge the fundamental factor of fire threat in Australia.	8	<p>Fire risk is beyond the scope of the vandalism Policy and is addressed the <b>Shoalhaven District Bushfire Risk Management Plan</b> (BFRMP) which identifies community assets at risk from bushfire and sets out a program of coordinated, multi-agency treatments to reduce identified risks.</p> <p>Residents concerned that vegetation on land near them may be placing their property at risk from bushfires can request an inspection by an officer from the NSW Rural Fire Service by lodging a <i>Bushfire Hazard Complaint</i> via the Rural Fire Service website.</p>
	Access to vistas, water views, vantage points and mobility of impaired people	7	These items are beyond the scope of this Policy.
	Falling trees and branches are a significant cause of power failure, bush fires, property damage, injury and death.	7	Reported hazardous trees, branches and other vegetation within Council managed lands are inspected and acted upon if deemed hazardous in relation to fire and public safety. Power companies check tree hazards in relation to power lines.
	All acts of vandalism should be reported on Council's website and in the media on a monthly basis with the cost to the community (council staff time, replanting etc) also reported.	1	This action could be considered by Councillors if/when resources permit .

## DE19.117 Berry Grey-headed Flying-fox Camp Emergency Grant 2019

**HPERM Ref:** D19/350495

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

### Purpose / Summary

To inform Council that Local Government NSW have reduced the maximum grant funding available for managing a Grey-headed Flying-fox (GHFF) colony at Berry to \$17,500 and to re-confirm Council's in-kind commitment of \$50,000, as per MIN19.645.

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

That Council:

1. Accept the grant funding of \$17,469 from Local Government NSW;
2. Council support the grant with a \$50,000 in-kind commitment from existing operational budget to manage the ongoing flying fox issues currently experienced in the Shoalhaven LGA; and
3. Write to the Minister of Local Government NSW and the State Member for Kiama thanking them for the grant funding and also outlining concerns regarding the reduction in grant funding and seeking restoration of the full funding of \$50,000 for this round and into the future.

### Options

1. As recommended above

#### Implications:

The existing in-kind commitment of \$50,000 (as per MIN19.645) is from existing budget for staff salaries and equipment. It is vital in assisting with the management, continued education and allocation of mitigation measures at the Berry Flying Fox Camp. The funds will also assist with the management of other flying fox camps in the Shoalhaven such as those located in Bomaderry and Kangaroo Valley, as well as new camps that may form in the future and require community liaison and education.

A community expectation has evolved that Council manage the impacts of flying foxes within the Shoalhaven. With the grant funding from Local Government NSW being reduced, Council staff will need to work closely with the community to determine which mitigation items are fully funded by the grant and which ones will require a monetary contribution.

2. Only approve a like for like contribution

Implications: Should Council approve a like for like contribution i.e. \$17,500 to match the Local Government NSW contribution of \$17,500, the total funds of \$35,000 will be insufficient to implement mitigation measures as well as fund staff time to manage the impacts of the flying foxes in Berry as well as other areas of the Shoalhaven to the degree originally contemplated.

DE19.117

3. Not accept the grant funding for \$17,469 and write to the Minister for Local Government and State Member for Kiama outlining concerns regarding the reduction in grant funding and seek restoration of the full funding of \$50,000 for this round and the need for future rounds.

Implications: A community expectation has evolved that Council provide some sort of assistance or solutions if local residents are impacted by living in close proximity to a GHFF colony. Should Council not accept the \$17,469 grant funding, there will be no budget to purchase items to assist residents. There will likely be community angst and the number of complaints received is likely to escalate.

4. Council provide an alternative resolution.

Implications: This would depend on the resolution.

## Background

*Flying Foxes in the Shoalhaven* Grey-headed Flying-fox (GHFF) is 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 Department of Planning, Industry and Environment (DPIE) and potentially approval from the Federal Environment Minister.

A relatively small number of GHFF were known to be present at Berry from time to time as advised by residents. In the past, Council did not receive any complaints about GHFF in this area as the animals were most likely contained within the lower parts of the backyards along the naturally occurring gully. However, the number of GHFF dramatically increased in June and July 2019.

During an initial inspection undertaken by Council officers and DPIE in mid-June 2019, the GHFF camp was found to be mainly restricted to the backyard of one property at Kentia Crescent, Berry. The property has been vacant for some time. An estimated count of the GHFF population at the time was approximately 500 individuals. During a subsequent site visit on 16 July with DPIE staff, a survey of GHFF numbers found that the population had greatly increased to approximately 2025 individuals and were occupying another backyard in Kentia Close within close proximity to a house and sleeping rooms (see Figure 1).

It is unknown whether the GHFF camp at the subject site is made up of a local population from an existing camp formerly located next to the Princes Highway in Berry or from the Bomaderry Camp located approximately 12 km south-west of Berry.

Some residents expressed concern, either via visits to Council's administration centre or through official telephone complaints to Council officers, that residents were waking them in the early hours of the morning because of air horns and banging of pots in an effort to dissuade the GHFF from roosting in certain trees/backyards in Kentia Close. It should also be noted that a number of residents that DPIE and Council officers have spoken to during community consultation were in favour of the GHFF and appreciative of the natural phenomenon.

At the time of writing, a total of 84 hours of Council staff time has been dedicated to door knocking, addressing complaints and completing the application for emergency grant funding.

Documented attempts to disperse GHFF camps at various locations in Queensland, Northern Territory and New South Wales between the years 1990 and 2013 show that in most cases the flying-foxes did not leave the local area and the local population size was not reduced.

The cost of dispersal, the amount of resources required, and the obtrusive nature of the dispersal methods does not make this a viable option.

A licence from DPIE would also be required and is unlikely to be granted. Therefore, dispersal is considered a last resort response.



Figure 1 – Location of the Grey-headed Flying-fox Camp, Berry

### Grant Funding

LGNSW has available “emergency grant funding” which can include funding of:

- possible removal of native and non-native trees to create a buffer between the camp and the residents’ houses; and
- items such as air conditioners, double glazed windows, high pressure cleaning systems, clothesline covers, and car covers etc for protection from GHFF faeces.

Staff applied for a grant from Local Government NSW in relation to managing a Grey-headed Flying-fox colony located on private property between Sabal Close and Kentia Crescent, Berry. The maximum amount, \$50,000, was applied for, with an in-kind Council contribution of \$50,000. This action was resolved on 20 September 2019 (MIN19.645). However, due to the number of flying fox issues occurring in other NSW local government areas, Council was notified by Local Government NSW that the maximum amount available has been reduced to

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\$17,500. Council resubmitted the grant application to reflect the reduced grant amount available as per the request of Local Government NSW which was granted on 24 October 2019.

The grant is subject to Council providing a matching or greater in-kind contribution for managing and implementing the grant. The full amount for managing the GHFF colony and community expectations at Berry was previously estimated at a maximum total of \$100,000 (including grant money).

In order to reduce costings of goods to a maximum of \$17,500 a number of milestones have been excluded from the grant. Negotiations will have to be made with local residents regarding the types of goods that will offer the greatest mitigation to the effects of the flying fox colony as well as their level of monetary contribution (up to 50%). The grant funds are limited to the purchase of mitigation measures such as double-glazed windows, air conditioning units, pool covers, tree removal/ lopping, high pressure cleaning equipment etc.

Local Government NSW has advised that grant funding to manage flying foxes in local government areas will no longer be available in the foreseeable future.

It is therefore recommended that Council approach the local Member and the Minister for Local Government to seek restoration of full funding of \$50,000 for this round and into the future.

### **Community Engagement**

Since June 2019, Council's Environmental Services officers have responded to 13 complaints in relation to GHFF roosting (camped) in trees in close proximity to homes and have been in regular contact with the most affected residents (four households). Council reported the colony and the complaints from residents to DPIE.

Council's Environmental Services officers and DPIE visited the area and door knocked residences surrounding the colony on five separate occasions to date. Information about GHFF and the perceived disease risk was left with residents or in letter boxes along with contact details for an Environmental Services Staff member. Council has advised residents a grant application for an emergency funding grant has been prepared in order to provide alleviation measures and direct measures such as habitat modification (subject to the DPIE licence) was also provided.

It should be noted that a DPIE licence comes with strict conditions in relation to the timing of actions around habitat modifications with no actions permitted if the GHFF will be unduly disturbed.

Council officers continue to contact and listen to affected residents as well as residents in support of the GHFF colony. Council continues to liaise with DPIE about possible management actions. DPIE do not support attempting to relocate the GHFF colony as this is not considered a viable option as it was unlikely to work, very expensive and that the number of persons affected was relatively small.

Proposed future actions will include the contacting of residents to inform them of the reduced funding amount and the requirement to provide monetary contributions for certain mitigation measures.

### **Policy Implications**

Lessons learned from the Berry camp in relation to the impacts of the GHFF on residents and the benefits of GHFF are useful for future management plans. Council is currently working with DPIE to review the GHFF management plan to include camps located in Berry and Kangaroo Valley area and any other new camp formations in the LGA.

### Financial Implications

Council Staff time since June 2019 has come from existing operations budgets, approximately 84 hours to date. This includes time allocated to the following:

- Various door knocks to document complaints, educate owners of flying-fox ecology and disease, mitigation options and suggest coping strategies;
- Receiving complaints over the phone and in person at the front counter;
- Camp counts to determine level of impact;
- Preparation of relevant information to affected and neighbouring properties;
- Dissemination of relevant information to affected and neighbouring properties;
- Liaising with stakeholders including DPIE and Local Government NSW;
- Administrative time to document issues; and
- Completion of the grant, including amending the grant to reflect reduced funds as per Local Government NSW request.

The grant offered is limited to the procurement of mitigation measures. Any additional staff time in managing the Berry camp, community expectations and other future issues associated with flying fox camps in the Shoalhaven will have to be met by Council.

Regardless of the reduction in grant funding, Council's commitment of a \$50,000 in-kind contribution is still required as the work associated with the management of flying foxes in the Shoalhaven is essential and is likely to be a recurring issue.

### Risk Implications

Shoalhaven City Council may be viewed as ignoring the concerns of its residents directly affected by the GHFF colony at Berry, should Council be unable to effectively manage the impacts of the flying fox colony.

## DE19.118 Proposed 2019 Heritage Housekeeping Amendment - Shoalhaven Local Environmental Plan 2014 (PP036)

**HPERM Ref:** D19/250223

**Group:** Planning Environment & Development Group

**Section:** Strategic Planning

### Purpose / Summary

Obtain the necessary resolution to progress the [2019 Heritage Housekeeping Amendment Planning Proposal \(PP\)](#) which seeks to make a range of required housekeeping amendments to the heritage components of Shoalhaven Local Environmental Plan (LEP) 2014.

The PP also seeks to list the cottages and former timber railway on Chinaman's Island, Lake Conjola as local heritage items as resolved by Council.

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

That Council:

1. Submit the 2019 Heritage Housekeeping Amendment Planning Proposal (PP036) to the NSW Department of Planning, Industry and Environment for initial Gateway determination and, if favourable, proceed to formal public exhibition in accordance with the terms of the determination and legislative requirements.
2. Advise key stakeholders, including relevant Community Consultative Bodies and any directly affected landowners, of the public exhibition arrangements.
3. Receive a further report on PP036 following the conclusion of the public exhibition period.

### Options

1. As recommended.

Implications: This is the preferred option as it will enable Council to address the identified inaccuracies in the LEP, make necessary adjustments and ensure it remains accurate and correctly identifies the location of local heritage items within the Shoalhaven. This will also ensure that steps are taken to recognise the heritage significance of the cottages and former timber railway on Chinaman's Island in the Shoalhaven LEP 2014.

2. Adopt an alternative recommendation. This could include endorsing the PP with the exception of the map changes relating to 14 items which seek to include private properties not currently identified in the map layer of the LEP within the heritage listing of existing items. Two alternatives could potentially be considered regarding these specific items:
  - Consider as part of a separate standalone subsequent PP that can be given specific consideration; or
  - Not proceed with them and discontinue the relevant proposed changes.



*Note: an alternative recommendation can be presented at the meeting if one of these alternatives is considered.*

**Implications:** This will depend on the extent of any changes. Depending on its nature, an alternative recommendation could delay the resolution of the identified housekeeping matters and heritage listing of the cottages and former timber railway on Chinaman's Island. Amendments to the instrument may still be required to address property description and other minor housekeeping matters relating to some of these items.

### 3. Not proceed with the PP.

**Implications:** This is not favoured as the identified housekeeping matters will not be resolved and the cottages and former timber railway on Chinaman's Island will not proceed to heritage listing.

## Background

Since its commencement in 2014 Council has continued to update and revise the Shoalhaven LEP 2014 via on-going housekeeping amendments.

As part of the housekeeping review process, a number of issues and anomalies have been identified in relation to the heritage items listed in LEP Schedule 5 and the associated heritage map.

In addition; on 8 May 2018, Council's Development Committee resolved (MIN18.333) to list the cottages and the former timber railway at Chinaman's Island, Lake Conjola as local heritage items in LEP Schedule 5.

## 2019 Heritage Housekeeping Amendments

The [2019 Heritage Housekeeping Amendment Planning Proposal \(PP\)](#) seeks to amend LEP Schedule 5 and the associated heritage map in Shoalhaven LEP 2014. The amendments to the LEP are predominantly administrative in nature, responding to anomalies or issues that have been identified through the operation of the Plan since 2014, including:

- Errors during the making of Shoalhaven LEP 2014 (e.g. items incorrectly or incompletely identified in the instrument or map);
- Locational inaccuracy, including property description, street address and map, due to a variety of factors (e.g. road network reconfiguration, subdivisions, cadastre shifts/updates);
- Changes to the heritage significance of items (No.241 Hampden Bridge has been included in the NSW State Heritage Register and No.A5 Greenwell Point wharf and surrounds has been nominated for inclusion in the NSW State Heritage Register); and
- Physical changes to items due to development or other factors (e.g. tree removal, subdivision or natural disaster).

In addition to these largely administrative changes the PP also seeks to:

- Include new components for two (2) existing items – No.202 Lady Denman heritage complex and No.215 Bundanon;
- Include one (1) existing item additionally as an archaeological site – No.407 Nowra Wharf; and




- Include two (2) new items (the cottages and former timber railway at Chinaman's Island, Lake Conjola) within LEP Schedule 5.

The range of proposed amendments are summarised in **Table 1** below, along with a brief explanation of why the change/adjustment is required.

