

Development & Environment Committee

Meeting Date: Tuesday, 03 December, 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**
 - Planning Environment & Development
 - DE19.126 Exhibition Outcomes and Proposed Finalisation - Planning Proposal:
LEP Clause 6.5 Amendment 17
 - DE19.127 Post Exhibition Consideration and Finalisation - Shoalhaven DCP
2014, Draft General and Generic Amendment (DCP2014.7) 33
 - DE19.128 Proponent Initiated Planning Proposal (Rezoning) - Lot 1 DP
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9. Confidential Reports

Reports

CDE19.2 South Mollymook Beach Cost Benefit and Distribution Analysis

Local Government Act - Section 10A(2)(d)(i) - Commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to reveal commercial-in-confidence provisions of a contract, diminish the competitive commercial value of any information to any person and/or prejudice any person's legitimate business, commercial, professional or financial interests.

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, 5 November 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 Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener – left 8.03pm
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

Apologies / Leave of Absence

Apologies were received from Clr Findley, Clr Guile and Clr Gartner.

Confirmation of the Minutes

RESOLVED (Clr White / Clr Pakes) MIN19.803

That the Minutes of the Development & Environment Committee held on Tuesday 01 October 2019 be confirmed.

CARRIED

Declarations of Interest

Nil

Call Over of the Business Paper

All items on the Agenda were withdrawn for debate.

MAYORAL MINUTES

Nil

DEPUTATIONS AND PRESENTATIONS

DE19.110 Development Application – 52 Cyrus Street Hyams Beach – Lot 58 & DP 577627

Mr Theo van Veenendaal addressed the meeting and spoke for the recommendation.

Ms Colleen Platford addressed the meeting and spoke against the recommendation.

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

Mr Anthony Barthelmess of Rienco Consulting, representing the owners, addressed the meeting and spoke against the recommendation.

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

Ms Susan Clelland addressed the meeting and spoke for the recommendation.

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

Mr Matthew Philpott, representing Allen Price & Scarratts, addressed the meeting and spoke in favour of the recommendation.

DE19.122 Review of Tabourie Lake Entrance Management Policy

Mr Mike James addressed the meeting and spoke for the recommendation.

Mr John Sandlands addressed the meeting and spoke against the recommendation.

Procedural Motion - Bring Item Forward

RESOLVED (Clr Pakes / Clr White)

MIN19.804

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

- DE19.110 - Development Application – 52 Cyrus Street Hyams Beach – Lot 58 & DP 577627
- DE19.111 - Development Application - SF10689 – Greens Road GREENWELL POINT – Lot 1 DP 625828
- DE19.112 - Development Application SF10741 – 636 Murramarang Road KIOLOA – Lot 9 DP 245582
- DE19.113 - Exhibition Outcomes & Finalisation - Planning Proposal PP018, Draft DCP Chapter N18 and Draft Planning Agreement - 510 Beach Road, Berry
- DE19.122 - Review of Tabourie Lake Entrance Management Policy.
- DE19.124 - Potential Impact of Invasive Aquatic Weeds on Sydney Drinking Water Catchment and Shoalwater Infrastructure

CARRIED

REPORTS

DE19.110 Development Application – 52 Cyrus Street Hyams Beach – Lot 58 & DP 577627

**HPERM Ref:
D19/294076**

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.

RESOLVED (Clr White / Clr Proudfoot)

MIN19.805

That:

1. Council approve Development Application DA16/1341 for demolition of the existing dwelling and construction of a two-storey dwelling at 52 Cyrus Street Hyams Beach described as Lot 58 in DP577627.
2. 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.
 - b. Condition 26 be amended by deletion of c, d and e.
 - c. Deletion of Conditions 8, 10 and 45.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Digiglio and Clr Proudfoot

AGAINST: Clr Alldrick, Clr Pakes, Clr Watson, Clr Kitchener and Stephen Dunshea

CARRIED

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

**HPERM Ref:
D19/306348**

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.

MOTION (Clr Pakes / Clr Proudfoot)

That Council approve the Development Application SF10689 for a 'four (4) lot Torrens Title subdivision and placement of fill to create building platforms' under section 4.15 subject to the conditions outlined in Attachment 2 to this report, on the following planning grounds:

1. To provide opportunity for housing on land that is zoned for Residential Development.
2. The land can be modified to provide suitable building platforms above the 1%AEP.
3. The impacts of the development can be mitigated by conditions of development consent.

MOTION (Clr Wells / Clr White)

That the MOTION be PUT.

FOR: Cllr Gash, Cllr White, Cllr Wells, Cllr Aldrick, Cllr Kitchener, Cllr Proudfoot and Stephen Dunshea

AGAINST: Cllr Levett, Cllr Digiglio, Cllr Pakes and Cllr Watson

CARRIED

RESOLVED (Cllr Pakes / Cllr Proudfoot)

MIN19.806

That Council approve the Development Application SF10689 for a 'four (4) lot Torrens Title subdivision and placement of fill to create building platforms' under section 4.15 subject to the conditions outlined in Attachment 2 to this report, on the following planning grounds:

1. To provide opportunity for housing on land that is zoned for Residential Development.
2. The land can be modified to provide suitable building platforms above the 1%AEP.
3. The impacts of the development can be mitigated by conditions of development consent.

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

AGAINST: Cllr Levett, Cllr Digiglio, Cllr Aldrick and Stephen Dunshea

CARRIED

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

HPERM Ref: D19/344549

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.

RESOLVED (Cllr White / Cllr Pakes)

MIN19.807

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.

FOR: Cllr Gash, Cllr White, Cllr Wells, Cllr Levett, Cllr Digiglio, Cllr Aldrick, Cllr Pakes, Cllr Watson, Cllr Kitchener, Cllr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

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

HPERM Ref: D19/319484

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.

RESOLVED (Clr Wells / Clr Proudfoot)

MIN19.808

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 the legal mechanism for the transfer of the E1 land to NPWS is secured, forward the PP to DPIE for finalisation and advise them that the notification of the amended LEP cannot occur until the VPA with OEH is signed by both parties.

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

DE19.122 Review of Tabourie Lake Entrance Management Policy

**HPERM Ref:
D19/345193**

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.

RESOLVED (Clr White / Clr Proudfoot)

MIN19.809

That Council adopt the Tabourie Lake Entrance Management Policy (June 2019), with the policy recommendation to retain the trigger level, for mechanical opening, of 1.17m AHD.

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

AGAINST: Clr Levett and Clr Digiglio

CARRIED

**DE19.124 Potential Impact of Invasive Aquatic Weeds on Sydney
Drinking Water Catchment and Shoalwater
Infrastructure****HPERM Ref:
D19/342970****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.

RESOLVED (Clr Wells / Clr Proudfoot)

MIN19.810

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.

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

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

**HPERM REF:
D19/293353**

Item dealt with earlier in the meeting see MIN19.811

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

**HPERM REF:
D19/332187**

Item dealt with earlier in the meeting see MIN19.812

**DE19.110 Development Application – 52 Cyrus Street Hyams
Beach – Lot 58 & DP 577627**

**HPERM REF:
D19/294076**

Item dealt with earlier in the meeting see MIN19.805

**DE19.111 Development Application - SF10689 – Greens Road
Greenwell Point – Lot 1 DP 625828**

**HPERM REF:
D19/306348**

Item dealt with earlier in the meeting see MIN19.806

**DE19.112 Development Application SF10741 – 636 Murramarang
Road Kioloa – Lot 9 DP 245582**

**HPERM REF:
D19/344549**

Item dealt with earlier in the meeting see MIN19.807

**DE19.113 Exhibition Outcomes & Finalisation - Planning Proposal
PP018, Draft DCP Chapter N18 and Draft Planning
Agreement - 510 Beach Road, Berry****HPERM REF:
D19/319484**

Item dealt with earlier in the meeting see MIN19.808

Procedural Motion - Adjournment of Meeting**MOTION** (Clr Proudfoot / Clr Levett)

That the meeting be adjourned for 5 minutes.

CARRIED

Note: The meeting was adjourned, the time being 7.08pm.

Note: The meeting reconvened, the time being 7.16pm

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 Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

**DE19.108 Updated - Parkcare Action Plans - Shoalhaven Heads
Native Botanic Gardens / Kings Point / Nashos Rotary
Park / Plantation Point****HPERM Ref:
D19/293353****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.

RESOLVED (Clr White / Clr Proudfoot)

MIN19.811

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.

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

AGAINST: Nil

CARRIED

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

HPERM Ref: D19/332187

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.

MOTION (Cllr Pakes / Cllr Watson)

That the item be deferred until the Ordinary meeting of Council to be held on 28 November, to allow staff to provide advice to Council on opportunities to include more flexibility in the ancillary structures clause.

FOR: Cllr Pakes and Cllr Watson

AGAINST: Cllr Gash, Cllr White, Cllr Wells, Cllr Levett, Cllr Digiglio, Cllr Alldrick, Cllr Kitchener, Cllr Proudfoot and Stephen Dunshea

LOST

MOTION (RESOLVED) (Cllr Proudfoot / Cllr Pakes)

MIN19.812

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 Column 1 of Table 1 in this Report that were proposed at the 3 September 2019 Development & Environment Committee meeting. Amendment 'e.' in Column 1 is to be corrected to refer to dot point 2. Acceptable solution A33.2 and associated table 4 and figure 10 are retained as exhibited.
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.

effective.

4. Advise key stakeholders, including relevant industry representatives, of this decision and when the Amendment will be made effective.

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

AGAINST: Clr Levett, Clr Digiglio and Clr Alldrick

CARRIED

DE19.114 Quarterly review for compliance matters

**HPERM Ref:
D19/317494**

Recommendation (Item to be determined under delegated authority)

That Council receive the quarterly report on compliance matters for information.

RESOLVED (Clr Proudfoot / Clr White)

MIN19.813

That

1. Council receive the quarterly report on compliance matters for information.
2. Beach patrols also be provided at Paradise Beach and that Mr Roderick George where possible be involved in discussion at this area.

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

AGAINST: Clr Watson

CARRIED

Note: Clr Kitchener left the meeting at 8:03pm

**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**

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.