**Table 1: Summary of the proposed amendments**

Summary of proposed amendment	Rationale
64 items within LEP Schedule 5 require administrative amendments only to the Instrument. These amendments include: updating the item names, addresses and property descriptions.	The proposed changes respond to issues that have been identified in the accuracy of the current schedule. These changes are administrative only and amend the item name, address and/or property description due to identified inaccuracies or respond to the lack of adequate detail within the heritage listing.
<p>Eight (8) LEP Schedule 5 items are located within a road reserve and have been incorrectly mapped, with the heritage layer covering the entire road reserve, rather than the specific location.</p> <p>It is proposed to remove the heritage map layer from the road reserve and only map the location of the item and its immediate curtilage. Associated amendments to the item address and property description are also required to reflect the proposed changes to the heritage map.</p> <p><b>Note:</b> three (3) of the proposed changes will also affect private properties that are not currently identified on the heritage layer in the LEP (refer to Items No.33, 41 and 45 in the PP).</p>	<p>The entire road reserve does not need to be identified as a heritage item. The proposed change will ensure the heritage layer is placed solely over the actual item and its immediate curtilage. This will allow for better identification of the item's specific location and remove heritage controls from land that does not contain a heritage item.</p> <p>The three (3) properties that are not currently identified on the heritage layer in the LEP are however identified within the Heritage Inventory Sheets for the heritage items as containing a portion of the item in question. Amending the listing and associated heritage map to cover the curtilage of the heritage items (including the three (3) private properties) will better align LEP Schedule 5 with the data in the supporting Heritage Inventory Sheets.</p>
<p>25 items within LEP Schedule 5 include a heritage significant tree(s) where the dripline of the tree(s) extends beyond the current heritage map layer. It is proposed to extend the heritage layer for these items to include the entire curtilage of the tree(s).</p> <p>Associated amendments to the item address and property description are required to reflect the proposed changes to the heritage map.</p> <p><b>Note:</b> these changes only affect private land that is currently identified on the heritage layer in the LEP or that is owned</p>	<p>Extending the heritage layer to include the dripline of the heritage listed tree(s) will enable better identification of the location of the heritage item in question or that component of a heritage item. This only applies to properties on the existing heritage layer in the LEP or land that is owned or managed by Council (including the road reserve).</p> <p>This change will allow for:</p> <ul style="list-style-type: none"> <li>• Better identification of the specific location of the heritage items.</li> <li>• Better management and maintenance of items on public land.</li> </ul>

<p>or managed by Council (including a road reserve). None of the proposed changes will affect private property that is not currently identified on the heritage layer in the LEP - the tree drip line has been interrupted to avoid these additional private properties. See map example below:</p> 	<ul style="list-style-type: none"> <li>The correct identification of land affected by heritage controls on Planning Certificates provided under section 10.7 of the Environmental Planning and Assessment Act 1979.</li> </ul>
<p>52 items within LEP Schedule 5 require amendments to the heritage map with some items also requiring associated amendments to the Instrument.</p> <p>Some of these amendments include adding and/or removing lots from the heritage listing.</p> <p>One of the proposed amendments is to Item No.241 Hampden Bridge to reflect its inclusion on the NSW State Heritage Register. In September 2018, Council supported (MIN18.800) the inclusion of the bridge on the NSW State Heritage Register. The State listing was Gazetted on 2 August 2019.</p> <p><b>Note:</b> 14 of these amendments will or could affect additional private properties that are not currently identified on the heritage layer in the LEP (refer to Item No's 6, 36, 114, 124, 135, 226, 325, 344, 405, 432, 444, 489, 509 and 532 in the PP).</p>	<p>The proposed changes respond to inaccuracies within LEP Schedule 5 and the associated heritage map. The amendments are only proposed where the instrument or heritage map are either incorrect or incomplete due to errors in the preparation of the original Shoalhaven LEP 2014.</p> <p>Lots are only proposed to be removed from the heritage map when the item has been incorrectly identified as being located on these lots. This will ensure heritage controls only apply to land that actually contains a heritage item.</p> <p>Lots are only proposed to be included on an item's heritage map when the Heritage Inventory Sheet lists the item as being located on that lot.</p> <p><b>Note:</b> Should Council wish to exclude the 14 proposed amendments that seek to specifically map private property not currently identified on the heritage map in the LEP, these items should possibly still be considered as part of a separate process. Council could also discontinue completely the amendments associated with these items.</p> <p>However, amendments to the instrument may still be required to address property description and other minor housekeeping matters.</p>
<p>Six (6) items currently identified within LEP Schedule 5 require amendments to the associated heritage map layer as a result from a shift in Council's cadastre. Some of these map changes also require complementary instrument changes.</p>	<p>Shoalhaven is constantly being surveyed with more accurate locational information becoming available in the process. At times this results in a physical shift in the Council's official cadastre, on which all GIS and map data is based. The proposed amendments to the heritage map layer will ensure the map identifies the entire lot a heritage item is located on.</p>
<p>Eight (8) items within LEP Schedule 5 require amendments due to physical</p>	<p>Eight (8) heritage items have been physically altered since the LEP was originally compiled in</p>

changes to the heritage item (e.g. subdivisions, lawful developments and natural disasters) that have altered the heritage item.	<p>2014. The proposed amendments reflect the physical alterations to the heritage items and ensure that lots that no longer possess heritage significance are not identified within LEP Schedule 5 or the associated heritage map.</p> <p>It is noted that none of the proposed amendments will remove an item from LEP Schedule 5.</p>
Item No.378 (St Michael's Roman Catholic Church including two storey Victorian presbytery and grounds) and Item No.380 (St Michael's Roman Catholic Cemetery) are proposed to be combined into a single heritage listing.	<p>These two items are located within the same lot and share a combined history and use.</p> <p>The cemetery that makes up Item No.380 was donated to the church (Item No.378) to be used as a burial ground for the congregation. The Heritage Inventory for the two items additionally refers to the shared group value of the two items.</p> <p>Recognising the shared heritage significance of the two items under a single listing reflects the combined history of the site and strengthens their related nature in the LEP.</p>
The Jervis Bay Maritime Museum (Lady Denman Heritage Complex) custodians have requested that Council amend the name of Item No.202 to recognise the heritage significance of four (4) vessels located at the site.	<p>Four (4) vessels located at the Lady Denman Heritage Complex (Item No. 202) have been identified as having heritage significance. It is proposed to amend the name of Item No.202 to include the names of these four vessels (Crest, Kingfisher, Porthole, Seabee Runabout) to recognise their heritage significance.</p> <p>This will allow the Museum to apply for conservation-based grant funding to help preserve the vessels.</p>
Amend the item name, property description and heritage map for Item No.215 ("Bundanon"-homestead including outbuildings and natural landscape) to align the local listing with the Commonwealth Heritage List Inventory Sheet.	<p>Item No.215 is additionally listed within the Commonwealth Heritage List. It is proposed to amend the item name to reference the four (4) properties that make up Item No.215. It is also proposed to amend the property description and associated heritage map to include Lot 1, DP 1232368. This will ensure the local listing is consistent with the Commonwealth listing.</p>
Amend the heritage map of the Pulman Street Heritage Conservation Area (HCA) to include an additional lot (Lot 1, DP 558065).	<p>Lot 1, DP 558065 is recognised in the Heritage Inventory Sheet of the Pulman Street HCA as a component of the HCA. The heritage map should be amended to include all lots associated with the HCA.</p>
Amend the heritage map of the Hampden Bridge HCA to be visible over the heritage item map layer.	<p>The hatched HCA map layer for the Hampden Bridge HCA is not visible through the solid polygon heritage item map layer. Amending the HCA map layer to be visible over the heritage</p>

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	item layer will help better identify the location of both the HCA and the heritage item.
<p>On 19 April 2016, Council resolved (MIN16.275(c)) to request the NSW Office of Environment and Heritage to place the old Berry's Wharf site (Item No.A5) at Greenwell Point on the NSW State Heritage Register. This was supported by a maritime archaeological survey of the site.</p> <p>To reflect this, it is proposed to amend the significance of Item No. A5 (Greenwell Point Wharf and Surrounds) in the LEP to reflect the item's State significance nomination.</p> <p>It is also proposed to amend the item name to replace 'Greenwell Point Wharf' with 'Berry's Wharf' and include the 'breaking chain' within the item name.</p> <p>The heritage map is also proposed to be amended to include Lot 7302, DP 1165443.</p>	<p>Existing Item No.A5 has been nominated for inclusion on the State Heritage Register. While the outcome is unknown at this point in time, Practice Note PN11-001 requires that the items significance be listed as 'nominated item of State significance' until a decision is made by the Heritage Council of NSW.</p> <p>Updating the name to also reference the breaking chain will better identify the item and all its components and amending the item name to replace 'Greenwell Point Wharf' with the more common name 'Berry's Wharf' will strengthen the identification of the heritage item.</p> <p>LEP Schedule 5 lists the heritage item as partially located on Lot 7302, DP 1165443. Updating the heritage map to also include Lot 7302, DP 1165443 will align the heritage map with the LEP Schedule 5 heritage listing.</p>
Add the Chinaman's Island (Lake Conjola) cottage group as a heritage item and the Chinaman's Island former timber railway as an archaeological site to LEP Schedule 5.	On 8 May 2018, Council resolved (MIN18.333) to list the cottages and the former timber railway as local heritage items in LEP Schedule 5.
Include the Nowra Wharf (which forms part of heritage item No.407) as an archaeological item in LEP Schedule 5.	The Nowra Sailing Club Heritage Assessment identified that the wharf possesses archaeological potential. While the wharf has been removed as it posed a public safety risk, the early footing is to be retained in-situ. These remains are proposed to be listed in LEP Schedule 5 as an archaeological site as supported by a Statement of Heritage Impact for the Nowra Wharf.

Following initial endorsement by Council, the PP will be submitted to the NSW Department of Planning, Industry and Environment for a Gateway determination. Depending on the response it will then proceed to formal public exhibition.

### Community Engagement

Should the PP receive a favourable Gateway determination, it will be exhibited for comment in accordance with Council's Community Engagement Policy at Level 1 to 'inform' and 'consult', and in accordance with the relevant legislative requirements.

The Gateway determination will specify the minimum exhibition period and any government agencies who should be consulted.

Any directly affected landowners will be advised of the exhibition arrangements in writing, as well as all Community Consultative Bodies.

**Financial Implications**

There are no immediate financial implications for Council. This PP is being resourced within the Strategic Planning budget.

**Risk Implications**

Ensuring the heritage listings within LEP Schedule 5 and the associated heritage map are accurate will help protect these heritage items from unsympathetic development or other impacts.

## DE19.119 Public Exhibition Outcomes - Proposed Finalisation - Coastal Hazard Review Planning Proposal and Coastal Management Areas DCP Amendment

**HPERM Ref:** D19/335874

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

**Attachments:** 1. Public Exhibition Submission Summary (under separate cover) [↗](#)  
2. Proposed Post Exhibition Changes to Chapter G6 (under separate cover)

### Purpose / Summary

- Detail the outcomes of the combined public exhibition of Planning Proposal PP026 – Coastal Hazards Review (PP) and Development Control Plan (DCP) Amendment No. 20 Chapter G6: Coastal Management Areas.
- Provide details on the community information session that was held on 26 August 2019 following the initial August 2019 consideration of this matter by the Committee.
- Enable the amendments to Shoalhaven Local Environmental Plan (LEP) 2014 and Shoalhaven DCP 2014 to proceed to finalisation.

### 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, Industry and Environment (DPIE) for finalisation.
2. Adopt and finalise the 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, submitters and/or people who attended the community information session, of this decision, and when the LEP and DCP amendments will be made effective.

### Options

1. As recommended.

Implications: This is the preferred option as it will ensure the amendments proceed to finalisation. This will increase the dependability of Council's coastal risk information in the planning process and also address several housekeeping matters within Chapter G6: Coastal Management Areas.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, this could delay the progress of the amendments to the LEP and DCP.

3. Not adopt the recommendation.

Implications: This option is not preferred as the coastal risk planning maps will remain in the LEP, resulting in potentially lengthy delays to update these maps on an ongoing basis as needed. The DCP housekeeping matters will also remain outstanding, which will potentially negatively impact on the overall application and use of the Chapter.

## Background

Some public and private properties along the coast are at risk from coastal hazards such as beach erosion, shoreline recession, coastal entrance instability, sand drift, coastal inundation, storm water erosion, and slope instability. Council's planning instruments assist to identify and manage this risk.

On 14 August 2018, Council's Development Committee resolved (MIN18.609) to:

1. *Endorse the Coastal Hazards Review Planning Proposal (PP026) (Attachment 1) and submit it to the NSW Department of Planning and Environment for Gateway determination*
2. *Following receipt of the Gateway determination, concurrently exhibit PP026 and draft Chapter G6: Coastal Management Areas of Shoalhaven Development Control Plan 2014 (Attachment 2), for a period of 28 days as per legislative requirements.*
3. *Support the preparation of the online coastal hazard mapping based on current coastal risk data.*
4. *Receive a further report on PP026 and draft Chapter G6: Coastal Management Areas following the conclusion of the public exhibition period.*
5. *Advise key stakeholders, including relevant Community Consultative Bodies, of this decision.*

The following is an overview of the PP and DCP amendment.

### Planning Proposal

Seeks to amend the current coastal hazard related controls in the LEP by:

- Removing the Coastal Risk Planning Maps from the LEP (Note: detailed coastal hazard mapping is now publicly available on [Council's website](#) and will be used if this removal occurs);
- Amend Clause 7.4 Coastal Risk Planning to apply to all land at risk of coastal hazards identified within the Shoalhaven Coastal Zone Management Plan, coastal management programs and/or supporting studies.

The PP was submitted to the then NSW Department of Planning and Environment (DP&E) following the August 2018 resolution and received a favourable Gateway determination on 24 October 2018. Council was not given delegated authority to finalise the LEP amendment which means the PP will ultimately need to be submitted to the NSW Department of Planning, Infrastructure & Environment (DPIE) for finalisation.

### DCP Amendment

The proposed amendments to DCP Chapter G6: Coastal Management Areas respond to operational issues and matters that require clarification. The key changes are summarised below:

- Insert references to the Shoalhaven Coastal Hazard Interactive Mapping.
- Replace references to 2025 Zone of Reduced Foundation Capacity (ZRFC) with 2030 ZRFC throughout.
- Clarify that sites landward of Precinct 2 (i.e. 2100 ZRFC) have limited restrictions, not no restrictions.
- Include additional commentary and provisions relating to wave runup.
- Include Bendalong Boat Harbour Beach as a known area of beach erosion and/or oceanic inundation, and Narrawallee as a known area of cliff/slope instability.
- Insert references to recently adopted studies (e.g. Royal Haskoning DHV Report – Shoalhaven Coastal Cliffs and Slopes Risk Management Program – 2018).
- Clarify that the side setback requirements also apply to lots on the landward side of an unformed road that adjoins a waterfront reserve.
- Include several provisions adopted from Council Policy POL12/217 Coastal Areas – Planning and Development relating to mitigating loss of public amenity and managing aesthetic and environmental impacts on the foreshore and other public areas.
- Expand foreshore development controls in Section 5.2 to also apply to non-residential development.
- Include new provisions relating to public infrastructure on public land.
- Include provisions to reflect the revised content of the Generic Community Lands Plan of Management – Natural Areas and Foreshore Reserves Policy (e.g. Stormwater from adjoining residences should be managed via inter-allotment drainage and discharged directly into a stormwater facility of Council).
- Update all images to enhance the readability of the Chapter and consistency across the DCP.

### Government Agency Feedback

Prior to public exhibition, the PP was referred to the NSW Office of Environment and Heritage (OEH) as required by the Gateway determination. The comments from OEH and the Council staff response is summarised in Table 1 below.

**Table 1: OEH Comments on the Planning Proposal**

OEH Comments	Council Staff Response
Clearly demonstrate that removing the coastal hazard mapping will not affect or remove existing development controls for development on land subject to coastal hazards.	The PP was updated prior to exhibition to include the following additional commentary in Section 3.2 Map Change: <i>"It (the online coastal mapping) will be updated as and when Council adopts new or updated coastal risk data (for example, Coastal Zone Management Plan). The removal of the CRP Map from SLEP 2014 will not affect or remove existing development controls on land subject to coastal hazards."</i>



Clearly demonstrate that there is a legal planning mechanism in place to trigger and apply appropriate coastal hazard related development controls for land subject to coastal hazards.	The PP was updated prior to exhibition to include the following additional commentary in Section 2 Part 1 Intended Outcome: <i>"The SLEP 2014 will then be used in conjunction with the Shoalhaven Coastal Management Plan (CZMP) 2018 and the Shoalhaven Development Control Plan 2014 (SDCP) to apply appropriate development controls to areas at risk of coastal hazards as identified in the online coastal risk mapping."</i>
Clarify how the proposed mapping will be linked to the development controls within Shoalhaven LEP 2014 and Shoalhaven DCP 2014.	
Update the proposed amendment to Clause 7.4(2) as follows: "This clause applies to the land identified as being at risk of coastal hazards in Council's Coastal Zone Management Plan, Coastal management programs and/or supporting studies."	The PP was updated prior to exhibition to reflect this request.
Outline how the intent of the PP is consistent with the Shoalhaven Coastal Management Plan.	The following additional commentary was included in Section 4.2.2 of the PP prior to exhibition: <i>"It is more appropriate to remove the CRP Mapping from SLEP 2014 and move the mapped coastal risk data to Council's online mapping system. This will allow for more timely updates of new risk data in perpetuity."</i>  <i>"The PP is considered consistent with this Action, as although the mapping is not included in SLEP 2014 or SDCP 2014, both draft documents refer to all risk areas, including the revised Advisian Risk Assessment Maps, via the content and relationship to the proposed online coastal risk mapping."</i>

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## Public Exhibition

In accordance with the Council resolution (MIN18.609) and Gateway determination, the PP and proposed DCP amendment were publicly exhibited for a period of 30 days, from 6 February to 8 March 2019 (inclusive).

Notices appeared in local newspapers on 6 February 2019. All CCBs, Development Industry Representatives and affected landowners were notified directly in writing.

The exhibition material consisted of the following:

- [Planning Proposal \(PP026\) – Coastal Hazards Review](#).
- [Draft DCP 2014 Amendment No. 20 Chapter G6: Coastal Management Areas](#).
- [Explanatory Statement](#).
- [Gateway determination dated 24 October 2018](#).
- [Agency consultation responses](#).
- Newspaper advertisement.

As a result of the exhibition, twelve (12) formal submissions were received including:

- One (1) submission from a consultancy firm.

- Nine (9) submissions from the community.
- Two (2) internal Council submissions: Environmental Services and Strategic Planning Sections.

A detailed summary of the submissions with a Council staff response to all comments raised is provided in **Attachment 1**.

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

### Post-Exhibition Amendments

As a result of the submissions received, various minor amendments are proposed to the Draft Chapter G6 as shown at **Attachment 2**. For convenience, the proposed changes are highlighted in yellow, with strikethroughs to note deletions. The recommended post exhibition amendments to Draft Chapter G6 are briefly summarised below:

- Include a link to the Shoalhaven Coastal Hazard Interactive Mapping in Section 1.
- Amend the purpose to apply to development in areas of coastal risk instead of development in areas of coastal management.
- Amend the context to correct the number of beaches, bays and headlands and include a link to the Shoalhaven Coastal Zone Management Plan 2018.
- Remove the word physical from objective ii) in section 4 Key Objectives.
- Remove reference to planned retreat in acceptable solution A1.9.
- Include the Narrawallee – Surfers Avenue/Bannister Head Road/Tallwood Avenue, Geotechnical Scoping Study and Stability Assessment, Douglas Partner 2012 within acceptable solution A2.1.
- Include additional wording to section 5.2 to correct a grammatical error.
- Remove reference to the Advisian hazard mapping and Shoalhaven Coastal Zone Management Plan as examples of properties identified but not studied.
- Include the 2016 Shoalhaven Coastal Mapping Review within Section 6.2.

No changes are recommended or required to the Coastal Hazard Review Planning Proposal following public exhibition.

### Community Information Session

Following the initial consideration of the public exhibition outcomes, Council's Development & Environment Committee resolved on 2 July 2019 (MIN19.456(1)) 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.*

Consistent with this resolution, a Community Information Session was held at the Council Chambers on 26 August 2019. All landowners affected by the coastal hazard mapping were advised of this session in writing, with approximately 29 affected landowners and some Councillors attending.

Generally, no issues were raised by the landowners at this session regarding the proposed amendments to DCP Chapter G6: Coastal Management Areas. There were however concerns raised surrounding the Planning Proposal and the approach being taken, which are generally summarised in **Table 2** below, along with a Council staff response/comment.

**Table 2: Community Comments on the Planning Proposal**

Community Comments	Council Staff Response/comment
Is it legal for Council to remove the coastal hazard mapping from the LEP?	<p><i>There is no legislative requirement for a Council to have a coastal hazard map within its LEP (this has been confirmed by the DPIE).</i></p> <p><i>Additionally, out of the 20 coastal councils in NSW (excluding Shoalhaven) 14 do not have a coastal hazard related map within their LEP.</i></p>
How was the new online coastal hazard map determined?	<p><i>The online coastal hazard map is based on information obtained from the 2016 Coastal Hazards Mapping Review, and Coastal Cliffs and Slopes Risk mapping 2008, 2011 and 2012.</i></p> <p><i>This mapping was previously exhibited along with the 2018 Coastal Zone Management Plan for the Shoalhaven Coastline.</i></p>
Can Council change the online map without notifying residents?	<p><i>It is noted that on 2 July 2019 (MIN19.456(3)), Council's Development &amp; Environment Committee resolved that <u>no changes be made with respect to Coastal Mapping unless a report has been provided to the Council and prior community consultation is undertaken with affected residents.</u></i></p> <p><i>As such, the online mapping will not be changed without notifying owners and providing an opportunity to comment and reporting any change through Council.</i></p>

## Conclusion

The primary concern raised at the Community Information Session was that the online mapping would be changed without Council notifying affected landowners. However, the resolution by Council's Development & Environment Committee on 2 July 2019 (MIN19.456(3)) ensures that no future changes will be made to the online mapping unless prior community consultation is undertaken with affected owners etc.

It is still considered prudent to finalise the PP as exhibited and to ensure that the most relevant information is available and being used. Thus, as a result of the Community Information Session, no changes are recommended to the exhibited PP.

**Policy and Risk Implications**

Council will no longer rely upon the Coastal Risk Planning maps within Shoalhaven LEP 2014 to identify land subject to coastal risk. Instead, land subject to coastal risk will be identified by the Shoalhaven Coastal Zone Management Plan, coastal management programs and/or supporting studies.

This approach is more responsive and better manages coastal hazard risk in Shoalhaven. As new information is obtained or information is updated the online mapping can be revised in a timelier manner, acknowledging that the 2 July 2019 direction from Council will also be complied with.

**Financial Implications**

Finalisation of the PP and draft DCP amendment will continue to be undertaken within the existing Strategic Planning budget.

## DE19.120 NOM - Narrawallee Beach Victor Way - Beach Access Stairs

**HPERM Ref:** D19/325806

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

### Purpose / Summary

To provide Council with information on the upgrade to Victor Avenue beach access at Narrawallee, which includes the increase to width and re-grade of concrete stairs, in accordance with the Notice of Motion and resolution MIN19.502, dated 30 July 2019, and to seek endorsement to proceed with geotechnical assessment.

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

That Council:

1. Receive the report on the update of Notice of Motion to upgrade the Victor Avenue beach access stairs at Narrawallee Beach for information;
2. Endorse staff to seek further geotechnical advice on the slope stability, to inform the design to widen the concrete step section, along the existing alignment;
3. Endorse for inclusion in the design, a crossing point on the steps for periods of heavy use; and
4. Staff report the results of the geotechnical advice back to Council, including design options and detailed costings of design and construction.

### Options

1. As per the recommendation

Implications: Reduce the risk of failure of any new infrastructure built at the site and would ensure that it would be designed fit for purpose.

2. Not adopt the recommendation

Implications: The site severely limits the capacity to redirect the access alignment or adjust the grade due to the narrow beach width and coastal processes acting on the site. Without geotechnical advice, the risk of failure of any alterations to the existing beach access stairs would increase.

3. Council provide an alternative approach

Implications: Would depend on the resolution.

### Background

On the 30 July 2019, Council resolved the following via a Notice of Motion (MIN19.502):

*That the Victor Avenue access stairs to Narrawallee Beach be replaced with a much wider set of stairs to allow more comfortable “passing” of beach users as they go to and from the beach. The design would ideally incorporate a landing and a slightly*

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*decreased grade for ease of access. Funding for the construction could be sourced from savings in a quarterly budget review or a future budget.*

The Victor Avenue beach access site is set on the natural rock headland, although the exact depth of the rock platform is unknown. The beach access follows the existing gradient from the road to the beach level (rock platform) (Figure 1). The underlying rock and rock beach platform do not allow for the regrading of the access slope without works into the rock shelf and extension of access footprint.

Regrading the slope would involve either a reclamation onto the rock platform that includes complex engineering design and approval by State Government agencies or excavation into the headland which may cause slope failure. The alternate option would be to have one or more passing bays, with the gradient remaining within the existing footprint. Further clarification in this regard is recommended and should be based on Geotech assessment.



*Figure 1: Victor Avenue Beach Access, looking east, showing rock platform exposed on beach*

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A road stormwater outlet empties onto the southern side of the existing access stairs. The stormwater channel runs directly beside the southern side of the access path, which restricts any ability to change the horizontal alignment of the track (Figure 2).



Figure 2: Looking west from beach on Victor Avenue Beach Access Stairs & Stormwater Outlet

Horizontal realignment on the northern side of the beach access way is also restricted, due to proximity of the boundary of the adjoining private land. Path width increases may be achieved within these constraints to achieve a path width of 2.5m. However, this would also be subject to geotechnical assessment.

Adjacent cliffs and slopes to the south are known for geotechnical instability, being of similar geology and aspect. They have been mapped on the Shoalhaven Coastal Cliffs and Slopes Risk Management Recommendations report 2018, as being subject to coastal risk from geotechnical instability. Thus it can be safely assumed that this section of slope would also be unstable, based on previous studies undertaken on the adjoining coastal cliffs and slopes.

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The site has previously been subject to storm wave attack, and the beach immediately to the north has been mapped as being subject to coastal erosion in the 2016 Shoalhaven Coastal Hazard Study. The location of the slope, where the beach access way is located, has not been impacted by slope instability, however areas immediately adjacent to the site (100m south) are known to have slope instability, which is documented.

Thus, Council under its duty of care would be strongly advised to seek geotechnical advice, to better inform the design of any new hard structures at this location.

Having regard to the above, Council may wish to consider the option of retaining the existing stair access and investigate the option of providing passing bay(s) along the length of the stair to accommodate the intent of the resolution. Whilst such a measure would require geotechnical assessment, the scope of such assessment would be reduced.

### **Financial Implications**

The geotechnical advice, land survey, aboriginal heritage and environmental assessment is estimated to be \$15,000. The cost of design and construction is unknown at this stage and will need to be informed by the recommendations of the geotechnical assessment.

### **Risk Implications**

The site review takes into consideration the geotechnical instability and coastal hazards impacting the site. The Advisian 2018 site-specific Emergency Action Narrawallee Subplan identifies storm erosion to 6 metres AHD as a potential risk, along with the road stormwater scour as another major potential risk to be managed.

As previously mentioned, there is a storm water outlet impacting on the southern side of the beach access way. If the stairs are widened, then there is a risk that this stormwater will impact on the safety of the stairs, thus will be increasing the public risk from wet stairs. If the risk was to be removed, the storm water would need to be redirected further south, however this would increase the cost.

Many of these coastal locations contain Aboriginal cultural heritage items, such as shell middens and stone/flint artefacts, due to their proximity to food sources. This would also pose an additional risk to the cost if they were found on the site, requiring further specialist investigations under the NSW Due Diligence Code.



## DE19.121 NOM - St Georges Basin & River Entrance Sussex Inlet - Safe Navigation - Seek Grant Funding - Contact State Minister - Review Classification as ICOLL

**HPERM Ref:** D19/320589

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

### Purpose / Summary

To advise Council of an administrative error, detected by the community in the Coastal Zone Management Plan, classifying Sussex Inlet entrance as an ICOLL.

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

That Council:

1. Note the amendment to map Figure 1.1 – Shoalhaven Coastal Zone in the 2018 Coastal Zone Management Plan for the Shoalhaven Coastline removing the notation of Sussex Inlet as a Council managed entrance as this was an error in the document;
2. Approach the relevant NSW Department to assist Council undertaking a hydrographic survey of Sussex Inlet and a seismic survey in key locations identified as potentially having rock ballast and apply for funding assistance through the Marine Infrastructure Delivery Office or other relevant grant programs; and
3. List for consideration in future quarterly budgets reviews the allocation of up to \$30,000 to contribute to the surveys and preparation of a navigation study to inform the preparation of the coastal management program (CMP) for St Georges Basin and Sussex Inlet.

### Options

1. As recommended.

Implications: This would progress investigation of the issues raised in the Council's resolution and inform a coastal management program.

2. Adopt 1 and 2 only and further assess depending the result of approaches to State agencies and/or grant applications

Implications: Council would be better informed in regard to State Government assistance prior to making a budgetary commitment.

3. Not adopt the recommendation.

Implications: Progress of the issues raised in Council's resolution would not be undertaken.

4. Alternative recommendation.

Implications: Unknown.

## Background

At Council's Strategy & Assets Committee Meeting of 23 July 2019 it was resolved that:

1. *The Chief Executive Officer report to Council regarding the possibility of having a preliminary design done aimed at achieving a reasonably safe navigable entrance for the River at Sussex Inlet.*
2. *Consideration also be given to the possibility of obtaining a grant to meet part of the cost of the study/design.*
3. *Council express concern to the relevant State Government Minister regarding St Georges Basin and River being classified as an ICOLL in a Government map, as the River has never closed in recorded memory.*
4. *Council make the necessary correction to its Coastal Zone Management Plan so that the St Georges Basin and River (Sussex Inlet entrance) is not classified as an ICOLL.*

### Items 1 and 2 – survey, design and study for safe navigable entrance and funding

The Safe Navigation Action Group (SNAG) – Sussex Inlet, identified the presence of ballast rock within Sussex Inlet river entrance as a significant issue in regard to sand accumulation in the area and overall navigation. SNAG recently submitted a document titled "Sussex Inlet Waterways Recovery, restoration and Rehabilitation 2019, in which they identify the removal of ballast and associated accumulated sand, as a significant aim of the group.

To achieve the above, it would be necessary to undertake a seismic survey to locate potential ballast rock within the problem areas identified by SNAG, including the sand shoal in front of the ARU camp and The Haven around the entrance to St Georges Basin. The estimated cost of ballast removal cannot be estimated until such survey is completed. The cost of survey is estimated to be in the order of \$10,000. This will identify the location, depth of any rock ballast and provide some understanding of the impact of the rock ballast.

A hydrographic survey for the whole of the Inlet, including the canals and around Chris Creek, from the Bar to St Georges Basin (known as the goal posts or the sticks) should also be carried out to inform a navigation assessment and study. It is likely that professional surveyor costs would be \$20,000 to \$30,000.

It is possible for Council to seek assistance from NSW Department of Industry, Planning & Environment (DPIE) technical survey team to undertake the surveys. NSW DPIE have undertaken similar surveys in other local government areas.