RESOLVED (Clr White / Clr Wells)

MIN19.814

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.

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

AGAINST: Nil

CARRIED

DE19.116 Draft Shoalhaven Tree and Vegetation Vandalism Prevention Policy - Post Exhibition Consideration and Finalisation

**HPERM Ref:
D19/318186**

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.

RESOLVED (Clr Digiglio / Clr Levett)

MIN19.815

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.

FOR: Clr Gash, Clr Wells, Clr Levett, Clr Digiglio, Clr Aldrick and Stephen Dunshea

AGAINST: Clr White, Clr Pakes, Clr Watson and Clr Proudfoot

CARRIED

DE19.117 Berry Grey-headed Flying-fox Camp Emergency Grant 2019

**HPERM Ref:
D19/350495**

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.

RESOLVED (Clr Wells / Clr White)

MIN19.816

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.

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

AGAINST: Nil

CARRIED

**DE19.118 Proposed 2019 Heritage Housekeeping Amendment -
Shoalhaven Local Environmental Plan 2014 (PP036)****HPERM Ref:
D19/250223****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.

RESOLVED (Clr White / Clr Digiglio)

MIN19.817

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.

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

AGAINST: Nil

CARRIED

DE19.119 Public Exhibition Outcomes - Proposed Finalisation - Coastal Hazard Review Planning Proposal and Coastal Management Areas DCP Amendment

HPERM Ref: D19/335874

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.

RESOLVED (Clr Wells / Clr Digiglio)

MIN19.818

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.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Aldrick, Clr Watson, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Pakes

CARRIED

DE19.120 NOM - Narrawallee Beach Victor Way - Beach Access Stairs

HPERM Ref: D19/325806

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.

RESOLVED (Clr Proudfoot / Clr Pakes)

MIN19.819

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.
5. Organise an onsite meeting with staff and available Councillors to determine the location and type of barrier to be installed at the rear of the beach.

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

AGAINST: Nil

CARRIED

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

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.

RESOLVED (Cllr White / Cllr Watson)

MIN19.820

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.

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

AGAINST: Nil

CARRIED

DE19.122 Review Of Tabourie Lake Entrance Management Policy**HPERM REF:
D19/345193**

Item dealt with earlier in the meeting see MIN19.809

**DE19.123 Lake Conjola Entrance Update and other matters
relating to Mayoral Minute MIN19.143****HPERM Ref:
D19/349266****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.

RESOLVED (Clr Digiglio / Clr Wells)

MIN19.821

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.

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

AGAINST: Nil

CARRIED

**DE19.124 Potential Impact of Invasive Aquatic Weeds on Sydney
Drinking Water Catchment and Shoalwater
Infrastructure****HPERM REF:
D19/342970**

Item dealt with earlier in the meeting see MIN19.810

**DE19.125 Drought Management - Implementation of Water
Restrictions****HPERM Ref:
D19/364372****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.

RESOLVED (Clr Watson / Clr Pakes)

MIN19.822

That Council

1. Note the current water supply situation.
2. Implement Level 1 Water Restrictions irrespective of trigger levels in Council’s Drought Management Plan being met.
3. Not implement Level 1 Water Restrictions from 2 December 2019 if there is a significant rainfall event that will alter the situation.

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

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 8.26pm.

Clr Gash
CHAIRPERSON

DE19.126 Exhibition Outcomes and Proposed Finalisation - Planning Proposal: LEP Clause 6.5 Amendment

HPERM Ref: D19/419099

Section: Strategic Planning

Approver: Phil Costello, Director Planning Environment & Development Group

Attachments: 1. Submission Summary (under separate cover)
2. Potential Residue Lots Review - Post Exhibition Version [↓](#)

Reason for Report

- Report the outcomes of the public exhibition of Planning Proposal (PP032) to amend Clause 6.5 of Shoalhaven Local Environmental Plan (LEP) 2014, relating to subdivision and dwelling entitlement provisions for residue lots adjoining Urban Release Areas.
- Detail proposed changes to the exhibited PP in response to submissions received and obtain agreement to revise/finalise the PP accordingly.

Recommendation (Item to be determined under delegated authority)

That Council:

1. In response to the submission received during the public exhibition period:
 - a. Amend the exhibited Planning Proposal (PP032) by including the following changes to Shoalhaven LEP 2014 Lot Size Map Sheet (LSZ_013D) for the RU1 (non-urban zoned) portion only of the following lots:
 - i. Lot 5 DP 618693, 202 Bells Lane – reduce the minimum lot size from 40ha to 3ha.
 - ii. Lot 7 DP 618693, Bells Lane – reduce the minimum lot size from 40ha to 7ha.
 - iii. Lot 2 DP 1134376, 112 Bells Lane – reduce the minimum lot size from 40ha to 3,000m².
 - b. Liaise with the NSW Parliamentary Counsel's Office as part of the legal drafting process to enhance the readability of the proposed amended Clause 6.5 by potentially following a similar structure to other clauses which outline: 1) The objective of the clause; 2) Land to which the clause applies; and 3) The specific provisions of the clause.
2. Forward the revised final PP032 to the NSW Department of Planning, Industry and Environment (DPIE) for consideration.
3. If necessary, undertake a further public exhibition of the revised PP in accordance with legislative and Gateway determination requirements, and receive a further report following the conclusion of the public exhibition period. If re-exhibition is not required, adopt PP032 as amended by part 1(a) above, and forward to the NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven LEP 2014 and make the resulting amendment to the LEP using Council's delegation.
4. Advise all affected landowners and those who made a submission of this decision.

DE19.126

Options

1. As recommended.

Implications: This is the preferred option as the issues raised in the submissions will be appropriately addressed and responded to. This will require the PP to be resubmitted to the NSW Department of Planning, Industry and Environment (DPIE) and may require a revised Gateway determination. This could also require the PP to be re-exhibited and delay the PP's completion and the approval of any development applications that are waiting on the amended clause 6.5.

This option is the most robust as it will ensure that issues are resolved now. The risk however is that the PP may need to be re-exhibited, however this will not be confirmed until it has been reviewed by DPIE. The best outcome is that the changes are viewed as within the intent of the exhibited PP and it can proceed to finalisation. The recommendation provides for both outcomes.

2. Not adopt the recommendation and proceed to finalising the PP as exhibited.

Implications: This would rectify the anomaly in the current clause 6.5 and enable subdivisions that propose a residual lot less than the minimum lot size to be approved. There are at least three (3) applications under assessment for Moss Vale Road South URA at the moment that will need the clause to be amended to enable their approval, as there is currently no legal mechanism in the LEP for them to create a residual lot less than the 40ha minimum lot size.

This option would however mean that recommended changes to the PP would need to be deferred or not adopted. There are existing provisions within SLEP 2014 to enable dwelling houses on, or attached to, residual lots, however these require dwelling entitlements to be secured prior to any subdivision taking place, which has been raised in the submissions as an inflexible approach and one that would not achieve the optimal or envisaged planning outcome for relevant sites.

The following suggested alternate wording is provided should the committee be of a mind to finalise the PP as exhibited:

1. *Adopt and finalise the Planning Proposal (PP032) as exhibited.*
2. *Forward PP032 to the NSW Parliamentary Counsel Office to draft the amendment to Shoalhaven Local Environmental Plan 2014.*
3. *Make the resulting amendment to Shoalhaven Local Environmental Plan 2014 using Council's delegation.*
4. *Advise relevant stakeholders of this decision and when the LEP amendment will be made effective.*
5. *Liaise with Parliamentary Counsel as part of the legal drafting process to enhance the readability of the proposed Clause, potentially following a similar structure to other clauses which outline: 1) The objective of the clause; 2) Land to which the clause applies; and 3) The specific provisions of the clause.*

3. Not adopt the recommendation.

Implications: This is not preferred as it would delay the completion of this PP and the timing to rectify the identified anomaly. This could result in some development applications in URAs being unable to be approved where they propose a 'residue' lot containing land zoned RU1, RU2, E2 or E3, as there is currently no legal mechanism to approve a lot in these circumstances that is less than the minimum lot size (generally 40ha in these locations).

Background

Part 6 of the NSW Standard LEP Instrument contains a range of provisions related to Urban Release Areas and their servicing and development.

Clause 6.5 *Erection of dwelling houses on residual lots in certain zones*, was initially inserted into Shoalhaven Local Environmental Plan (SLEP) 2014 to deal with residue rural or similar land resulting from the subdivision of land in an Urban Release Area (URA) that has a split zoning of a residential and a rural/environment zone.

An anomaly was however identified with the current wording of the Clause in that it has no application to the subdivision of land that is not actually within a mapped 'urban release area' boundary. In most existing URAs within Shoalhaven, the mapped 'urban release area' only includes the urban zoned portion and excludes the remaining rural/environmental zoned portion to which the clause is actually intended to apply.

On 22 January 2018, Council's Development Committee considered a report in relation to the identified anomaly and it was resolved to:

1. *Support the preparation and submission of a Planning Proposal for Gateway determination to amend Clause 6.5 of Shoalhaven Local Environmental Plan 2014 to include reference to land associated with Urban Release Areas to rectify the identified anomaly.*
2. *If Gateway determination is received, proceed to public exhibition to at least the requirement specified in the Gateway determination.*

Original PP

The PP was originally submitted to the then NSW Department of Planning and Environment (DP&E) on 26 February 2018 requesting a Gateway determination.

The PP sought to resolve the anomaly to allow subdivision to create a 'residual' lot made up of the non-urban zone, and the potential to obtain development approval to erect a dwelling on the residual lot.

As part of DP&E's review of the PP, consultation was undertaken with the NSW Office of Environment and Heritage (OEH). On 3 May 2018 OEH objected to the submitted PP as they were concerned it would potentially permit the erection of dwelling houses on land already recognised with non-urban attributes such as high biodiversity sensitivity, flood affectation, visual or other buffers or within future road corridors. OEH also considered E2 and E3 zoned lands inappropriate for additional dwelling entitlements and requested that these be excluded from the proposed PP. It was requested that Council take a more strategic approach to managing any residual lands and this triggered a review of all possible residual lots under the proposed Clause.