These surveys would inform a navigation study which would in turn inform the coastal management program for St Georges Basin and Sussex Inlet. This study should consider the type of use, type and size of boats, navigation constraints and operational safety. The study should also consider the impact of vessel navigation on the waterway including erosion. It is estimated that the cost of this study is approximately \$20,000 to \$30,000 dependent upon the brief and results of the surveys.

A potential funding stream includes the Rescuing Our Waterways Program through the Marine Infrastructure Delivery Office (MIDO). The latest round of the Rescuing Our Waterways program is now open for applications. NSW coastal councils are invited to apply for a share of \$1.5 million being offered by the NSW Government for dredging projects (and pre-dredge studies/activities) to keep local waterways accessible and safe for boating.

Applications close on Tuesday 12 November 2019.

**Items 3 and 4 – correction required on Coastal Zone Management Plan**

The area map defining the Shoalhaven Coastal Zone, Figure 1.1 in the 2018 Coastal Zone Management Plan (CZMP) for the Shoalhaven Coastline, was in error as it referenced Sussex Inlet as a Council managed entrance. Council does not manage the entrance of Sussex Inlet and has never had a management plan to do so. This error has been corrected on the map and Council's website updated and in the CZMP. See <http://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D18/379377>

Letters notifying the Minister for Energy and Environment, Minister for Local Government, NSW DPIE and NSW Coastal Council were sent, noting the error and providing the updated map. There was no other reference in the CZMP that referred to this item and removing it has not changed or altered the intent of the CZMP or any actions in it. As this map was only a locality map for the document and does not include actions for estuaries including St Georges Basin and Sussex Inlet.

**Community Engagement**

Community engagement is underway as part of Council's coastal management program and will inform the citywide Scoping Study. Community engagement sessions were held at Sussex Inlet.

**Policy Implications**

Any findings from the survey and study should inform the Coastal Management Program for St Georges Basin and Sussex Inlet.

**Financial Implications**

The cost of the survey and study is estimated to be up to \$50,000. With assistance from NSW DPIE this could be reduced to \$20,000 to \$30,000.

**Risk Implications**

The Sussex Safe Navigation Group (SNAG) has requested Council investigate these issues to address safe navigation within Sussex Inlet.

## DE19.122 Review of Tabourie Lake Entrance Management Policy

**HPERM Ref:** D19/345193

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

**Attachments:** 1. Tabourie Lake - EMP - Summary of Community Consultation Submissions [↓](#)  
2. Draft Lake Tabourie Entrance Management Policy (under separate cover) [⇒](#)

### Purpose / Summary

To inform Council regarding the review of the Tabourie Lake Entrance Management Policy and present the policy for adoption.

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

That Council adopt the Tabourie Lake Entrance Management Policy (June 2019), with the policy recommendation to increase the trigger level, for mechanical opening, from 1.17m AHD to 1.3m AHD.

### Options

1. As recommended

Implications: Would be in-line with the recommendation of the policy review and the equally highest ranked preferred option based on community feedback.

2. As recommended with a trial time frame

Implications: This would allow assessment of impact during periods when Tabourie Lake are at or above trigger levels

3. Not adopt the Tabourie Lake Entrance Management Policy (June 2019)

Implications: Reviewing the Tabourie Lake Entrance Management Policy was a key recommendation of the adopted Lake Tabourie Flood Risk Management Plan 2016. Not adopting the reviewed Policy would place Council in conflict with this recommendation.

4. Alternative recommendation

Implications: Would depend on the recommendation.

### Background

Council, together with the NSW Government, manages five estuary entrances for flood mitigation purposes. Historical land use planning and development of estuary catchments and floodplains has resulted in low-lying properties being at risk from flooding under certain rainfall and entrance conditions.

### **History of the Review of Tabourie Lake Entrance Management Policy (EMP)**

Cardno Pty Ltd was engaged by Shoalhaven City Council to review the existing Entrance Management Policy (EMP) for Tabourie Lake. Tabourie Lake is an Intermittently Closed and Open Lake or Lagoon (ICOLL) and has periods during which the entrance is closed off from the ocean by the formation of a berm. The study area for the EMP comprises the tidal waterway of Tabourie Lake, its foreshores, and the adjacent lands.

The Tabourie Lake Floodplain Risk Management Study/Plan (FRMS, 2016), proposed a review of Council's existing Tabourie Lake Entrance Management Policy (EMP, 2005) and the accompanying Review of Environmental Factors (REF). The ocean storm event in June 2016 further highlighted the importance of this review.

A Draft Entrance Management Policy and REF was developed for Tabourie Lake by Peter Spurway & Associates in 2005. The Draft EMP has been used since that time by Council to guide the management of the entrance of Tabourie Lake for flood mitigation purposes. Under the Draft EMP the entrance is mechanically opened by Council when:

- Lake water levels are equal to, or in excess of, 1.17m AHD, this initiates an immediate entrance opening; or
- Lake water levels stabilise after rainfall at a level between 1.00m and 1.17m AHD and a period of over two months has elapsed since attaining that level, resulting in below floor level flooding of foreshore land.

Peter Spurway & Associates (2005) recommends that the assumptions of the Draft EMP and the management framework contained therein be reviewed following adoption of the Tabourie Lake Floodplain Risk Management Study and Plan (FRMS&P). The FRMS&P was completed in 2016, and one of the recommended actions in the FRMS&P was to review the Draft EMP considering the improved understanding of flood behaviour.

Given the significant amount of time that has passed since the Draft EMP was prepared, and acknowledging the changes in the catchment and improved understanding of flood behaviour, Council resolved to proceed with a review of the Draft EMP and preparation of a final EMP.

### **EMP Considerations**

The review of the EMP considered the detailed flood modelling results presented in the 2016 FRMS&P, the combined risks associated with catchment and ocean flooding, and the potential impact of climate change on flooding and entrance behaviour.

There is a range of existing information for Tabourie Lake, that is of relevance to understanding the need and context for the EMP. ICOLL behaviour, entrance behaviour and flooding processes are important determinants of the level of risk to low-lying development from inundation, and aid in determining potential entrance management options.

The statutory and policy context, and environmental and social values of Tabourie Lake are important in assessing the appropriateness and acceptability of entrance management options from both regulatory and stakeholder perspectives.

### **EMP Review – Management Options**

Options were identified and presented to the community. The following options were presented in the following order:

- **Option 1:** A “Do Nothing” option. Under this scenario, there is no active management of the lake entrance. For the ‘do nothing’ option the entrance berm would be overtopped when water levels rise during a rainfall event and the entrance breaks out naturally without any intervention.
- **Option 2:** The continuation of the existing management approach, comprising mechanical entrance opening, when lake water levels reach the trigger level of 1.17 m AHD.
- **Option 3:** Raising the trigger Level to 1.3m AHD. This would lead to fewer mechanical openings of the entrance of Tabourie Lake, thereby reducing the environmental impact on the Lake.
- **Option 4:** Berm height management. This involves managing the entrance berm height (when closed) such that it does not exceed a pre-determined level; this is known as maintaining a ‘dry notch’, which is a low or ‘saddle’ point in the entrance berm, which the water can preferentially flow across. The purpose of the notch is to dispense with the need to mechanically open the lake when a flood occurs.
- **Option 5:** Construction of a permanently open entrance, using rock armoured training walls.
- **Option 6:** Implementation of a pilot channel - a mechanical excavation of sand from the entrance berm 1 – 3 days before a large storm is scheduled to arrive, by digging a pilot channel starting from the ocean. The exercise is intended to reduce the volume of sand required to be removed to instigate a lake breakout, thereby inducing an earlier breakout and reducing flood levels within the lake.

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### **Management Options - Community Consultation**

An online questionnaire was distributed during the consultation period and over 90 responses were received from the community. In the questionnaire, the community was asked to rank the options presented (refer above) from a scale 1 to 5. It was found there was a wide range of opinions within the community.

As demonstrated in Table 1, final scores for Options 2 to 5 were very similar, with Option 1 scoring the least. Therefore, the options assessment based on community feedback concluded that options will come down to cost and impacts to the community.

**Table 1:** Summary of results from the community questionnaire

Option No.	Average Score	Rank
1	4.9	6
2	3.2	3
3	3.1	1
4	3.1	1
5	3.4	4
6	3.4	4

Table 1 above shows the options ranking results, including an indication of how respondents ranked each option. An average score is also provided, whereby each respondent ranked their most preferred option ‘1’ and their least preferred option ‘6’. The survey results were inconclusive, with no clear preference indicated by the community. The ‘most preferred’ options were Options 3 (Raise trigger level) and 4 (Dry notch) with an average score of 3.1 out of 6, followed closely by Option 2 (Existing approach) with a score of 3.2.

The least preferred option was Option 1 (Do nothing), which would allow flooding to occur with no intervention. Option 6 (Construction of a permanently open entrance) appeared to be a fairly polarising option, being scored as the most preferred option by 38.8% of respondents, and least popular by 30.6% of respondents.

### **Management Options Modelling**

Computer-based numerical modelling of various sub-sets of the entrance management options was undertaken using the Delft3D hydrodynamic and morphological model of the Tabourie Lake Estuary, which was established during the Tabourie Lake FRMS&P (Cardno, 2016). The same model set-up and catchment inflow data was used, as in the Cardno 2016 study.

Numerical modelling was undertaken to assess the impact of three of the potential management options on peak flood levels and durations for the more regularly occurring 20% Annual Exceedance Probability (AEP) event. It is noted that the 1% AEP flood event occurs so rapidly that entrance management is not feasible for purposes of flood mitigation; hence it was not considered in the options assessment.

Option 1 was not modelled as it was lowest ranking and was considered unacceptable to the community. Option 5 was not modelled as it was considered unacceptable due to its lower ranking, high cost of implementation and risk of coastal inundation (refer to Section 4.5 of the 2019 Draft Policy). Despite being ranked equal number one by the community, Option 4 was not modelled due to its higher cost and the fact that its technical feasibility was questionable (refer to Section 4.4 of the 2019 Draft Policy).

The remaining three options modelled were:

- Option 2: Existing approach with trigger level of 1.17 m AHD;
- Option 3: Raising the trigger level to 1.30 m AHD; and
- Option 6: Incorporation of a pilot channel (in conjunction with the existing trigger level).

Each of the three options was modelled under five discrete conditions, summing to a total of 15 model simulations (as detailed below). These are different scenarios tested for each option to indicate the peak water levels. Further detail on the modelling methodology is provided in Section 5.3 of Attachment 2:

- Condition A: High High Water Springs (HHWS) and initial berm height of 2.1 m;
- Condition B: HHWS and initial berm height of 1.8 m;
- Condition C: 1% AEP ocean level and initial berm height of 2.1m;
- Condition D: 1% AEP ocean level and initial berm height of 1.8m;
- Condition E: HHWS + 0.4m sea level rise and initial berm height of 2.2 m.

Note: High High Water Springs (HHWS) refers to the highest level that spring tides reach on average over a period of time. The 2.1m berm height is deemed to be the maximum probable berm height.

**Table 2: Peak Water Levels for Each Option for Each of Model Run**

Option	Condition A	Condition B	Condition C	Condition D	Condition E
<b>2</b>	1.86	1.86	2.52	2.53	1.86
<b>3</b>	1.93	1.93	2.52	2.53	1.93
<b>6</b>	1.76	1.76	2.52	2.52	1.77

### **Management Options Modelling Results and Comparisons**

Comparison of results for Options 2 and 3 (Table 2) shows that raising the trigger level from 1.17 m AHD to 1.30m AHD (an increase of 13cm) would result in an increase in the maximum flood level. However, the increase in flood level is not one for one, and flood levels only increase for Option 3 by around 7 cm (from 1.86 to 1.93 m AHD) for conditions A and B. The increase is non-linear due to the fact that as flood level increases, so too does the available flood storage. Additionally, the flood levels are likely heavily influenced by the geometry of the entrance channel, which constricts the rate of lagoon outflow.

The results also show the same level of storm tide inundation for Options 2 and 3. This would suggest that Options 2 and 3 result in a comparable level of entrance scour, and therefore allow ingress of the storm tide to the same degree.

Cardno Pty Ltd has recommended that Council adopt Option 3 (raising trigger level to 1.3 m AHD) in the Tabourie Lake EMP, as described in the attached Tabourie Lake Entrance Management Policy. This recommendation is based on the technical assessment presented in Section 5.4 of the 2019 Draft Policy), which included a triple bottom line cost-benefit assessment. The assessment resulted in highest score for Option 3 out of the six options considered.

If adopted, the Entrance Management Plan for Tabourie Lake presented in the 2019 Draft Policy (Attachment Two) will henceforth supersede the previous Peter Spurway & Associates (2005) EMP. The 2019 Draft EMP sets out the procedure by which Council will decide to open the entrance of Tabourie Lake for flood mitigation purposes, whether in response to a flood event or to alleviate below floor level inundation of foreshore land.

It is anticipated the implementation of the measures outlined in the 2016 FRMS&P would, in the future, likely remove the need to undertake entrance management and mechanical lake opening as a means of mitigating below floor level flooding. These options included structural options aimed at preventing, avoiding or reducing the likelihood of flood risks – including the construction of levees behind properties and raising roads in specific locations.

Therefore, it is intended that the EMP be adopted, until the relevant measures outlined in the 2016 FRMS&P have been fully funded and implemented.

Please note that Appendices A to E are not included in the Draft Tabourie Lake Entrance Management Policy (Attachment Two), as they are the accompanying operational documents.

### **Community Engagement**

The outcome of the options assessment and the 2019 Draft EMP were subject to public exhibition by Council between 21 January 2019 and 22 March 2019. As part of this public exhibition, the 2019 Draft EMP was presented to the local community on 20 February 2019 at a Community Workshop at the Tabourie Lake Rural Fire Service (RFS) Shed. More than 30 community members attended this workshop.

In total 13 online submissions were received, of which seven submissions were in support of the draft EMP, 1 was neutral, and 4 were against. Of the submissions that were not in favour of the Draft EMP, one submission was made by ten residents. Please refer to Attachment One for a summary of submissions received.

Furthermore, a petition with 105 signatures against raising the trigger and to continue with the current management was presented by Councillor White at the Ordinary Meeting of Council, held on 30 April 2019. This petition was lodged post consultation period.

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## Policy Implications

The current Tabourie Lake Entrance Management Policy (final draft, 2005) remains current until such time as this review is completed and formally adopted by Council.

## Financial Implications

The review of the Tabourie Lake Entrance Management Policy was completed within budget.

The project is for the provision of consultancy works and does not have any direct or immediate implications on Council's assets. The project is managed by staff from the Natural Resources and Floodplain Unit.

Once the Draft Tabourie Lake EMP is adopted, Council is required to prepare a Review of Environmental Factors, as per the requirements of Part 5 of the NSW Environmental Planning and Assessment Act 1979. The cost of this is estimated to be approximately \$15,000. There are sufficient funds in the Flood Programme budget for this work.

## Risk Implications

Opening of the entrance of the lake will not prevent flooding of property and dwellings in many circumstances. For example, even if the entrance is fully open at the start of a large flood event, if the flood is greater than a 10% Annual Exceedance Probability (AEP), it is expected that there are existing dwellings that would be affected by flooding

The Policy aims to reduce (where possible) but not eliminate the impacts of catchment flooding. Further, there may be circumstances (e.g. closed access roads, night, or dangerous sea conditions) where, despite its best endeavours, Council cannot act to mechanically open the entrance of the lake at the levels indicated in this Policy.