Review of PP

The strategic review of all potential residue lots was subsequently completed considering OEH's comments in relation to flood prone and biodiversity constrained land and the exclusion of the E2 and E3 zones. This review also considered whether the potential residue lot would be within the future bypass corridor and whether the potential residue lot could be appropriately managed under existing provisions of the LEP - for example clause 4.1E (split zones clause) which would enable land in the urban zone to be within the same lot as the non-urban residue lands.

The review found that all potential residue lots would either:

- Have an existing dwelling entitlement, were constrained by high hazard floodway/future bypass corridor and therefore inappropriate for a future dwelling house, or
- Could be managed via the existing split zones clause, and additional provisions for dwelling entitlement within the PP were not required.

As part of the review, Council staff also investigated the original intent of the current clause when the LEP was being drafted given that it is not a standard clause under the Standard Instrument LEP. It was found that the original intent of the clause was identified in the Development Committee Report of 17 July 2013 as follows:

“Need to include a Clause to deal with residue rural or similar land resulting from the subdivision of the URAs under the draft LEP.”

It was subsequently resolved to:

“Request that DP&E include an additional Clause in part 6 to deal with residue land resulting from the subdivision of the URAs under the draft LEP”.

Revised PP

Following the requested investigation work, a revised PP was submitted to the NSW Department of Planning, Industry and Environment (DPIE) on 5 June 2019.

The revised PP sought to reword Clause 6.5 as below to permit the subdivision of residue lots in URAs below the minimum lot size and to delete the current subclause 2 relating to the erection of dwelling houses on residual lots, with the intention of relying on existing provisions within LEP 2014 to enable dwelling houses on, or attached to, residual lots:

Current wording	Proposed amendment
<p>6.5 Erection of dwelling houses on residual lots in certain zones</p> <p>1) Development consent may be granted for the subdivision of land in an urban release area to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land or less than the minimum lot size permitted for the land immediately before it became, or became part of, an urban release area if the lot is comprised entirely of land in one or more of the following zones (the residual lot):</p> <p>(a) Zone RU1 Primary Production, (b) Zone RU2 Rural Landscape, (c) Zone E2 Environmental Conservation, (d) Zone E3 Environmental Management</p> <p>2) Development consent may be granted for the erection of a dwelling house on a residual lot.</p>	<p>6.5 Subdivision of residual lots in certain zones</p> <p>1) Despite any other provision of this Plan, the size of a lot created in a subdivision of land that is partly or wholly within an urban release area may be less than the minimum lot size shown on the Lot Size Map in relation to the land if the lot:</p> <p>a) contains only land that is within the urban release area, or land that is within the urban release area and land immediately adjoining that land; and</p> <p>b) contains only land that is within one or more of the following zones (the residual lot):</p> <p>(a) Zone RU1 Primary Production, (b) Zone RU2 Rural Landscape, (c) Zone E2 Environmental Conservation, (d) Zone E3 Environmental Management</p>

DE19.126

	It is proposed that the current Clause 6.5(2) be deleted since potential residue lots that are considered suitable for a dwelling entitlement would be able to satisfy existing provisions in Clause 4.2D(3)(a) or Clause 4.2D(5).
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A Gateway determination was subsequently received on 24 July 2019 which determined that the PP could proceed subject to conditions (updated SEPP information, agency consultation and 9 months completion timeframe). The plan making functions for the subsequent LEP Amendment were also delegated to Council.

Public Exhibition

In accordance with the conditions of the Gateway determination, the PP was formally exhibited from Wednesday 21 August to Friday 6 September 2019 (inclusive). The exhibition included:

- Advertisement in the local newspaper;
- Exhibition of the proposed PP and related documentation at the Nowra and Ulladulla Administrative Buildings and on Council's website.

The exhibition material is provided is still available for viewing on Councils internet site at the following link under the 'Planning Documents on Exhibition' heading:

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

- Notification to affected landholders;
- Notification to Development Industry Representatives and Community Consultative Bodies (CCBs).

Government Agency Feedback

Prior to the formal public exhibition, the PP was referred to the NSW Rural Fire Service (RFS) and DPIE – Environment and Conservation Division as required by the Gateway determination. The comments these agencies are summarised below.

Agency	Summary	Staff Comment
NSW Rural Fire Service	Raises no objections to the PP subject to a requirement that any future subdivision of any Urban Release Area includes a building envelope on residue land that retains a dwelling entitlement to demonstrate compliance with <i>Planning for Bushfire Protection 2018/19</i> . This includes, but is not limited to, the provision of asset protection zones, access and water supply in accordance with Table 7.4a.	Noted. Any future subdivision of sites that are 'bushfire prone' will be required at the development application stage to be assessed against and comply with the provisions of <i>Planning for Bushfire Protection 2018/19</i> .
DPIE – Environment and Conservation	PP generally addresses the concerns initially raised by OEHL through clarifying the intended operation of the revised clause and the extent of dwelling	Noted. Any future subdivision that seeks to create a residue lot will be required to consider the future intended use of the land

Division	entitlements. Supportive of the PP in that it does not create a new dwelling entitlement unless the residue lot comprises an existing lawful dwelling or meets the minimum lot size, as per the existing provisions under Clause 4.2D. The final amended wording of the clause should ensure this. Future dwelling DA's on lots with a new dwelling entitlement should ensure that flood-related planning provisions, particularly in areas with no flood studies, and the "avoid, minimise, offset" provisions of the BC Act, are adhered to.	and applicable constraints.
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Community Engagement

As a result of the formal public exhibition, six (6) submissions were received from affected landowners or their consultants.

The submissions received are summarised in **Attachment 1**. Copies of actual submissions will be available for viewing in the **Councillors' Room** prior to the meeting.

The primary issues arising from the submissions are identified below, along with comment from Council staff:

- 1) Concern about the wording of the proposed clause leading to undesirable outcomes.

Staff comment:

- *The current proposed wording has been prepared through legal advice and staff are comfortable that it will achieve its intended outcome and purpose of enabling the subdivision of required residue lot/s below the minimum lot size.*
- *It is however acknowledged that the wording is complex and is unlikely to be understood upon first reading.*

Recommendation:

- To address this concern, Council staff will liaise with the NSW Parliamentary Counsel as part of the legal drafting process for the resulting LEP amendment to better structure the clause and improve its readability.

- 2) Concerned the clause is not flexible enough to facilitate subdivision occurring in a number of different ways and concern that existing dwelling entitlements may be lost.

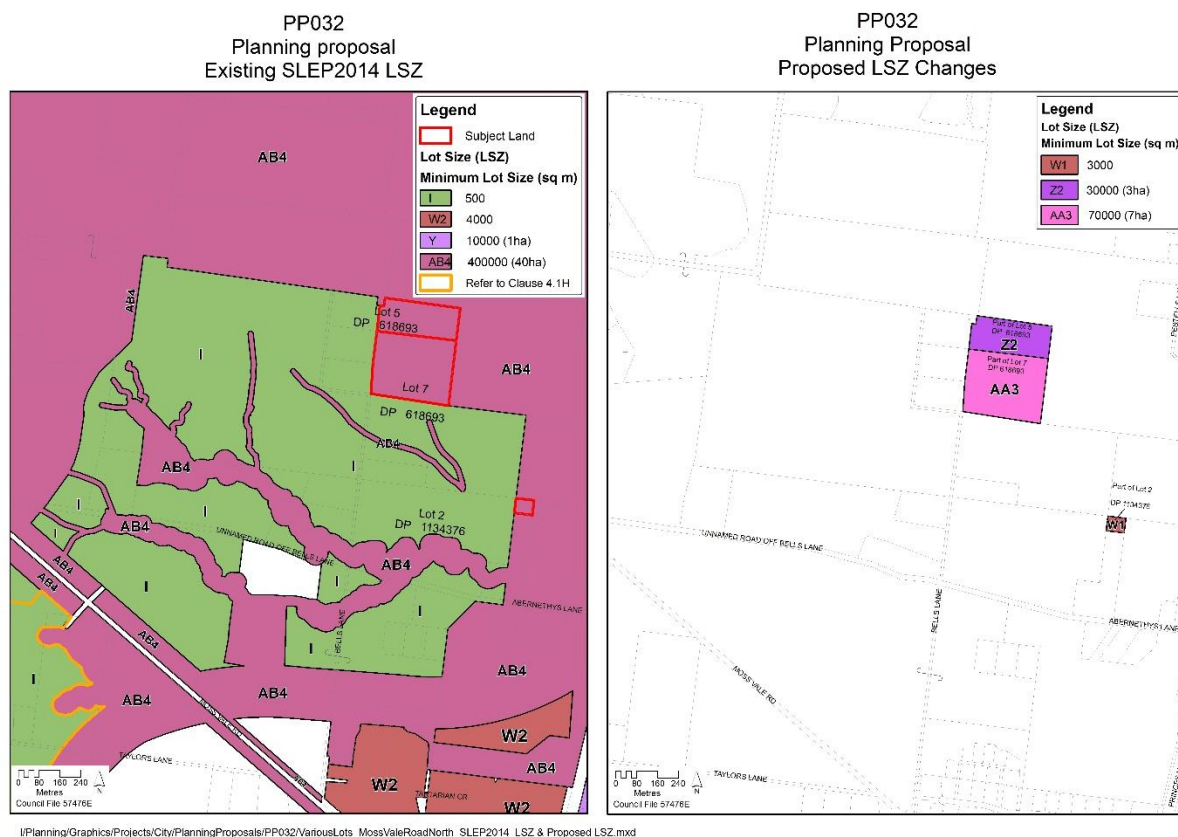
Staff comment:

- *It is the intention that the majority of the development scenarios presented in the submissions would be able to be carried out under the proposed clause, and the clause does permit multiple residue lots to be created as long as they contain only land that is within one or more of the following zones: RU1, RU2, E2, E3.*
- *It is acknowledged that when it comes to securing existing dwelling entitlements, the clause does require any dwelling entitlement to be secured over the non-urban/residue portion prior to any subdivision taking place. This could be achieved via a development application to, for example, relocate an existing dwelling from the urban to the non-urban zoned portion; or for vacant lots with an existing dwelling entitlement, obtaining consent for a new dwelling over the non-urban portion prior to any subdivision taking place.*