Legal advice was sought on a submission received from a resident, who is in favour of Option 2 (keep current trigger level) and made the following comments:

- *Believes that adopting Option 3 could lead to legal action from residents who are potentially negatively impacted by the entrance management (e.g. destruction of assets and health and safety concerns).*
- *Makes a note about the costs and lead time involved with potential legal action for Council, as well as any potential media attention.*
- *Believes that the outcomes of the Study (Option 3) is led by environmental arguments and Council is not well-informed.*

The legal response and acknowledgement to this submission is contained within Attachment One. In summary, under the provisions of Section 733 of the Local Government Act, if Council acts in good faith it is protected from legal action in instances such as this. The "good faith" principle would be supported by the scientific study completed in regard to the Tabourie Lake catchment.

Summary of Submissions	Acknowledgment/Responses
<p>Resident doesn't support Option 3 recommendation due to the following reasons:</p> <ul style="list-style-type: none"> <li>- The stench from the closed lake increases if it hasn't been open for a while.</li> <li>- Pelican itch due to poor water quality makes water inaccessible</li> </ul>	<p>The respondent's concerns about water quality and odours are acknowledged by Council and the report authors. While water quality conditions can deteriorate from time to time, negatively impacting the community's use and enjoyment of the waterway, these changes in water level and periods of entrance closure are natural components of the hydrological and ecological processes operating within ICOLLs.</p>
<p>Supports the recommendation to adopt Option 3 and makes the following comments:</p> <ul style="list-style-type: none"> <li>- The report appears to be thorough with the conclusion well supported by the evidence.</li> <li>- Their property at 16 Oak Avenue is likely to be affected by flooding should it occur, and accepts that flooding could occur in extreme events and that it is one of the risks associated with living at Lake Tabourie on the lake edge.</li> <li>- Believes that in the long-term raising the trigger level will lead to an improvement in the environmental quality of the lake.</li> </ul>	<p>It is noted that the resident supports Option 3 recommendation of the study.</p>
<p>Supports the recommendation to adopt Option 3 and makes the following comments:</p> <ul style="list-style-type: none"> <li>- Believe this will enhance the environmental health of the lake and will only have a minimal nuisance flooding impact on a handful of properties.</li> <li>- Believes entrance management will not prevent extreme and rare flooding events caused by a huge rain event and/or surge from the sea and so raising the trigger point by 13cm will not have an adverse effect on these events.</li> </ul>	<p>The resident supports Option 3 recommendation of the study.</p>
<p>Supports the recommendation to adopt Option 3 and makes the following comments:</p> <ul style="list-style-type: none"> <li>- Realises it would cause low level flooding to certain properties which are built in the flood zones</li> <li>- Supports the option in favour for the health of the lake and environment.</li> <li>- Believes that low level flooding will always occur in flood zones at big rain events with properties in low lying areas.</li> </ul>	<p>The resident supports Option 3 recommendation of the study.</p>
<p>Supports the recommendation to adopt Option 3 and makes the following comments:</p> <ul style="list-style-type: none"> <li>- Believes it does not jeopardise the flood risk to residents and at the same time gives the best opportunity for the lake to open for a longer time period.</li> <li>- Better for the environmental health of the lake.</li> </ul>	<p>The resident supports Option 3 recommendation of the study.</p>

<p>Resident favours Option 5 - to keep the entrance permanently open, with the following comments:</p> <ul style="list-style-type: none"> <li>- The lake was open a lot in the 1970s before the grass was put in covering up the aboriginal shell midden</li> <li>- The lake begins to smell when it's closed, and resident doesn't trust swimming in it or eat fish caught from the lake during these times.</li> <li>- Development has altered the lake significantly</li> <li>- Believes that the only way to keep it as close as possible to its natural state is to have fresh water coming into it from the ocean.</li> </ul>	<p>The permanently open entrance option has been considered during the study, and after assessment ranked 6th out of the 6 options (last place). The options have been scored based on several criteria and scored the lowest on 5 out of the 7 criteria compared to the other options.</p> <p>The two criteria relevant to the community member's concern are the impact on estuarine ecology and impact on recreational amenity, access and public safety. The permanent opening option received the lowest scores on these two criteria compared to the other five options due to the following factors:</p> <ul style="list-style-type: none"> <li>- A permanent opening results in an increased tidal prism (the water volume that goes in and out during ebb and flood) and increased tidal velocities (currents). These changes would likely change the pattern and scale of shoaling and scouring in the entrance channel, and may also lead to erosion around the lake foreshore. It appears the respondent has previously observed this to be the case (i.e. before the grass was placed on the midden). This has potential to negatively impact assets and important ecological areas, such as the dunes and areas used by threatened birds. It would also prevent public access for people walking along the beach and may under certain conditions make swimming in the estuary more hazardous;</li> <li>- This may also lead to increased risk of elevated estuarine water levels due to high ocean water levels and storm surge, which could propagate up the estuary and place foreshore habitats and built infrastructure at risk, particularly under sea level risk conditions;</li> <li>- It is possible that the increased tidal exchange may improve the water quality of the estuary, certainly downstream near the entrance. It would make the estuary more saline and may increase average estuarine water levels, with potential to significantly alter the distribution and occurrence of flora and fauna species. This could impact estuarine vegetation such as saltmarsh, mangroves and seagrass, with flow on effects for fauna.</li> </ul> <p>On balance, for these and other reasons, the impacts associated with Option 5 were considered higher than those associated with entrance management (i.e. Options 2 or 3). The cost was also significantly higher. This resulted in a lower cost-benefit index and therefore a lower ranking in the options assessment.</p> <p>The respondent's concerns about water quality and odours are acknowledged by Council and the report authors. While water quality conditions can deteriorate from time to time, negatively impacting the community's use and enjoyment of the waterway, these changes in water level and periods of entrance closure are natural components of the hydrological and ecological processes operating within ICOLLs.</p>
<p>Residents at two properties on the Princes Hwy, Lake Tabourie, are very unsatisfied with the Option 3 recommendation and favour Option 2 referring to the following comments:</p> <ul style="list-style-type: none"> <li>- Even though above floor level flooding does not occur until 3.39m, water inundates the front of the block block at 1.17m, driveway access at 1.2m, and slab and stair entry 1.3m. This results in flooded downstairs bathroom, laundry, garage, sheds, bbq area.</li> <li>- They consider 1.3m opening disastrous, worse than "nuisance flooding".</li> <li>- Experience evacuation issues for them, and also their neighbours, and elderly lady next door. The Council reserve next door will be inundated by 1.3m which will cause the lake to come around the back of our house and completely surround the property with no emergency exits.</li> <li>- They have had SES arrive at 1.23m to sandbag and provide evacuation assistance.</li> <li>- They see Health and Safety concerns including electrocution, septic pollution from unsewered homes and absorption trenches leaching</li> <li>- They emphasize that police advises not to walk through floodwater, however could experience a flooding situation up to 2 months in this situation.</li> <li>- Concern about permanent irreversible damage to house, and impact on house value.</li> <li>- They believe the lake monitoring system is questionable and that it has been broken in the last 2 years.</li> <li>- They experience major drainage issues off the highway and that a 1.3m opening will exacerbate their issues.</li> <li>- They have experienced flooding on the slab 3 times in last 4 years and sewage alarm activated number of times. In the 2016 event they experienced 30cm of water in the house for which an insurance claim has been raised.</li> <li>- They believe that many issues raised in Council's 2006 management plan still have not been addressed by Council and that floodplain mitigation issues are still under consideration to this date.</li> <li>- Residents believe that Council has the obligation to keep all residents and ratepayers safe in the LGA above any environmental issues, and that they are considering legal action if Option 3 will be adopted.</li> </ul>	<p>The permanently open entrance option has been considered during the study, and after assessment ranked 6th out of the 6 options (last place). The options have been scored based on several criteria and scored the lowest on 5 out of the 7 criteria compared to the other options.</p> <p>The two criteria relevant to the community member's concern are the impact on estuarine ecology and impact on recreational amenity, access and public safety. The permanent opening option received the lowest scores on these two criteria compared to the other five options due to the following factors:</p> <ul style="list-style-type: none"> <li>- A permanent opening results in an increased tidal prism (the water volume that goes in and out during ebb and flood) and increased tidal velocities (currents). These changes would likely change the pattern and scale of shoaling and scouring in the entrance channel, and may also lead to erosion around the lake foreshore. It appears the respondent has previously observed this to be the case (i.e. before the grass was placed on the midden). This has potential to negatively impact assets and important ecological areas, such as the dunes and areas used by threatened birds. It would also prevent public access for people walking along the beach and may under certain conditions make swimming in the estuary more hazardous;</li> <li>- This may also lead to increased risk of elevated estuarine water levels due to high ocean water levels and storm surge, which could propagate up the estuary and place foreshore habitats and built infrastructure at risk, particularly under sea level risk conditions;</li> <li>- It is possible that the increased tidal exchange may improve the water quality of the estuary, certainly downstream near the entrance. It would make the estuary more saline and may increase average estuarine water levels, with potential to significantly alter the distribution and occurrence of flora and fauna species. This could impact estuarine vegetation such as saltmarsh, mangroves and seagrass, with flow on effects for fauna.</li> </ul> <p>On balance, for these and other reasons, the impacts associated with Option 5 were considered higher than those associated with entrance management (i.e. Options 2 or 3). The cost was also significantly higher. This resulted in a lower cost-benefit index and therefore a lower ranking in the options assessment.</p> <p>The respondent's concerns about water quality and odours are acknowledged by Council and the report authors. While water quality conditions can deteriorate from time to time, negatively impacting the community's use and enjoyment of the waterway, these changes in water level and periods of entrance closure are natural components of the hydrological and ecological processes operating within ICOLLs.</p>

<p>Residents of a property on the Princes Hwy, Lake Tabourie, are very unsatisfied with the Option 3 recommendation and favour Option 2 referring to the following comments:</p> <ul style="list-style-type: none"> <li>- Even though above floor level flooding does not occur until 3.39m, water inundates the front of the block block at 1.17m, driveway access at 1.2m, and slab and stair entry 1.3m. This results in flooded downstairs bathroom, laundry, garage, sheds, bbq area.</li> <li>- They consider 1.3m opening disastrous, worse than "nuisance flooding".</li> <li>- Experience evacuation issues for them, and also their neighbours, and elderly lady next door. The Council reserve next door will be inundated by 1.3m which will cause the lake to come around the back of our house and completely surround the property with no emergency exits.</li> <li>- They have had SES arrive at 1.23m to sandbag and provide evacuation assistance.</li> <li>- They see Health and Safety concerns including electrocution, septic pollution from unsewered homes and absorption trenches leaching</li> <li>- They emphasize that police advises not to walk through floodwater, however could experience a flooding situation up to 2 months in this situation.</li> <li>- Concern about permanent irreversible damage to house, and impact on house value.</li> <li>- They believe the lake monitoring system is questionable and that it has been broken in the last 2 years.</li> <li>- They experience major drainage issues off the highway and that a 1.3m opening will exacerbate their issues.</li> <li>- They have experienced flooding on the slab 3 times in last 4 years and sewage alarm activated number of times. In the 2016 event they experienced 30cm of water in the house for which an insurance claim has been raised.</li> <li>- They believe that many issues raised in Council's 2006 management plan still have not been addressed by Council and that floodplain mitigation issues are still under consideration to this date.</li> <li>- Residents believe that Council has the obligation to keep all residents and ratepayers safe in the LGA above any environmental issues, and that they are considering legal action if Option 3 will be adopted.</li> </ul>	<p>The raised trigger level of 1.30m AHD has been set in relation to the floor level for the lowest-lying property in the floodplain (2.0 m AHD). Due to re-development of properties, the flood level of the lowest-lying property has been raised to 2.0m AHD.</p> <p>The term 'nuisance flooding' was carried over from a previous report, and has been reworded in this report to 'below floor level flooding' in acknowledgement of the impact below-floor level flooding (i.e. of ancillary buildings and garden areas) has on some community members.</p> <p>The main purpose of mechanical opening of the entrance is to mitigate above floor level flooding. It is noted that mechanical opening does little to reduce peak flood levels during rarer, more severe catchment flooding events. Mechanical opening is targeted at smaller, more regularly occurring flood events like the 20% AEP. A 20% AEP event means that there is a 20% chance that this size event or larger occurs in any given year. Mechanical opening is not effective at reducing peak flood levels during rarer, more severe catchment flooding events, as discussed in Section 3.5 of the report (e.g. the 1% AEP event - which means that there is a 1% chance (that is a one-in-100 year) that a flood event of this size or larger occurs in any given year). The 2016 flooding event, for example, was estimated as likely greater than an 1% AEP event, and it is expected that mechanical opening of the entrance would not have been effective in mitigating the effect of this event as the lake water level rises too quickly for opening. Additionally, severe weather conditions often makes mechanical opening in these circumstances unsafe to execute.</p> <p>As part of the review of the EMP, six options have been considered and assessed, including 'Option with Raised trigger level 1.30m AHD' (Option 3) as well as 'Current approach' (Option 2, trigger level of 1.17m AHD). After assessment they ranked no 1 and no 2 respectively. Raising the trigger level ranked higher as it leads to fewer mechanical openings of the entrance of Lake Tabourie, thereby the environmental impact of the current practices on the Lake.</p> <p>It is noted that this revision of the EMP has been undertaken as part of a larger suite of actions identified in the Floodplain Risk Management Plan (Cardno, 2016), some of which may alleviate some of the below floor level flooding experienced by some residents. The actions in the Tabourie Lake Floodplain Risk Management Plan will be progressively implemented by Council under their LGA-wide floodplain management program as funding becomes available, and considering also issues such as relative reduction in risk to life and property, and reduction in economic damages.</p>
<p>The resident is in favour of Option 2 (keep current trigger level) and makes the following comments:</p> <ul style="list-style-type: none"> <li>- Believes that adopting Option 3 could lead to legal action from residents who are potentially negatively impacted by the entrance management (e.g. destruction of assets and health and safety concerns).</li> <li>- Makes a note about the costs and lead time involved with potential legal action for Council, as well as any potential media attention.</li> <li>- Believes that the outcomes of the Study (Option 3) is led by environmental arguments and Council is not well-informed.</li> </ul>	<p>Legal advice - If there are to be claims in the future then the claimants would need to prove that council had a duty of care and acted negligently. The claimants would then need to prove their loss against the decision to raise the trigger level of EMP to 1.2 metres AHD. Council also has some protections with respect to liability</p>
<p>One resident, representing 10 property owners on the Princes Highway Lake Tabourie. They do not agree with recommended Option 3, and are in favour of Option 2. They raised the following concerns:</p> <ul style="list-style-type: none"> <li>- Nuisance flooding reference is not appropriate as the flooding is in their experience much more severe</li> <li>- At no 12 Princes highway, when the lake reaches a height of 1.0m the water is lapping the bank and at 1.168m it is half way to the back step.</li> <li>- Raising the height to 1.3m means the water will be over back step and the garden at the back (with a clothes line) will be flooded entirely.</li> <li>- Previous flood mitigation actions taken by residents (e.g. earthen berm) will not be sufficient anymore with a raised trigger level.</li> <li>- Drainage pipes to drain water underneath the house may be flooded with a raised trigger level and not work appropriately in those cases.</li> <li>- A raised water level for a maximum of 2 months, could lead to grass deteriorate on lawns, rising damp underneath the house, attraction of mosquito's and mildew bacteria.</li> </ul>	<p>The respondent's concerns, and the impacts of below floor level flooding on their property, are acknowledged. As discussed in Section 2.1 of the report, the current entrance management regime undertaken by Council (which has been in place since 2005) has significantly modified the natural range of fluctuation in estuarine water level, truncating the upper range of water levels. If no intervention was undertaken, or if the trigger level was raised, it is reasonable to expect estuarine water levels would on occasion reach higher levels than is currently the case. It is noted that this revision of the EMP has been undertaken as part of a larger suite of actions in the Floodplain Risk Management Plan (Cardno, 2016), which includes a number of flood modification actions, some of which may alleviate some of the below floor level flooding experienced by some residents. The actions in the Tabourie Lake Floodplain Risk Management Plan will be progressively implemented by Council under their LGA-wide floodplain management program as funding becomes available, and considering also issues such as relative reduction in risk to life and property and reduction in economic damages.</p> <p>The term 'nuisance flooding' was carried over from a previous report, and has been reworded in this report to 'below floor level flooding' in acknowledgement of the impact below-floor level flooding has on some community members.</p>