- *Although there are existing mechanisms to enable dwelling houses on, or attached to, residual lots, it is noted that these do not provide flexibility for development occurring in a number of different ways.*
- *In considering this concern, informal advice was sought from DPIE where it was suggested that the best approach for dealing with relevant lots may be to map a reduced minimum lot size applying to suitable residue lots.*
- *Lots considered suitable for a reduced minimum lot size should meet the following criteria:*
 1. *Must not be zoned E2 or E3 (OEHL were unsupportive of this approach in the original PP and there may be inconsistencies with 9.1 Ministerial Directions);*
 2. *Must not be flood prone (inconsistency with 9.1 Directions);*
 3. *Must not be within future bypass corridor;*
 4. *Parent lot must have an existing dwelling entitlement under Clause 4.2D which has not been secured over the non-urban residue portion;*
 5. *Must not result in more than one dwelling entitlement for the non-urban zoned portion (residue lot/s); and*
 6. *Must not be proposed to be dealt with through another rezoning, i.e. forming part of the future Moss Vale Road North Planning Proposal.*
- *The original review of all potential residue lots has been updated and modified to highlight which lots may be suitable for or require mapping of a reduced minimum lot size to facilitate a dwelling entitlement - see **Attachment 2**.*
- *Based on this, three (3) lots adjacent to the Moss Vale Road North URA (see figure 1 below) may need a reduced mapped minimum lot size:*
 1. *Lot 5 DP 618693, 202 Bells Lane, Meroo Meadow;*
 2. *Lot 7 DP 618693, Bells Lane, Meroo Meadow; and*
 3. *Lot 2 DP 1134376, 112 Bells Lane, Meroo Meadow.*

Recommendation:

- Amend the PP to provide a reduced minimum lot size (from 40 ha) for the non-urban RU1 zoned portion only of the above lots as shown in Figure 1:
 1. Lot 5 DP 618693, 202 Bells Lane – reduce minimum lot size to 3ha.
 2. Lot 7 DP 618693, Bells Lane – reduce minimum lot size to 7ha.
 3. Lot 2 DP 1134376, 112 Bells Lane – reduce minimum lot size to 3,000m².



- 3) Concerned that the clause will not provide dwelling entitlement provisions for small acre residue lots and would require them to be attached to the residential component of the URA.

Staff comment:

- Under the current proposed clause, potential smaller residue lots that do not have a dwelling entitlement secured over the non-urban portion would need to use Clause 4.1E (split zones clause) to ensure the residual land can be attached to a dwelling house within the urban zone for ongoing management purposes.

Recommendation:

- This issue would be resolved where relevant/appropriate through the recommendations to amending the minimum lot size that are discussed above.

Conclusions

The recommendations outlined above aim to address relevant matters raised in submissions and if accepted by Council can be included in the final PP and this matter can then proceed to finalisation and the required LEP amendment.

Policy Implications

The LEP amendment proposed via this PP will enable the subdivision of certain residue lots that are part of an Urban Release Area in Shoalhaven LEP 2014.

DE19.126

Financial Implications

The PP is being resourced within the existing Strategic Planning budget.

Risk Implications

If the PP does not proceed, some subdivisions in URAs (where the land has a split urban/non-urban zoning and a non-urban residue lot is proposed less than the mapped minimum lot size) will be unable to be approved.

Strategic Review of Potential Residue Lots

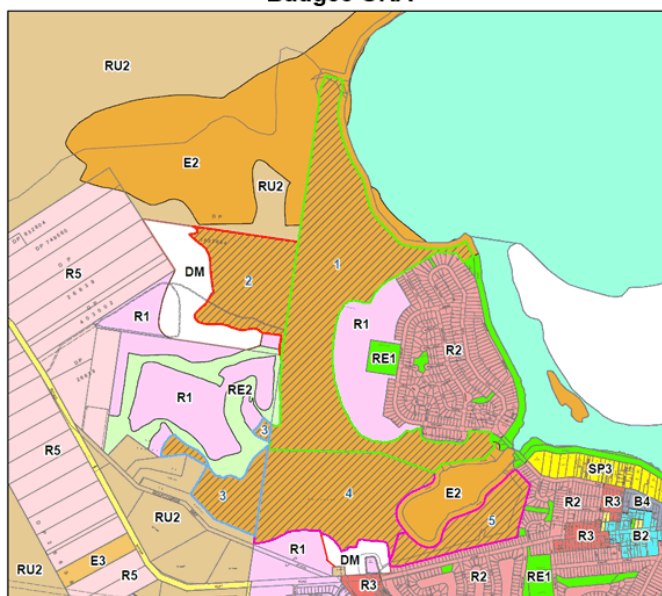
November 2019 – Post Exhibition Version

The following criteria were used to consider if a potential residue lot may be suitable for a reduced minimum lot size to facilitate a dwelling entitlement under the Clause 6.5 Planning Proposal:

Criteria

1. Must not be zoned E2 or E3 (OEH unsupportive in original PP and potential inconsistencies with 9.1 Ministerial Directions).
2. Must not be flood prone (inconsistency with 9.1 Ministerial Directions).
3. Must not be constrained by the future Western Bypass Corridor (clause 7.21 of SLEP 2014).
4. Parent lot must have a dwelling entitlement which has not been secured over the non-urban residue portion.
5. Must not result in more than one dwelling entitlement for the non-urban zoned portion (residue lot/s)
6. Must not be proposed to be rezoned R1 as part of MVRN Planning Proposal.

Badgee URA

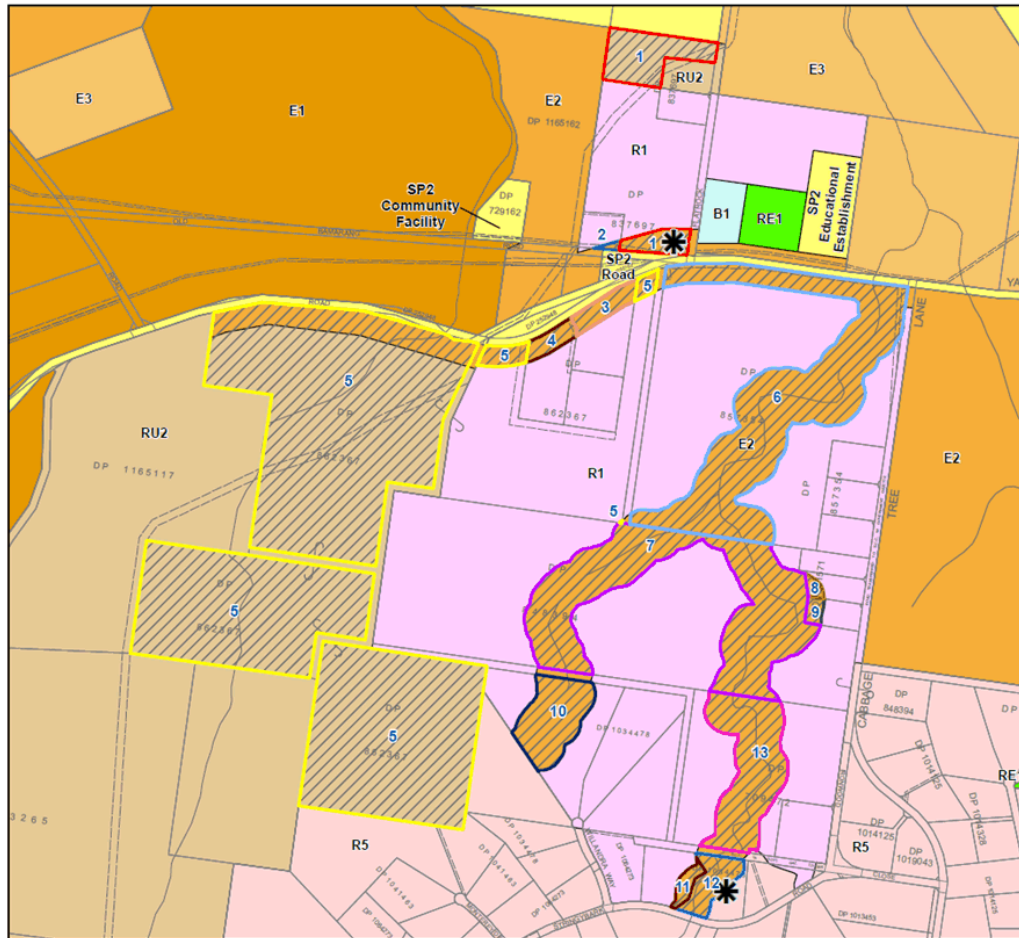


Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m ²)	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
1	Lot 2442 DP 1074478	E2	793,686	No*	No - E2 (OEH unsupportive)
2	Lot 51 DP 1033684	E2	203,816	No	No - E2 (OEH unsupportive)
3	Lot 5 DP 568283	E2	104,483	No	No - E2 (OEH unsupportive)
4	Lot 101 DP 1239084	E2	318,765	No	No - E2 (OEH unsupportive)
5	Lot 102 DP 1239084	E2	114,213	No	No - E2 (OEH unsupportive)
*Lot has dwelling entitlement potential under Clause 4.2D(3)(a) if ≥40ha					

Strategic Review of Potential Residue Lots

November 2019 – Post Exhibition Version

Cabbage Tree Lane URA



Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m ²)	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
1	Lot 4 DP 837697	E2 RU2	9,529.66 29,308.83	Yes^	No - dwelling entitlement has already been secured over the non-urban residue portion
2	Lot 3 DP 837697	E2	866.67	No	No - E2 (OEH unsupportive)
3	Lot 1 DP 862367	E2	9,301.31	No	No - E2 (OEH unsupportive)
4	Lot 2 DP 862367	E2	6,954.27	No	No - E2 (OEH unsupportive)
5	Lot 4 DP 862367	E2 RU2	669,478	No*	No - Potential residue meets Minimum Lot Size
6	Lot 8 DP 857354	E2	165,849.1	No	No - E2 (OEH unsupportive)
7	Lot 4 DP 848394	E2	138253	No	No - E2 (OEH unsupportive)