<p>The respondent is a frequent visitor of the area for his entire life (40+years).</p> <p>Out of the six options, the community member prefers Option 3, but promotes an even higher trigger level than 1.3m. The respondent made the following comments:</p> <ul style="list-style-type: none"> <li>- Realises that flooding of some low lying outbuildings is inconvenient to the owners, but favours the overall health of the lake.</li> <li>- Believes that managed openings will generally happen after extended periods of heavy rain when the lake level comes up very quickly over a few days so any inundation on the low lying private properties are generally short term in nature.</li> </ul>	<p>Option 3, which raises the trigger level to 1.30m AHD, takes into consideration not only the lowest-lying property in the floodplain (2.0 m AHD), but also the rate of rise of floodwaters during the flood and the necessary time required to facilitate a lowering of estuarine water levels (e.g. mobilisation of plant and personnel, time for entrance scour, etc). It is intended to provide sufficient time to ensure that the water level stays below flood level of the properties.</p> <p>It has to be noted that mechanical opening does little to reduce peak flood levels during rarer, more severe catchment flooding events. Mechanical opening is targeted at smaller, more regularly occurring flood events like the 20% AEP. An 20% AEP event means that there is a 5% chance (that is a one-in-20 chance) that a flood event of this size or larger occurs in any one year. Mechanical opening is not effective at reducing peak flood levels during rarer, more severe catchment flooding events, as discussed in Section 3.5 of the report (e.g. the 1% AEP event - which means that there is a 1% chance (that is a one-in-100 year) that a flood event of this size or larger occurs in any one year). The 2016 flooding event, for example, was estimated as being greater than an 1% AEP event, and it is expected that mechanical opening of the entrance would not have been effective in mitigating the effect of this event as the lake water level rises too quickly for opening. Additionally, severe weather conditions often makes mechanical opening in these circumstances unsafe to execute.</p>
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## DE19.123 Lake Conjola Entrance Update and other matters relating to Mayoral Minute MIN19.143

**HPERM Ref:** D19/349266

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

**Attachments:** 1. Email correspondence from Red Head Villages Association and Conjola Community Association [↓](#)

### Purpose / Summary

To provide Council with an update on progress in accordance with the Mayoral Minute, (MIN19.143) dated 26 March 2019.

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

That Council:

1. Receive the report providing an update on Parts 3, 8 and 10 of the Mayoral Minute (MIN19.143) regarding Lake Conjola for information; and
2. No longer 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.

### Options

1. As recommended

Implications: Council will be better informed and updated on Lake Conjola.

2. Propose an alternative recommendation.

Implications: Would depend on the recommendation

### Background

On 26 March 2019 Council passed Mayoral Minute (MIN19.143), relating to the management of Lake Conjola entrance (MIN19.143). The following is a summary of the progress to date relating to the following parts of MIN19.143:

- Part 3: 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.
- Part 8: Report timeframe and priority status for preparation of Coastal Management Plan for Lake Conjola to Council.
- Part 10: Provide monthly update reports to Councillors on all issues concerning Lake Conjola.

### Proposed Dry Notch

Council staff have completed a draft Lake Conjola “Flood Dry Notch” proposal report based on the current available scientific data, contained within existing 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 there is an information gap.

Any proposal, without being informed by relevant data and a specific study, looking into social, environmental and economic implications, can be prone to inaccuracy, as coastal processes are a complex science.

Council staff presented the “Lake Conjola Flood Dry Notch” proposal to Councillors on 26 September 2019. The outcome of the presentation was for Council staff to consult directly with the Red Head Villagers and Conjola Community Association, including offering to give the presentation to the association.

The offer to present the proposal for the Lake Conjola ‘Flood Dry Notch’ was not taken up by either CCB, as they have decided not to undertake any further investigations into a proposed flood dry notch (see Attachment 1).

In light of the community’s decision, it is recommended that Council no longer 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.

### Lake Conjola Coastal Management Program

In April 2019, Council applied for a grant from the NSW Government – Coast and Estuary Program to prepare a Coastal Management Program (CMP) for Lake Conjola. In June 2019, Council was awarded and signed a grant agreement with the NSW Office of Environment and Heritage (OEH). The grant timeframe is from 01/09/2019 to 01/09/2021.

Further to advice received from the NSW Coastal Council, Council pursued the development of the Scoping Study (as per the first phase of the Coastal Management Program (CMP)) for the whole of the city. The Scoping Study was to include the open coast and all estuaries. Further detail regarding subsequent grant variations has been emailed to Councillors.

Council engaged Advisian - WorleyParsons to prepare the citywide scoping study and engaged the RPS Group to undertake the community engagement. This means that all current and future CMPs will not have to undertake a scoping study as part of their CMP preparation, including Lake Conjola.

The community engagement phase of the citywide scoping study was rolled out across the city, with six (6) Focus Workshops and Community Information Drop-In Sessions held at the following locations:

1. Ulladulla;
2. St Georges Basin;
3. Nowra;
4. Lake Conjola;
5. Sussex Inlet; and
6. Shoalhaven Heads.

The milestones, outputs and timeframe for the Lake Conjola CMP are as follows:

Milestone	Outputs	Timeframe
Citywide Scoping Study	Scoping Study Community Engagement report Scoping Study questionnaire evaluation Final Scoping Study report	31/12/2019
Additional studies	Working group established Consultant engaged Additional studies commenced	30/04/2020
Draft CMP	Draft CMP complete and on public exhibition	17/12/2020
Final CMP	Final CMP adopted by Council Grant acquitted.	31/08/2021

Table 1: Lake Conjola CMP grant Milestones, Outputs and Timeframe

#### Condition of the entrance

Further to part ten of the Mayoral Minute (MIN19.143), the following is an update of the condition of the Lake Conjola entrance, including the current lake levels. Any further updates will be provided to Councillors via an email.

On 13 June 2019, Council opened the lake to the ocean and have been closely monitoring the condition of the entrance. The entrance closed on 12 August 2019.

Since closure of the lake entrance, Council have been monitoring the water level and rainfall. Between 16 and 17 August 2019, Lake Conjola received 60mm of rainfall over 24 hours resulting in water level increase from 0.64m to 0.74m. No other significant rainfall has been experienced to date. Lake levels at 12:00 hours on 25/10/2019 were 0.699m AHD.





*Figure 1: Lake Conjola Entrance – Looking South 27/9/2019*

### **Community Engagement**

Council have collaborated closely with both the Red Head Villages Association and Lake Conjola Community Association throughout the planning and implementation process of the recent lake opening. Council have setup a 'Get Involved Page' providing information about Lake Conjola entrance management.

As part of the preparation of the citywide scoping study, six focus workshops and community information drop-in session were held across the Shoalhaven from 24/9/19 to 3/10/19, at six locations across the City.

13 residents from Conjola and surrounding areas attended the focus group workshops across various locations, with five representatives from the Conjola Community Association attending.

The scoping study community engagement report and the draft scoping study report are scheduled to be presented to Council in December 2019 for approval to publicly exhibit.

As part of the preparation of the Lake Conjola CMP, a Working Group, will be formed. This working group will have community representatives from Lake Conjola, including Council staff and State Government Agencies staff.

### **Policy Implications**

The community consultation and associated works will contribute to the production of updated coastal policy.

### **Financial Implications**

Grant variations were required to facilitate the completion of a city-wide scoping study process.

DE19.123

Email correspondence from Red Head Villages Association and Conjola Community Association, to Shoalhaven City Council CEO – dated 17/10/2019

Dear Stephen,

Further to Council's email to the Conjola CCB dated 10th October 2019, proposing the trialling of a dry notch for Lake Conjola, the Executive Committees and replacement CMP working Group of Conjola and Bendalong CCBs have reviewed and considered this proposal and proffer the following comments for your consideration. More specifically...

1. Council's proposal to amend the Interim Entrance Management Policy 2013 to include the proposed dry notch trial presumes changes can be made to the current Policy under the Coastal Management Act 2016, notwithstanding OEH advice to the contrary in February 2019.
2. Further to this last point and based upon a presumption of change, the Conjola CCB presented to Council in February 2019, the Community's immediate preference to lower the trigger level for a Planned Opening to 0.75mAHD, with channel works to commence at 0.65mAHD. So, if change is possible, then lowering the trigger level for a Planned Opening remains the preferred option.
3. Notwithstanding the original Intent of Council's Resolution MIN19.143 and effort to prepare the draft proposal by Council's Environmental Services Section, the dry notch for Lake Conjola proposal is completely without supporting scientific evidence. As such, the broader Conjola Community has no appetite for additional flood risks associated with the unknown. Moreover, the proposed dry notch does not address the overriding need to restore the southern ebb channel to a cleared northern entrance opening.
4. Importantly, the broader Conjola Community has mandated the PBP 1999 recommendation of a Managed Entrance to be adopted for the reasons that it has been scientifically validated; mimics the natural entrance process/condition of a Regime State; and results in an open lake with associated environmental/flood mitigation and cost benefits thereafter. All of which are well documented.

In light of the above and anticipated timeline to a replacement CMP, the Conjola and Bendalong CCBs do not support Council's dry notch proposal and respectfully request that no further Council resources be used to pursue this amendment of the Interim Entrance Management Policy 2013. Unless of course, the preferred option of a reduced trigger level for a Planned Opening can be further investigated.

Yours faithfully,

Robyn Kerves – President Conjola Community Association.

## DE19.124 Potential Impact of Invasive Aquatic Weeds on Sydney Drinking Water Catchment and Shoalwater Infrastructure

**HPERM Ref:** D19/342970

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

**Attachments:** 1. Greater Sydney's Water Supply System [↓](#)

### Purpose / Summary

To inform Council of the concerns raised by WaterNSW regarding the potential impact of Water hyacinth (*Eichhornia crassipes*), Long-leaf willow primrose (*Ludwigia longifolia*) and other invasive aquatic weeds on critical drinking water infrastructure managed by WaterNSW and Shoalhaven Water and to seek endorsement to act appropriately on these concerns.

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

That Council:

1. Write to the Minister for Agriculture and Western New South Wales, urging the Department to introduce a Special Biosecurity Zone for management of aquatic weeds in the WaterNSW Sydney Drinking Water Catchment and Shoalhaven River Catchment;
2. Write to the Illawarra Shoalhaven Joint Organisation (ISJO) seeking their support for establishment of the Special Biosecurity Zone;
3. Write to other councils that have land management roles in the broader Sydney Drinking Water Catchment seeking their support for establishment of the Special Biosecurity Zone. These councils are:
  - a. Wollondilly Shire Council;
  - b. Wingecarribee Shire Council;
  - c. Blue Mountains City Council;
  - d. Lithgow City Council;
  - e. Goulburn Mulwaree Council;
  - f. Queanbeyan Palerang Regional Council;
  - g. Oberon Council; and
  - h. Upper Lachlan Shire Council.
4. Write to the Local Land Services regional weed committees that are established in the catchment area seeking their support for establishment of the Special Biosecurity Zone. These weeds committees are:
  - a. South East Regional Weed Committee;
  - b. Greater Sydney Regional Weed Committee; and
  - c. Central Tableland Regional Weed Committee.

DE19.124

## Options

1. Adopt the recommendation:

Implications: Supporting the establishment of the Special Biosecurity Zone - Aquatic Weeds in the Declared Sydney Drinking Water Catchment and Shoalhaven River Catchment will provide protection for critical State infrastructure and water supply not only for Sydney, but also the Shoalhaven area, as serviced by Shoalhaven Water. Attachment 1 provides an overview of the infrastructure in Greater Sydney's Water Supply System.

2. Not adopt the recommendation:

Implications: Not supporting the establishment of the Special Biosecurity Zone - Aquatic Weeds in the Declared Sydney Drinking Water Catchment and Shoalhaven River Catchment will potentially expose critical State and Council water infrastructure to risk of degradation by establishment of invasive aquatic species.

## Background

In early December 2007 extremely intense rainfall in the Kangaroo Valley area washed Water hyacinth from an ornamental lake in Kangaroo Valley into an adjoining farm dam and then into the Kangaroo River.

This infestation was not known to Council's Noxious Weeds staff at the time of the incident and was reported by a local resident.

The infestation was carried into the Kangaroo River and into Lake Yarrunga behind Tallowa Dam.

## Control Action

Council staff took immediate action to contain existing plants in the farm dam and treat this infestation with herbicide and mechanically remove plants from the farm dam. Council also immediately alerted the former Sydney Catchment Authority [Water NSW] of the incident.

Sydney Catchment Authority weed control staff commenced mechanically removing Water hyacinth from Tallowa Dam/Lake Yarrunga. This involved control activity on excess of 30 km of foreshore and when completed the labour component of the project exceeded 60 days of labour.

It was recorded that the extreme rainfall event that led to the carriage of the Water hyacinth into Lake Yarrunga, scoured the creek line and Kangaroo River watercourse, carrying the Water hyacinth into the lake.

Council staff continue to monitor dams, ponds, creeks and rivers in this area on a seasonal basis.

## South East Regional Weed Committee

At a recent meeting of the South East Regional Weed Committee, the representative of WaterNSW tabled a document seeking support from Shoalhaven City Council and other members of the committee to include the Sydney Drinking Water Catchment as part of the State Water hyacinth Biosecurity Zone.

Currently, the “Water hyacinth Biosecurity Zone” applies to all land within the State, **except for the following regions**: Greater Sydney and South East (but only in the local government areas of Eurobodalla, Kiama, City of Shellharbour, City of Shoalhaven or City of Wollongong).

Considering that part of the Sydney Water Catchment and the Shoalhaven Catchment are critical infrastructure, these areas are worthy of special consideration to ensure protection of the drinking water supply to Sydney and the Shoalhaven.

Water NSW has requested support from local councils, including Shoalhaven City Council and Local Land Services boards in lobbying the Minister for Agriculture and Western New South Wales, The Hon. Adam Marshall MP, for establishment of a Special Biosecurity Zone - Aquatic Weeds in the Declared Sydney Drinking Water Catchment and Shoalhaven River Catchment.