Strategic Review of Potential Residue Lots

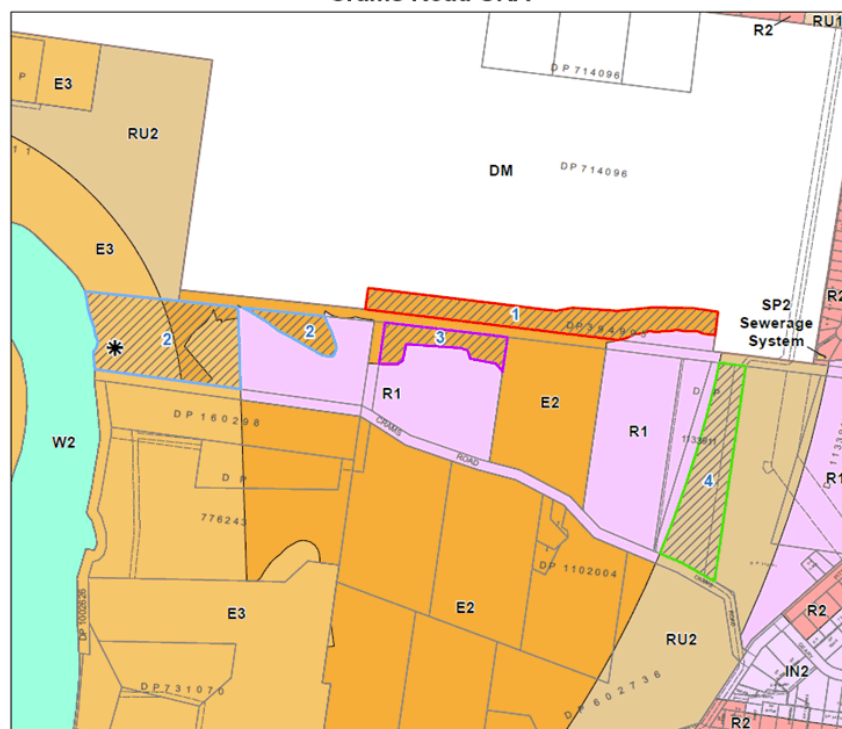
November 2019 – Post Exhibition Version

8	Lot 2 DP 841571	E2	2046.26	No	No - E2 (OEH unsupportive)
9	Lot 3 DP 841571	E2	2938.31	No	No - E2 (OEH unsupportive)
10	Lot 313 DP 1034478	E2	32692.49	No	No - E2 (OEH unsupportive)
11	Lot 305 DP 1034478	E2	4301.6	No	No - E2 (OEH unsupportive)
12	Lot 304 DP 1034478	E2	14109.98	Yes^	No - E2 (OEH unsupportive)
13	Lot 101 DP 709472	E2	58130.04	No	No - E2 (OEH unsupportive)

*Lot has dwelling entitlement potential under Clause 4.2D(3)(a) if ≥ 40 ha

^Lot has dwelling entitlement potential under Clause 4.2D(5) if the existing dwelling is lawfully erected

Crams Road URA



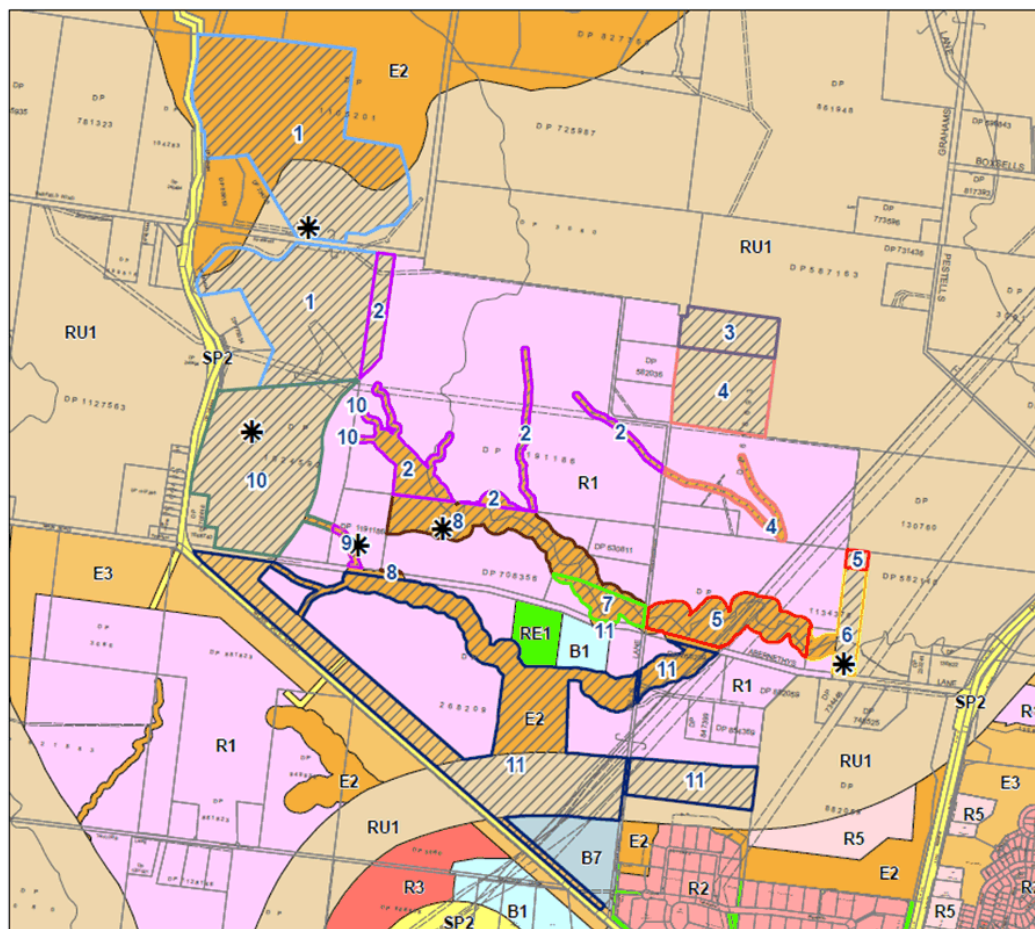
Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m ²)	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
1	Lot 1 DP 394995	E2	28,842.73	No	No - E2 (OEH unsupportive)
2	Lot 121 DP 751273	E2/E3	48,022.66	Yes^	No - dwelling entitlement has already been secured over the non-urban residue portion
3	Lot 267 DP 751273	E2	10,784.3	No	No - E2 (OEH unsupportive)

Strategic Review of Potential Residue Lots

November 2019 – Post Exhibition Version

4	Lot 292 DP 1133911	RU2	29,110.05	No	No - Entirely within future bypass corridor
^Lot has dwelling entitlement potential under Clause 4.2D(5) if the existing dwelling is lawfully erected					

Moss Vale Road North URA



Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m ²)	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
1	Lot 10 DP 1105201	RU1, E2	458,696	Yes^*	No - only 4m ² is within the URA, which is proposed to be removed in a future PP
2	Lot 1 DP 1191186	RU1	20,290.34	No	No - proposed to be rezoned R1
3	Lot 5 DP 618693	RU1	39,145.62	No	Yes - parent lot has dwelling entitlement and residue is unconstrained by E2, E3, bypass
4	Lot 7 DP 618693	RU1	75,785.96	No	Yes - parent lot has unused dwelling entitlement and

Strategic Review of Potential Residue Lots

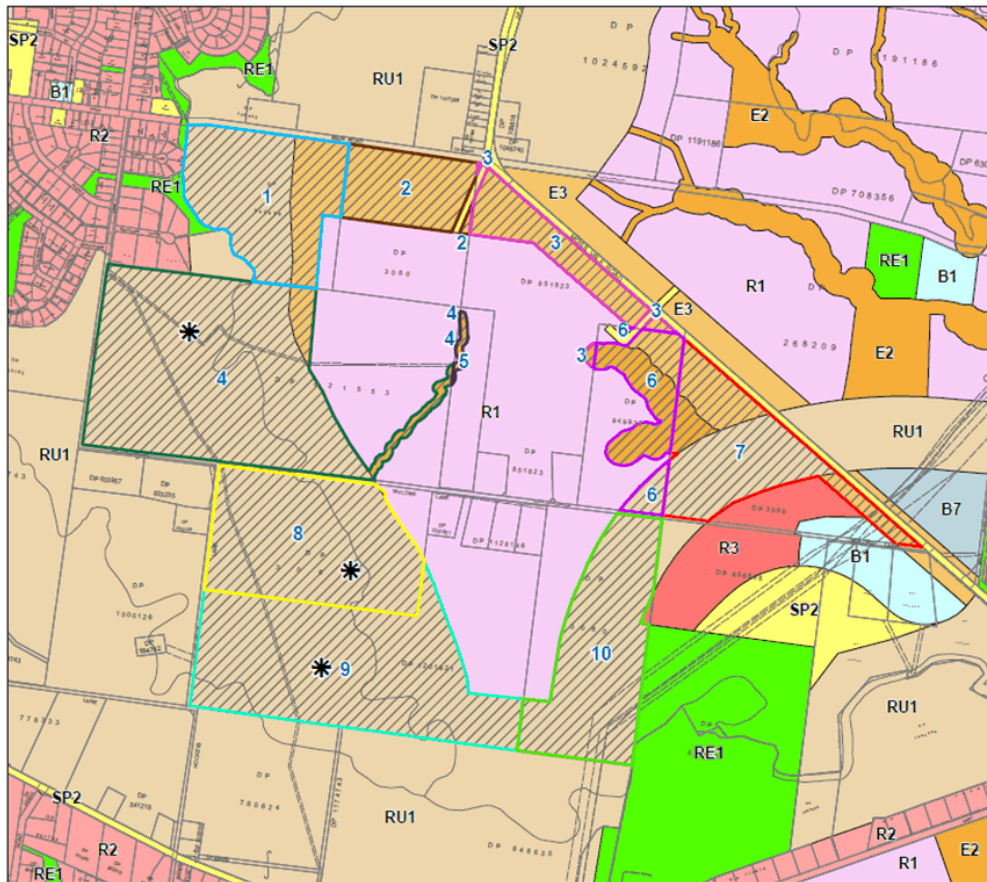
November 2019 – Post Exhibition Version

		E2	14,717.27	No	residue is unconstrained by E2, E3, bypass No - E2 (OEH unsupportive)
5	Lot 2 DP 1134376	E2	58,518.71	No	No - E2 (OEH unsupportive)
		RU1	3,997.56	No	Yes - Parent lot has dwelling entitlement which has not been secured over the non-urban residue portion.
6	Lot 1 DP 1134376	Part E2 Part RU1	29,708.19	Yes^	No - E2 (OEH unsupportive and existing dwelling on RU1 residue)
7	Lot 3 DP 708356	E2	18,963.02	No	No - E2 (OEH unsupportive)
8	Lot 4 DP 708356	E2	70,024.49	Yes^	No - E2 (OEH unsupportive)
9	Lot 2 DP 1191186	E2	3,334.71	Yes^	No - E2 (OEH unsupportive)
10	Lot 54 DP 1024592	E2, RU1	189,347.41	Yes^	No - existing dwelling on RU1 residue
11	Lot 4 DP 268209	E2, E3, RU1	391,268.98	No	No - E2/E3 (OEH unsupportive), RU1 located entirely within future bypass corridor
*Lot has dwelling entitlement potential under Clause 4.2D(3)(a) if ≥40ha					
^Lot has dwelling entitlement potential under Clause 4.2D(5) if the existing dwelling is lawfully erected					

Strategic Review of Potential Residue Lots

November 2019 – Post Exhibition Version

Moss Vale Road South URA



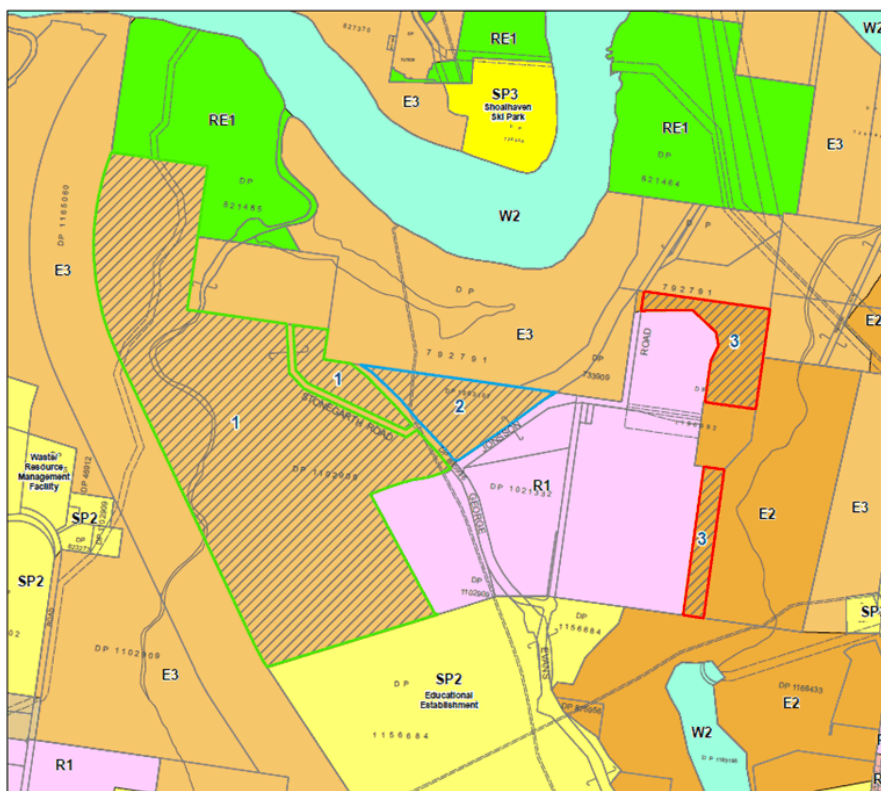
Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m ²)	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
1	Lot 4 DP 542936	E3, RU1	148,446	No	No - entirely flood prone - inconsistent with Section 9.1 Directions + E3 (OEH unsupportive)
2	Lot 127 DP 3060	E3, SP2	73,583.55	No	No - E3 (OEH unsupportive)
3	Lot 3 DP 851823	E2, E3, SP2	61,060.44	No	No - E3 (OEH unsupportive)
4	Lot 2 DP 621553	E2, E3, RU1	340,093	Yes^	No - existing dwelling on RU1 residue
5	Lot 1 DP 621553	E2	3,770.72	No	No - E2 (OEH unsupportive)
6	Lot 1 DP 949932	E2, E3, RU1	63,261.67	No	No - RU1 within bypass corridor + E2/E3 not supported by OEH
7	Lot 122 DP 3060	E2, E3, RU1	133,060.71	No	No - RU1 within bypass corridor + E2/E3 not supported by OEH

Strategic Review of Potential Residue Lots

November 2019 – Post Exhibition Version

8	Lot 119 DP 3060	E2, RU1	193,369.5	Yes^	No - existing dwelling on RU1 residue
9	Lot 102 DP 1201921	RU1	274922.5	Yes^	No - existing dwelling on RU1 residue
10	Lot 116 DP 3060	RU1	162062.4	No	No - RU1 within bypass corridor + flood prone - inconsistent with Section 9.1 Directions
				^Lot has dwelling entitlement potential under Clause 4.2D(5) if the existing dwelling is lawfully erected	

Mundamia URA



Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m ²)	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
1	Lot 473 DP 1102909	E3	820,625	No*	No - Potential residue meets Minimum Lot Size
2	Lot 458 DP 1063107	E3	75,714.33	No	No - E3 (OEI unsupportive)
3	Lot 30 DP 1198692	E2	61,978.28	No	No - E2 (OEI unsupportive)
				*Lot has dwelling entitlement potential under Clause 4.2D(3)(a) if >40ha	

DE19.127 Post Exhibition Consideration and Finalisation - Shoalhaven DCP 2014, Draft General and Generic Amendment (DCP2014.7)

HPERM Ref: D19/373346

Section: Strategic Planning

Approver: Phil Costello, Director Planning Environment & Development Group

Attachments:

1. External Consultation Submission Summary (under separate cover)
2. Proposed Post Exhibition Changes to the Draft Dictionary, Chapter G1, Chapter G8 and the Waste Guidelines (under separate cover)

Reason for Report

- Detail and consider the submissions received as a result of the public exhibition of the draft Amendment (the Amendment) to Shoalhaven Development Control Plan (DCP) 2014.
- Enable the finalisation of the Amendment.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt and finalise the amendments to the General and Generic Chapters of Shoalhaven Development Control Plan 2014 (DCP) as exhibited, with the inclusion of the changes to the following draft Chapters as shown in Attachment 2, based on the summary of submissions at Attachment 1:
 - Dictionary.
 - Chapter G1: Site Analysis, Site Design and Building Materials.
 - Chapter G8: Onsite Sewage Management.
2. Adopt and finalise the new draft Waste Minimisation and Management Guidelines (the Guidelines) with the inclusion of the changes shown in Attachment 2, based on the summary of submissions at Attachment 1.
3. Rescind existing Chapter 3: Exempt Development of the DCP and the Waste Minimisation and Management Guidelines (Policy POL16/171) when the Amendment is made effective.
4. Notify the adoption of the Amendment in local newspapers in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and Regulations.
5. Commence the preparation of a major review of Chapter G8: Onsite Sewage Management of the DCP, including consideration of the feedback received already and consultation with the development industry as required.
6. Advise key stakeholders, including relevant industry representatives, of this decision and when the Amendment will be made effective.

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Options

1. As recommended.

Implications: This is the preferred option as it will enable operational issues and matters that require clarification to be considered and resolved, which will improve the function of the relevant chapters and DCP as a whole.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could delay the implementation of updated and improved DCP provisions.

3. Not adopt the recommendation.

Implications: This could stop the implementation of improved, best practice/modern and better structured provisions in the DCP.

Background

Council resolved on 2 July 2019 (MIN19.464) to:

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

The Amendment seeks to improve the function of the relevant chapters of the DCP, address gaps in policy and address operational issues or matters that need clarification that have been identified since the DCP originally commenced in 2014.

The Amendment includes a review and proposed update of the following existing chapters/content:

- General Chapters and Dictionary:
 - [Chapter 1: Introduction](#)
 - [Chapter 3: Exempt Development \(note: proposed to be rescinded\)](#)
 - [Dictionary](#)
- Generic Chapters:
 - [Chapter G1: Site Analysis, Sustainable Design and Building Materials in Rural, Coastal and Environmental Areas](#)
 - [Chapter G3: Landscaping Design Guidelines](#)
 - [Chapter G5: Threatened Species Impact Assessment](#)
 - [Chapter G7: Waste Minimisation and Management Controls](#)
 - [Chapter G8: Onsite Sewage Management](#)

- [Chapter G17: Business, Commercial and Retail Activities](#)
- [Chapter G19: Home Based Business Activities](#)
- [Chapter G28: Design Guidelines for Permanent Occupation of Caravan Parks](#)

Public Exhibition

In accordance with the Council resolution, the Amendment package was publicly exhibited for a period of 30 days from Wednesday 7 August until Friday 6 September 2019 (inclusive).

Notices appeared in local newspapers on 7 August 2019. All Community Consultative Bodies (CCB's) and relevant development industry representatives (91) were notified directly in writing of the exhibition.

The exhibition material included the following:

- Explanatory Statement.
- Draft Amendment Package (Chapters 1, 3, Dictionary, G1, G3, G5, G7, G8, G17, G19, G28 and the new draft Waste Minimisation and Management Guidelines).
- Newspaper advertisement.

The exhibition package is still available to view on Council's internet site at the following link under the heading 'Planning Documents on Exhibition':

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

As a result of the exhibition, two (2) formal submissions were received from development industry representatives – Allen Price & Scarratts Pty Ltd and Cowman Stoddart Pty Ltd.

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 **Councillor's Room** prior to the meeting.

Post-Exhibition Amendments

Attachment 1 covers the content of the two submissions received, comments on them and highlights adjustments required in response where considered justified/appropriate.