### Legislative provisions

#### **Biosecurity Act 2015 & Biosecurity Regulation 2017**

Currently, under the *Biosecurity Regulation 2017*, Water hyacinth and Alligator weed (*Alternanthera philoxeroides*) are identified as priority weeds. A biosecurity zone is established for Water hyacinth and Alligator weed.

Under Division 2, Clauses 68 and 69 of the Biosecurity Regulation 2017, the Alligator weed biosecurity zone is described in the following terms:

#### **68 Establishment of biosecurity zone**

1. A biosecurity zone, to be known as the **alligator weed biosecurity zone**, is established for all land within the State except land in the following regions:
  - a. Greater Sydney
2. The alligator weed biosecurity zone is established to manage the biosecurity risk of the weed *Alternanthera philoxeroides* (Alligator weed).

#### **69 Regulatory measures**

An owner or occupier of land in the alligator weed biosecurity zone on which there is the weed *Alternanthera philoxeroides* (Alligator weed) must:

- a. if the weed is part of a new infestation of the weed on the land, notify the local control authority for the land as soon as practicable in accordance with Part 6, and
- b. eradicate the weed or, if that is not practicable, destroy as much of the weed as is practicable and suppress the spread of any remaining weed.

Under Division 4, Clauses 72 and 73 of the Biosecurity Regulation 2017, the **Water hyacinth biosecurity zone** is described in the following terms:

#### **72 Establishment of biosecurity zone**

1. A biosecurity zone, to be known as the Water hyacinth biosecurity zone, is established for all land within the State except land in the following regions:
  - a. Greater Sydney
  - b. South East (but only land in that region that is in the local government area of Eurobodalla, Kiama, City of Shellharbour, City of Shoalhaven or City of Wollongong).
2. The Water hyacinth biosecurity zone is established to manage the biosecurity risk of the weed *Eichhornia crassipes* (Water hyacinth).

### 73 Regulatory measures

An owner or occupier of land in the Water hyacinth biosecurity zone on which there is the weed *Eichhornia crassipes* (Water hyacinth) must:

- if the weed is part of a new infestation of the weed on the land, notify the local control authority for the land as soon as practicable in accordance with Part 6, and
- eradicate the weed, or if that is not practicable, destroy as much of the weed as is practicable and suppress the spread of any remaining weed

### Other Aquatic Plants

Under s. 24 of the *Biosecurity Act 2015* other invasive aquatic species (refer to table below) are captured as “prohibited plants” or under “mandatory measures” which specify what land managers must do in respect of the identified biosecurity matter [weed].

#### Prohibited matter

Common name	Botanic name	Mandatory measure
Anchored water hyacinth	<i>Eichhornia azurea</i>	Prohibited matter
Frogbit	<i>Limnobium laevigatum</i> – Inc. all species of <i>Limnobium</i>	Prohibited matter
Lagarosiphon	<i>Lagarosiphon major</i>	Prohibited matter
Pond apple	<i>Annona glabra</i>	Prohibited matter
Spongeplant	<i>Limnobium spongia</i>	Prohibited matter
Water caltrop	<i>Trapa</i> spp	Prohibited matter
Water soldier	<i>Stratiotes aloides</i>	Prohibited matter

#### Prohibited matter

A person who deals with prohibited matter or a carrier of prohibited matter is guilty of an offence. A person who becomes aware of or suspects the presence of prohibited matter must notify the Department of Primary Industries.

#### Mandatory measures

Common name	Botanic name	Mandatory measure
Alligator weed	<i>Alternanthera philoxeroides</i>	<b>Alligator weed biosecurity zone</b> (excludes Shoalhaven City Council) Recommended Regional Measure 1.
Water hyacinth	<i>Eichhornia crassipes</i>	<b>Water hyacinth biosecurity zone</b> (excludes Shoalhaven City Council) Recommended Regional Measure 1.
Hygrophila	<i>Hygrophila costata</i>	Recommended Regional Measure 2.
Kidney-leaf mud plantain	<i>Heteranthera reniformis</i>	Recommended Regional Measure 2.
Long-leaved willow primrose	<i>Ludwigia longifolia</i>	Recommended Regional Measure 2.
Ludwigia	<i>Ludwigia peruviana</i>	Recommended Regional Measure 2.

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Salvinia	<i>Salvinia molesta</i>	Recommended Regional Measure 2.
Senegal tea	<i>Gymnocoronis spilanthoides</i>	Recommended Regional Measure 2.
Water lettuce	<i>Pista stratiotes</i>	Recommended Regional Measure 2.
Sagittaria	<i>Sagittaria platyphylla</i>	Recommended Regional Measure 3.

#### Recommended regional measure 1

*Within the Biosecurity Zone this weed must be eradicated where practicable, or as much of the weed destroyed as practicable, and any remaining weed suppressed. The local control authority must be notified of any new infestations of this weed within the Biosecurity Zone.*

#### Recommended regional measure 2

*Land managers should mitigate the risk of new weeds being introduced to their land. The plant should be eradicated from the land and the land kept free of the plant. The plant should not be bought, sold, grown, carried or released into the environment. Notify local control authority if found.*

#### Recommended regional measure 3

*Plant should not be allowed to be spread to priority sites of high environmental, economic or social value.*

### Policy Implications

Policy implications will be limited as the application of the relevant legislation is already addressed by Council's weed biosecurity management program. The creation of the special biosecurity zone will enhance Council's ability to effectively manage aquatic weeds by enforcement of the *Biosecurity Act 2015* and *Biosecurity Regulation 2017*.

### Financial Implications

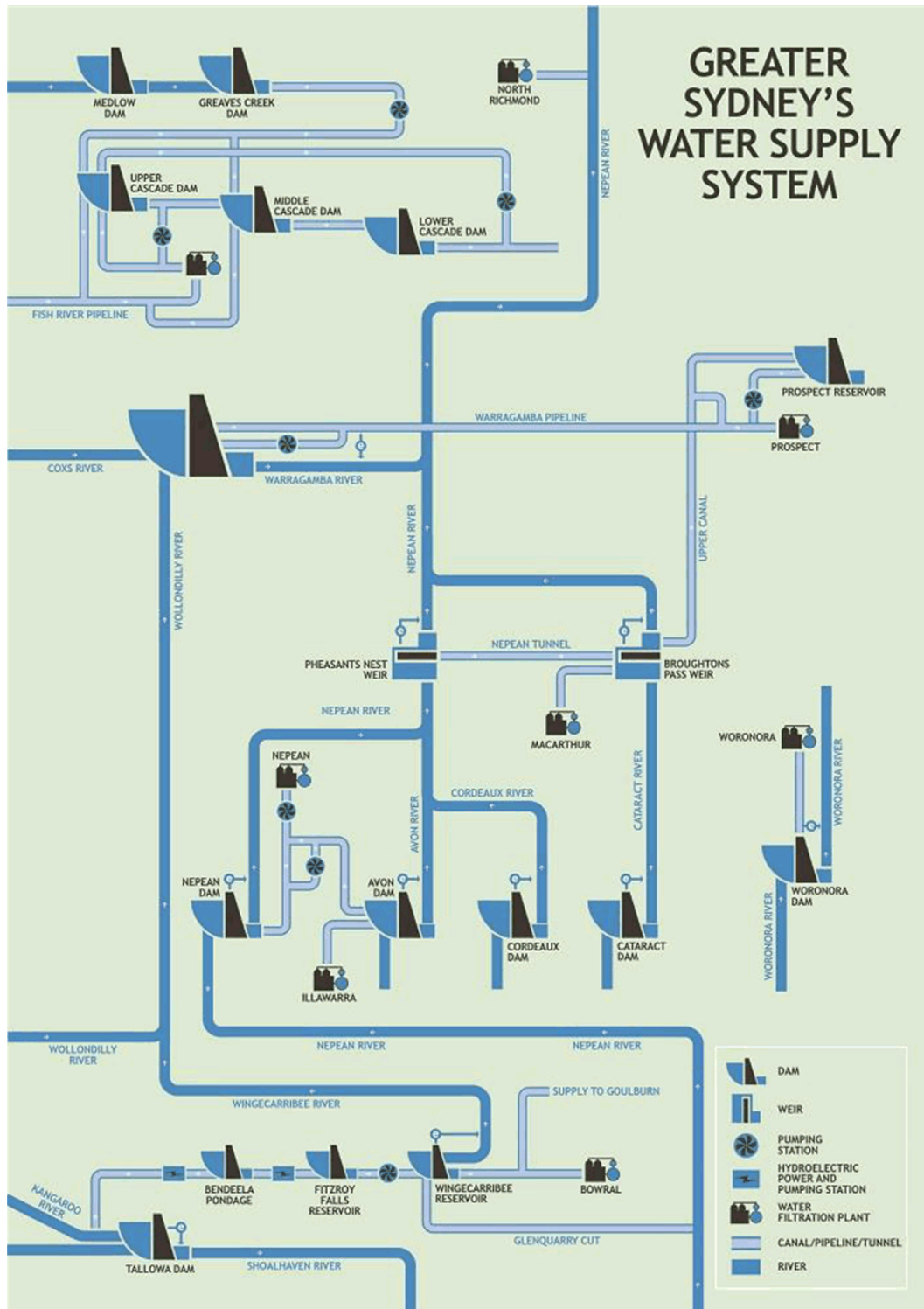
Limited in the current situation. However, if aquatic weeds are allowed to establish in the Shoalhaven drinking water supply and the Sydney Drinking Water Catchment, then the costs of management of aquatic weeds in these areas will increase exponentially.

### Risk Implications

The risk posed to the Shoalhaven drinking water supply and the Sydney Drinking Water Catchment by aquatic weeds cannot be understated. Recent infestation and eradication of Water hyacinth and current control activity on Long-leafed willow primrose, demonstrate the vulnerability of these critical state infrastructure assets to potential threat from invasive aquatic weeds.

Establishment of a special Biosecurity Zone for management of aquatic weeds in the WaterNSW Sydney Drinking Water Catchment and Shoalhaven River Catchment will substantially mitigate the risk posed by serious aquatic weeds.





## DE19.125 Drought Management - Implementation of Water Restrictions

**HPERM Ref:** D19/364372

**Approver:** Stephen Dunshea, Chief Executive Officer

**Attachments:** 1. Communicating Water Restrictions - Survey Results (under separate cover) [⇒](#)  
2. Communicating Water Restrictions - Additional Analysis [↓](#)

### Reason for Report

This report seeks Council's concurrence to implement Level 1 water restrictions from 2 December 2019 whether or not the trigger levels in the Drought Management Plan are met. It also seeks Council's support to review its Drought Management Plan following a recent community survey.

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

That Council

1. Note the current water supply situation.
2. Implement Level 1 Water Restrictions from 2 December 2019 irrespective of trigger levels in Council's Drought Management Plan being met.
3. Undertake a full review of the Drought Management Plan, incorporating "Permanent Water Conservation Measures", following the recent community survey.
4. Receive a further report at the completion of a revised Draft Drought Management Plan, prior to public exhibition.
5. Review and implement marketing strategies to support the key findings and recommendations from the "Communicating Water Restrictions in the Shoalhaven LGA" Report, August 2019.

### Options

1. Adopt the recommendation with regard to implementation of Level 1 water restrictions.  
Implications: Level 1 water restrictions will be implemented on 2 December 2019, with water saving messages being aired in the lead-up to the implementation date.
2. Council could resolve to implement water restrictions in accordance with the trigger levels in the Drought Management Plan.  
Implications: Staff consider that, if water restrictions are not implemented over the peak holiday period, this could convey a negative message to the local community with regard to water conservation.
3. Adopt the recommendation with regard to reviewing the Drought Management Plan.  
Implications: The Drought Management Plan was last updated in 2014 and is outdated. The review would be undertaken incorporating "Permanent Water Conservation Measures" and a full review of other restriction Levels

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4. Council could resolve to leave the Drought Management Plan in the status quo.

Implications: The Drought Management Plan was last updated in 2014 and is outdated. The recent community survey suggests that the community (particularly the younger generation) are in favour of permanent water conservation measures.

## Background

### Current Water Supply Situation

At mid October, 98.4% of NSW was in drought, with the worst affected areas being in the north-west (Namoi/Peel, Macquarie and Border Rivers) and the far west (Barwon-Darling and Lower Darling Valleys). Towns such as Bourke, Orange, Tamworth, Dubbo, Bathurst, Glenn Innes, Cobar, Coonabarabran, Nyngan, Walgett, Walcha and Murrumbundi are rated as high risk of running out of potable water supply. A number of smaller villages in these areas are already receiving potable water by water carting.

Sydney's water storages were at 48% of capacity, and falling at 22 October 2019. Sydney Water customers have been on Level 1 water restrictions since 1 June 2019.

Eurobadalla Shire Council introduced Level 1 water restriction from 14 October 2019.

At 22 October 2019, Shoalhaven's dams were at a total 87% of capacity; individually the dams capacities were:

- Bamarang Dam – 98%
- Danjera Dam – 84.2%
- Porters Creek Dam – 73.2%

The WaterNSW-owned Tallowa Dam was at 1.5 metres below spill level and the flow into Tallowa Dam was 87 megalitres per day (ML/day) and dropping. Shoalhaven Water ceased pumping from the Shoalhaven River to Bamarang Dam on 22 October 2019 when the flow into Tallowa Dam dropped below 90 ML/day, per the Water Sharing Plan and Council's Drought Management Plan.

WaterNSW has received Ministerial approval to pump water from Tallowa Dam to Fitzroy Dam (Sydney system) until Tallowa Dam drops to 3 metres below spill level, from 27 August 2019. The Hon. Melinda Pavey utilised Powers under Sec.49A of the *Water Management Act 2000* to suspend part of the operation of the *Water Sharing Plan for the Greater Metropolitan Unregulated River Water Sources 2011* to enable additional pumping. This action has approval to continue until June 2020, or until notified otherwise.

In the past 12 months Shoalhaven has only received its long term average rainfall in 5 of those months and as such has been close to trigger levels for Level 1 water restrictions. Level 1 restrictions are triggered by Bamarang Dam dropping to 60% of capacity and the first release of water from Danjera Dam. Bamarang Dam is drawn down when Shoalhaven ceases pumping from the Shoalhaven River due to the flow into Tallowa Dam dropping to less than 90 ML/day.

The Bureau of Meteorology's outlook for rain in the Shoalhaven up to the end of November is poor with the current likelihood of receiving average rainfall through this period around 30-40%.

Shoalhaven last implemented water restrictions on 3 September 2018 and removed restrictions from 10 December 2018 (98 days in Level 1 restrictions). Previous to that, restrictions were implemented in 2009/10 for a period of 128 days.

It is estimated that it will take approximately 6 weeks to draw Bamarang Dam down to 60% from the time pumping ceases from the River (from 22 October 2019).

Shoalhaven Water's Drought Management Team are recommending that Council impose Level 1 water restrictions from 2 December 2019, whether or not the trigger levels are met, based on the following:

- 2 December 2019 is the current projected time for triggering Level 1 restrictions based on no significant rainfall.
- We are heading into the high demand holiday period where water demand traditionally increases by around 40%.
- Many holiday makers are from the Sydney area, who are now accustomed to water restrictions.
- Porters Creek Dam and Milton WTP will be required for use over the peak period. These have not been utilised due to the current level of Porters Creek Dam.

### Community Engagement

Council resolved at its Ordinary Meeting in March 2019 as follows:

*That Council*

1. *Engage with the community and seek views on water restrictions, permanent water conservation measures and other possible programs that would be used to develop a new Drought Management Plan and Water Demand Strategy.*
2. *Consider a further Report after community input has been received.*

Following this resolution Shoalhaven Water engaged Iris Research and The Marketing Clan to undertake a community survey and develop marketing strategies. The aims of this research were to:

- Gauge the community's awareness of the Shoalhaven's water sources.
- Gauge the community's awareness of the various levels of water restrictions and their triggers.
- Investigate the community's appetite for change to Council's Drought Management Plan, primarily in terms of whether the status quo should remain or introduce permanent water conservation measures (similar to Sydney Water and Eurobadalla Shire).
- Identify the effectiveness of various communications channels on the community's behavioural responses to assist Council with its marketing strategies.

The full survey results can be viewed in Attachments 1 and 2.

A summary of the key findings from the survey follow.

- Nearly all residents surveyed (96%) are convinced Council's water restriction messages indicate there are current water shortages.
- More than one third of residents surveyed do not understand the meaning of Level 1, 2, 3, 4 water restrictions.
- When seeking response on whether Shoalhaven should have more severe intermittent water restrictions the total sample was almost split between agreeing and disagreeing (55%:45%), it is interesting to note that the 18-39 year old age group strongly supported (74%) more severe, intermittent water restrictions while the 60-74

year old age group were less supportive (48%) and the 75+ age group were only 38% supportive.

- When seeking response on whether Shoalhaven should introduce permanent water conservation measures, again the total sample was almost split between agreeing and disagreeing (49%:51%), however it was again the 18-39 age group showing the greatest support for permanent water conservation measures (63%).
- Only half of the respondents claimed to be aware of the origins of their water supply. When prompted to name the origins only about half of those claiming to know responded with Shoalhaven River.

The key recommendations from the engagement are as follows

- Increase residents' understanding of Levels of water restrictions through education.
- Develop water conservation messages and programs raising awareness of water conservation.
- Increase community awareness of its water sources to engender stronger water conservation attitudes and behaviours.
- Council should have a multimedia approach to messaging.
- Monitoring should be undertaken to assess the success of any water conservation messages and programs undertaken.

### Policy Implications

Council has an adopted Drought Management Plan (2014). It is proposed, through a thorough review process, to ultimately adopt a revised Drought Management Plan which takes into consideration feedback from the community and recommendations from the consultation process.

An aim of the review will also to develop a Drought Management Plan to be better aligned with surrounding Water Authorities/Utilities, i.e. Sydney Water and Eurobadalla Shire.



# THE MARKETING CLAN

Communicating Water Restrictions in the  
Shoalhaven City Council – Additional Analysis

Prepared for  
Shoalhaven City Council

Prepared by  
IRIS Research

August 2019

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**IRIS Research** ABN 16 002 278 793  
POST: Office A, Wing C, Level 1, iC Central, Innovation Campus, University of Wollongong, Wollongong NSW 2522  
OFFICES: iC Central, Innovation Campus, North Wollongong NSW 2500  
Level 1, Suite F, 110 George St, Parramatta NSW 2150  
Net: <http://www.iris.org.au> Email: [research@iris.org.au](mailto:research@iris.org.au)

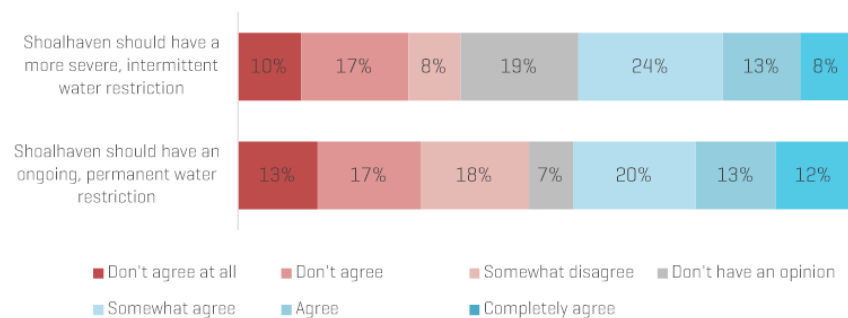
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Respondents were asked to what extent do they agree with two proposed water restriction policies:

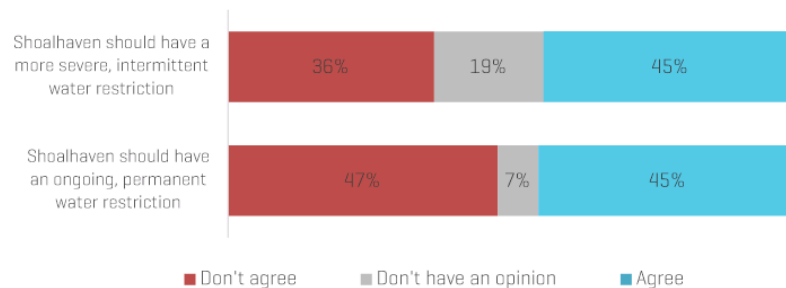
- ▶ More severe water restrictions instituted intermittently
- ▶ Permanent but less severe water restrictions.

Figure 1 displays the agreement results for both policies. Figure 2 displays these results collapsed into 'agree' and 'don't agree' categories. Figure 2 shows that the proportion of Shoalhaven City Council residents that agreed with each policy is the same at 45 percent. However, the proportion of residents who disagreed with permanent restrictions (47%) is higher than the proportion who disagreed with intermittent restrictions (36%). This is due to the difference in the number of residents who had no opinion.

**Figure 1 Agreement with proposed water restriction policies**



**Figure 2 Agreement with proposed water restriction policies – Collapsed**



When residents without an opinion on the policies are removed (see Figure 3), it is clear **there is higher support for more severe, intermittent water restrictions**. This is due to fewer residents disagreeing with this proposed policy compared to permanent restrictions.

Figure 3 Agreement with proposed water restriction policies – No opinion removed

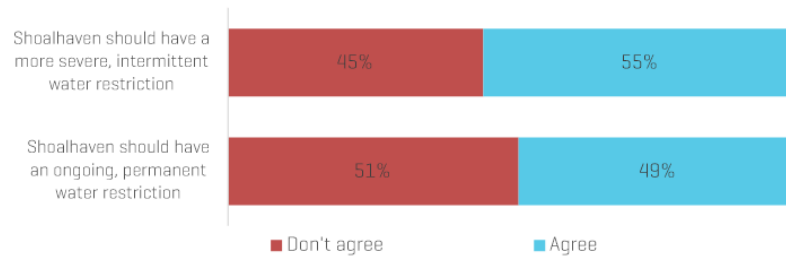


Figure 4 displays agreement results for intermittent water restrictions across gender and age. Support for this policy is highest among female residents (63%), as well as those in the 18 to 39 years (74%) and 40 to 59 years (58%) age groups. Male residents and those aged 60+ years were more likely to oppose this policy.

Figure 4 Agreement with intermittent water restrictions – Subgroup analysis

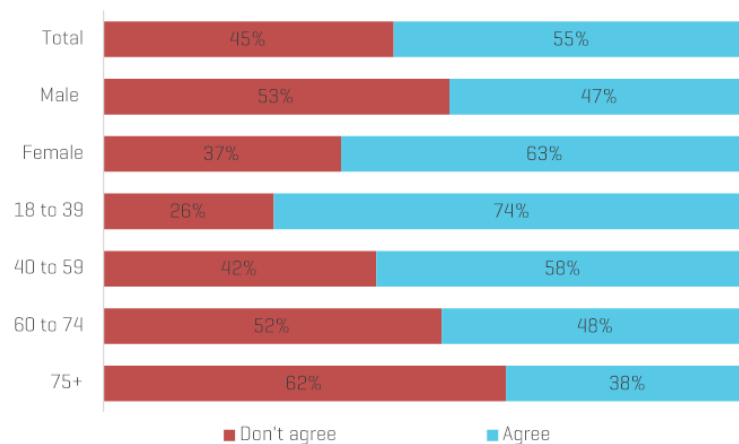
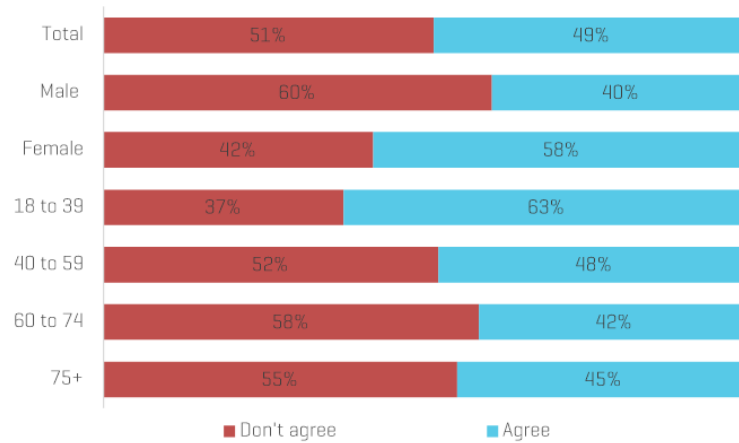




Figure 5 displays agreement results for permanent water restrictions across gender and age. Again, support for this policy is higher among female residents [58%] as well as those age 18 to 39 years [63%]. This shows that these groups favour general action on water conservation and are less concerned with whether restrictions are implemented on an intermittent or permanent basis.

**Figure 5 Agreement with permanent water restrictions – Subgroup analysis**

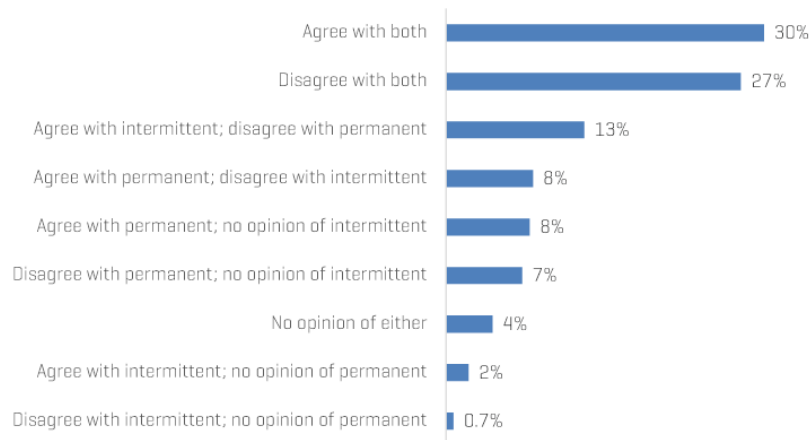


The structure of the questions meant residents could agree, disagree or share no opinion of either policies. As such, there are nine possible combinations of responses [see Figure 4].

Most residents either **agreed with both policies** [30%] or **disagreed with both** [27%]. In total, only 21 percent of residents agreed with one policy while disagreeing with the other. Another 22 percent agreed or disagreed with one policy while sharing no opinion of the other.

These results show that rather than favouring one policy over the other, **residents generally show support for general action on water conservation or disapprove of such action.**

**Figure 6 Combined agreement results**



Tables 1 and 2 display these results by gender and age. Statistically significant differences in results have been highlighted in red and green. The proportion of female residents who agree with both policies is significantly higher compared to male residents. Conversely, male residents disagreed with both policies significantly more than female residents.

Looking at results across age groups, a significantly lower number of residents aged 75+ years agreed with both policies. Residents aged 18 to 39 years disagreed with both policies significantly less than those in the 60 to 74 years age group.

**Table 1 Combined agreement results – Gender**

	Total	Male	Female
Agree with both	30%	22%	37%
Disagree with both	27%	34%	21%
Agree with intermittent; disagree with permanent	13%	15%	11%
Agree with permanent; disagree with intermittent	8%	8%	8%
Agree with permanent; no opinion of intermittent	8%	8%	7%
Disagree with permanent; no opinion of intermittent	7%	9%	5%
No opinion of either	4%	3%	6%
Agree with intermittent; no opinion of permanent	2%	0.5%	4%
Disagree with intermittent; no opinion of permanent	0.7%	0.5%	1%

**Table 2 Combined agreement results – Age**

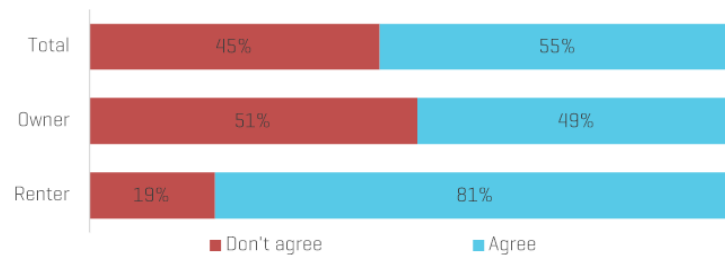
	Total	18-39	40-59	60-74	75+
Agree with both	30%	35%	33%	28%	13%
Disagree with both	27%	9%	30%	37%	29%
Agree with intermittent; disagree with permanent	13%	13%	15%	12%	10%
Agree with permanent; disagree with intermittent	8%	7%	7%	8%	14%
Agree with permanent; no opinion of intermittent	8%	14%	5%	3%	15%
Disagree with permanent; no opinion of intermittent	7%	11%	4%	6%	11%
No opinion of either	4%	7%	4%	3%	2%
Agree with intermittent; no opinion of permanent	2%	3%	2%	1%	5%
Disagree with intermittent; no opinion of permanent	0.7%	1%	-	0.5%	2%

## Home Ownership

Eighty-one percent [81%] of the sample own their current dwelling while 19 percent are renters. Two thirds [65%] of renters are between the aged of 18 and 39.

There is a high level of support among renters for intermittent water restrictions with 81 percent agreeing with this policy. Agreement among owners is rather evenly split with a slightly higher number disagreeing with the policy.

**Figure 7 Agreement with intermittent water restrictions by Home Ownership**



Support for permanent water restrictions is lower among both renters and owners. However, more than half the number of renters [63%] agree with this policy. This aligns with results based on age as respondents who indicated they are renters tend to be younger.

**Figure 8 Agreement with permanent water restrictions by Home Ownership**

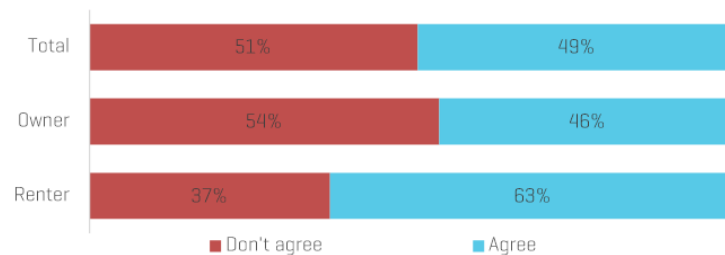


Table 3 shows that renters are significantly more likely to agree with both policies compared to owners. In contrast, owners are significantly more likely to disagree with both policies.

**Table 3 Combined agreement results – Home Ownership**

	Total	Owner	Renter
Agree with both	30%	26%	45%
Disagree with both	27%	31%	11%
Agree with intermittent; disagree with permanent	13%	12%	17%
Agree with permanent; disagree with intermittent	8%	9%	5%
Agree with permanent; no opinion of intermittent	8%	8%	9%
Disagree with permanent; no opinion of intermittent	7%	7%	7%
No opinion of either	4%	5%	2%
Agree with intermittent; no opinion of permanent	2%	2%	4%
Disagree with intermittent; no opinion of permanent	0.7%	0.9%	-

## 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.