As a result of the submissions, various amendments are proposed to the following three exhibited draft DCP Chapters and the new draft Waste Guidelines, as shown at **Attachment 2** and summarised briefly below. For convenience, the proposed changes are highlighted within the Chapters or Guidelines. **Note:** To reduce the attachment size, only pages with exhibited or recommended proposed changes are provided in **Attachment 2**.

Chapter/Guideline	Summary of key post exhibition changes
Dictionary	<ul style="list-style-type: none"> • Amend 'Continuous accessible path of travel (CAPT)' definition to assist with readability. • Expand 'Ground level (natural)' term name to 'Ground level (natural) or natural ground level' to capture all dated terms in the DCP that meet the LEP definition of 'Ground level (existing)'.
Chapter G1: Site Analysis, Site Design and Building Materials	<ul style="list-style-type: none"> • Update Figures 1-3 (<i>site analysis plan and site development plan examples</i>) to include the boundary dimensions and area of the lot to assist applicants.

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	<ul style="list-style-type: none"> Amend acceptable solutions A1.1 and A1.2, relating to site analysis plan requirements, to note 'where appropriate'. This allows the site analysis plan to be tailored to the type of development without being overly onerous to an applicant and provides a mechanism for requests for further detail as appropriate to the development.
Chapter G8: Onsite Sewage Management	<ul style="list-style-type: none"> Convert note under acceptable solution A5.8 relating to number/types of application systems, back to an acceptable solution (proposed A5.9) and relate specifically to subdivision. Insert new acceptable solution A5.10 specifying an effluent application setback area. Expand note under acceptable solution A10.3 relating to use of effluent for fruit trees, to include the following additional text: "but must be in accordance with A5.10 and AS/NZS 1547". Expand acceptable solution A13.1 to specify that the treatment and application areas form part of the management system. Clarify in Section 7.2.1 (Plan Details) which requirements are in relation to a Section 68 installation approval under the Local Government Act 1993, and therefore do not need to be included in the DA documentation. The s68 content is retained in the Chapter as most people will submit the s68 application with the development application. Amend typographical error – Table 2, row 11, change 'absorb' to 'adsorb'. Table 2, row 12; move paragraph relating to test holes to the row relating to depth to ground water (row 7). <p><i>Note: A number of submission points in Attachment 1 relating to Chapter G8 have been highlighted and identified for consideration as part of a more major review of Chapter G8 (e.g. assessment of native vegetation offsite, sodicity assessment and soil chemistry information) given that they are outside the more 'housekeeping' nature of this chapter amendment and require more detailed consideration.</i></p>
Waste Minimisation and Management Guidelines	<ul style="list-style-type: none"> It is recommended that Section 3.1.6 be amended to specifically note that it applies "to development that requires construction of any waste storage area". This should resolve the problem for development where a waste storage area does not need to be constructed (e.g. subdivision only). <p><i>Note: The Guidelines were exhibited with the proposed DCP Amendment as a 'guideline' of Council and that support the DCP – they are however not formally part of the DCP or a Policy of Council and provide guidance in this regard.</i></p>

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No changes are recommended as a result of the exhibition and comment received in relation to the following Chapters:

- General Chapters and Dictionary:
 - Chapter 1: Introduction
 - Chapter 3: Exempt Development (proposed to be rescinded)
- Generic Chapters:
 - Chapter G3: Landscaping Design Guidelines
 - Chapter G5: Threatened Species Impact Assessment
 - Chapter G7: Waste Minimisation and Management Controls
 - Chapter G17: Business, Commercial and Retail Activities
 - Chapter G19: Home Based Business Activities
 - Chapter G28: Design Guidelines for Permanent Occupation of Caravan Parks

Conclusion

The draft Amendment, with recommended post exhibition changes, will improve the function of the relevant chapters and DCP as a whole. 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 and commented on in **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. The proposed changes will increase efficiency and improve the operation of the Shoalhaven DCP 2014. Should the Amendment not proceed, these fundamental concerns will not be addressed.

The Amendment includes the rescission of the existing [Waste Minimisation and Management Guidelines](#) (a Policy of Council) when the DCP Amendment is made effective.

Financial Implications

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

DE19.128 Proponent Initiated Planning Proposal (Rezoning) - Lot 1 DP 1246435, 55 Wire Lane, Berry

HPERM Ref: D19/369173

Section: Strategic Planning

Approver: Phil Costello, Director Planning Environment & Development Group

Attachments:

1. Biophysical Strategic Agricultural Lands Map - 55 Wire Lane Berry [↓](#)
2. Biodiversity Corridor Mapping - Illawarra Shoalhaven Regional Plan 2015 - 55 Wire Lane Berry [↓](#)
3. Summary of Submissions - 55 Wire Lane Berry (under separate cover)

Reason for Report

Present a proponent-initiated Planning Proposal (PP) that has been received that seeks to rezone land at 55 Wire Lane, Berry (Lot 1 DP 1246435) for Council's consideration and to obtain direction in this regard.

Recommendation (Item to be determined under delegated authority)

That Council

1. Not proceed with a Planning Proposal to rezone 55 Wire Lane, Berry (Lot 1 DP 1246435) to an R5 Large Lot Residential zoning, with a 1 ha minimum lot size, and inform the proponent and submitters of this decision.
2. Advise the proponents of the Local Strategic Planning Statement process, invite them to engage with this process and any associated work on a rural land strategy and the review of the Growth Management Strategy.

Options

1. Not proceed with the PP.

Implications: This is the recommended option as it would maintain the existing planning controls for the site helping to protect an important rural resource by promoting primary production and preventing the fragmentation of the site through subdivision. This option confirms the strategic direction for the management of productive rural land set out in the suite of NSW Government and Council strategic land-use planning documents.

The proponent is however entitled to request an independent review of this decision, known as a Rezoning Review, carried out by the Regional Planning Panel. The most recent and only review of this type in Shoalhaven concerned a rural-residential development proposal for a nearby site. In considering that review, the Panel recommended no further rural residential subdivision be considered by Council until a rural-residential strategy had been developed and regionally significant agricultural lands identified.

Under this option the proponent will also have opportunities to provide feedback on the development of any relevant strategy and related documents (Local Strategic Planning Statement and Growth Management Strategy).

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2. Proceed with the Planning Proposal as submitted.

Implications: The proponent's PP would be submitted to the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway determination. Under this process the Minister (or delegate) decides whether the proposal or an amended version of it should proceed through the Gateway process.

This option is not recommended as the proposal is fundamentally inconsistent with long held Council and State Government policies regarding rezoning of rural land to enable ad-hoc rural residential development.

3. Proceed with an amended version of the Planning Proposal.

Implications: If there is support for an alternative outcome for the site, for example, a different land use zone(s) or lot sizes, an amended PP would be required. Advice would be provided based on any amendments proposed, for example such as an RU4 zoning or a minimum lot size of 10ha consistent with the adjacent land to the west.

Background

Subject Land

The subject land is Lot 1 DP 1246435, 55 Wire Lane, Berry and is located approximately 4.6km east of the Berry township (Figure 1). The subject land is approximately 41 hectares in area and is bounded to the north by Beach Road, to the east by the existing Campbell's Run rural residential estate, to the south by a comparatively sized rural lot, and the west by Wire Lane (Figure 2). The lot was created from a 1976 subdivision (DP 253806) that also yielded several additional lots each with a dwelling entitlement.

There is an existing dwelling and farm shed on the south-western corner of the site. It is understood to be currently used for cattle grazing

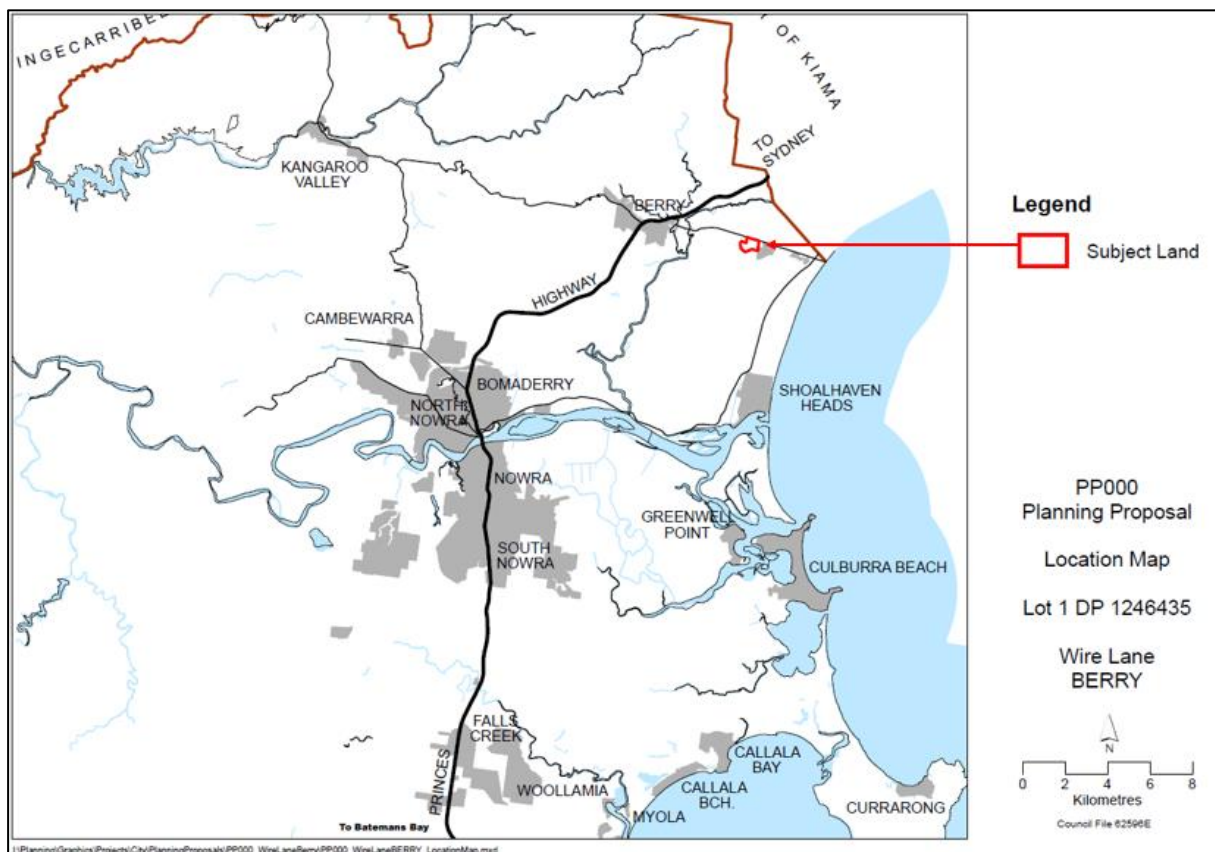


Figure 1: Subject Land - Location



Figure 2: Subject land - Mid-2019 aerial image

Shoalhaven Local Environmental Plan (LEP) 2014 and Related Background

The subject land is currently zoned predominantly zoned RU1 Primary Production with a minimum lot size for subdivision of 40ha under Shoalhaven Local Environmental Plan (LEP) 2014.

However, a small part of the subject land on its eastern edge adjacent to Wire Lane (~0.84ha) is zoned RU4 Primary Production Small Lots with a minimum lot size of 10ha. The RU4 zoned part was previously a separate lot (Lot 2 DP1217124) that was owned by Council. The previous Lot 2 was created through a road closure and transferred to the adjoining and current landowner. The subject land was then created through the consolidation of Lot 14 DP253806 and Lot 2 DP1217124, registered in October 2018.

Part of the subject land is also mapped on the biodiversity overlay in LEP 2014 as significant vegetation/habitat corridor/excluded land.

The broader locality has a complex planning history, specifically associated with consideration for rural residential development, that has resulted in a mix of existing zones and planning controls.

The land to the west of the subject land is zoned RU4 Primary Production Small Lots, with a minimum lot size of 10ha. This land is partially cleared with a historic rural character of diverse lots sizes and housing types, with most of the land subdivided between 1935 and 1991. There are significant stands of vegetation on most of the lots, which are also identified on the biodiversity overlay in LEP 2014.

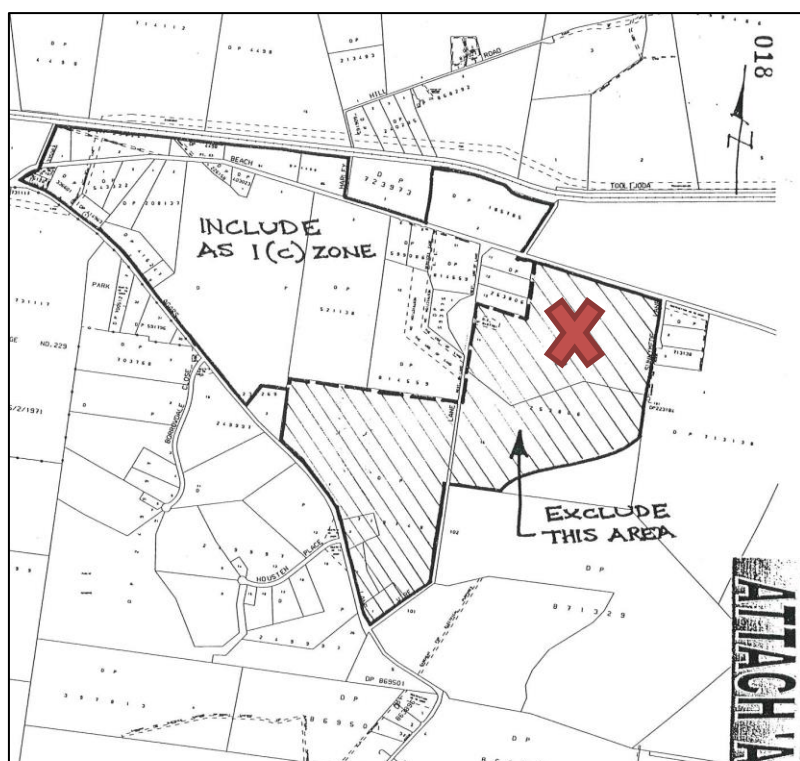
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Prior to 2014, this western area was zoned Rural 1(c)(rural lifestyle) under Shoalhaven LEP 1985. The 1(c) zoning resulted from the Rural Plan Amendments (No.127) to LEP 1985 that were gazetted in 1999.

As part of the preparation of the Rural Plan, the subject land was mapped as proposed Rural 1(c) in a later exhibited version of the draft LEP amendment. It was also later mapped as part of 'Special Rural Lifestyle Area No.13' in the final draft LEP amendment that was submitted to the then NSW Department of Urban Affairs & Planning (DUAP) for gazettal.

Ultimately DUAP would not agree to the proposal for the subject land and other adjacent land (shown hatched on the map below). They requested it be zoned Rural 1(a)(agricultural production) – this appears to have been based on the fact that the lots in question had been added by the Council after the 1994 exhibition of the draft plan and concerns around regional values (prime crop and pasture land, etc). Council subsequently agreed to the adjustment and the LEP amendment was gazetted with the land zoned Rural 1(a).

DUAP also agreed to including 'Special Rural Lifestyle Area No.13' in the final gazetted plan as a Rural 1(c) zone – the following map is an extract from a September 1998 Council report showing the agreed outcome in this location, including for the subject land. The prevailing historic subdivision pattern noted above is clearly evident in this map.



*Figure 3: 1998 Council Report: Agreed Outcome – Rural Plan Finalisation
Red Cross - Current Subject Land*

Schedule 13 was then subsequently inserted into LEP 1985 in 2002 (Amendment No.185) and set the subdivision lot density for certain of the 1(c) zones including the Beach Road area.

This LEP amendment was the subject of a detailed Public Hearing process run by the then NSW Commissioners of Inquiry for Environment & Planning that concluded in 2001. This LEP amendment and the process it followed considered the need for specific subdivision controls in relevant areas based on their characteristics, rather than a blanket minimum lot size.

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The Public Hearing report noted that Council's specific objectives for the Beach Road 1(c) zone were as follows:

Conservation

Retail the conservation values of the remnant coastal forest vegetation in the area and to ensure that development does not reduce these values.

Lifestyle and Rural Character

Recognise the presence of prime crop and pasture land in the area and to provide opportunities for small scale part time farming

Prevent ribbon development along Beach Road and Agars Lane

Services

Provide only a basic level of services in the area in keeping with its low development potential and the potential impact on reticulated water supply on waste water volumes.

Based on the attributes of the land in the Beach Road 1(c) zone associated with prime crop and pasture land and conservation value, the Commissioner found that the subdivision performance criteria proposed by Council were appropriate.

This led to the following density standards in Schedule 13 of LEP 1985 for the Beach Road 1(c) zone:

Ensure that:

(a) No lot is created is less than 10 hectares in area; and

(b) The overall density of lots to be created from a landholding is no greater than 1 lot per 10 hectares.

Through the conversion to the new Shoalhaven LEP 2014, the density standards in this location were covered by the mapped minimum lot size of 10 ha. As a result of the long-standing planning controls for this land within the RU4 zone, there is a distinctly diverse rural character associated with this area, which is substantially different to other rural lifestyle subdivisions that are found along Beach Road to the east of the subject site.

Land to the immediate east of the subject site consists of 3 concessional lots created in 1985 (zoned RU1), and a rural-residential subdivision containing 28 lots between 1 and 4ha in size known as Campbell's Run. This subdivision was approved in 2002. The overall Campbell's Run subdivision covers two separate areas south of Beach Road that are now largely developed and zoned R5 Large Lot Residential under the LEP 2014.

The two parts of the Campbell's Run subdivision were originally rezoned to Rural 1(c)(rural lifestyle) via an Amendment (No. 166) to LEP 1985 which was gazetted on 7 July 2000. The objectives of that rezoning were to permit rural smallholding subdivision on the land to facilitate public acquisition of Coomonderry Swamp, to protect landscape values and to preserve as much of the existing forest cover as possible. This rezoning resulted in the transfer of relevant land to the NSW National Parks & Wildlife Service for addition to the Seven Mile Beach National Park.

It is noted that this Amendment No.166 was considered separately to the Rural Plan amendments to the LEP that were finalised around the same time as it had already been separately under consideration for some time (since 1991/92). On reviewing relevant background, it is apparent that preservation of the swamp was the driving priority in resolving this particular historic amendment.

The area to the east of the subject land between the two areas currently zoned R5 (Lot 4 DP834254, 510 Beach Road) is covered by another PP that has recently been finally adopted by Council and the resultant LEP Amendment is in the process of being finalised. This PP was supported for the following reasons:

- Considered to be in-fill – was located between two existing R5 zones and was previously identified for inclusion in the rezoning from which the two zoned areas resulted.
- Provided an opportunity to bring a further part of the Coomonderry Swamp wetland into public ownership
- Achieve outcomes consistent with the adjacent R5 zoned areas – zoning, minimum lot size and no dwellings within the catchment of the swamp.

The PP that was finally adopted by Council on 5 November 2019 will see the land that makes up the swamp zoned E1 National Parks & Nature Reserve, the area within the catchment of the swamp zoned E2 Environmental Conservation and the area adjacent to Beach Road zoned R5 Large Lot Residential. The mapped minimum lot size for the E2/R5 areas will be a mix of 1, 2 and 4 ha. In this regard it is noted that one of the maps in the proponent's PP (see Figure 6 below) overstates the area of this land that will actually be zoned R5.

Land to the north and south of the subject site is zoned predominantly *RU1 Primary Production* with a minimum lot size for subdivision of 40ha.

The planning and zoning background provided above is relevant to Council's consideration of this matter as it provides important context on the existing zones in this locality, including the subject land, and how they came to eventuate. In this regard it is specifically noted that the subject land was previously considered for a rural residential zoning through the Rural Plan amendments to LEP 1985 and this was ultimately not supported, based on advice from the NSW Government (DUAP).

The following map, Figure 4, provides an existing zoning map of the subject land and surrounding lands. As this map demonstrates, there is a distinct difference between the land zones and prevailing lot configurations of the RU4 area to the west of the subject site, and the R5 area to the east.

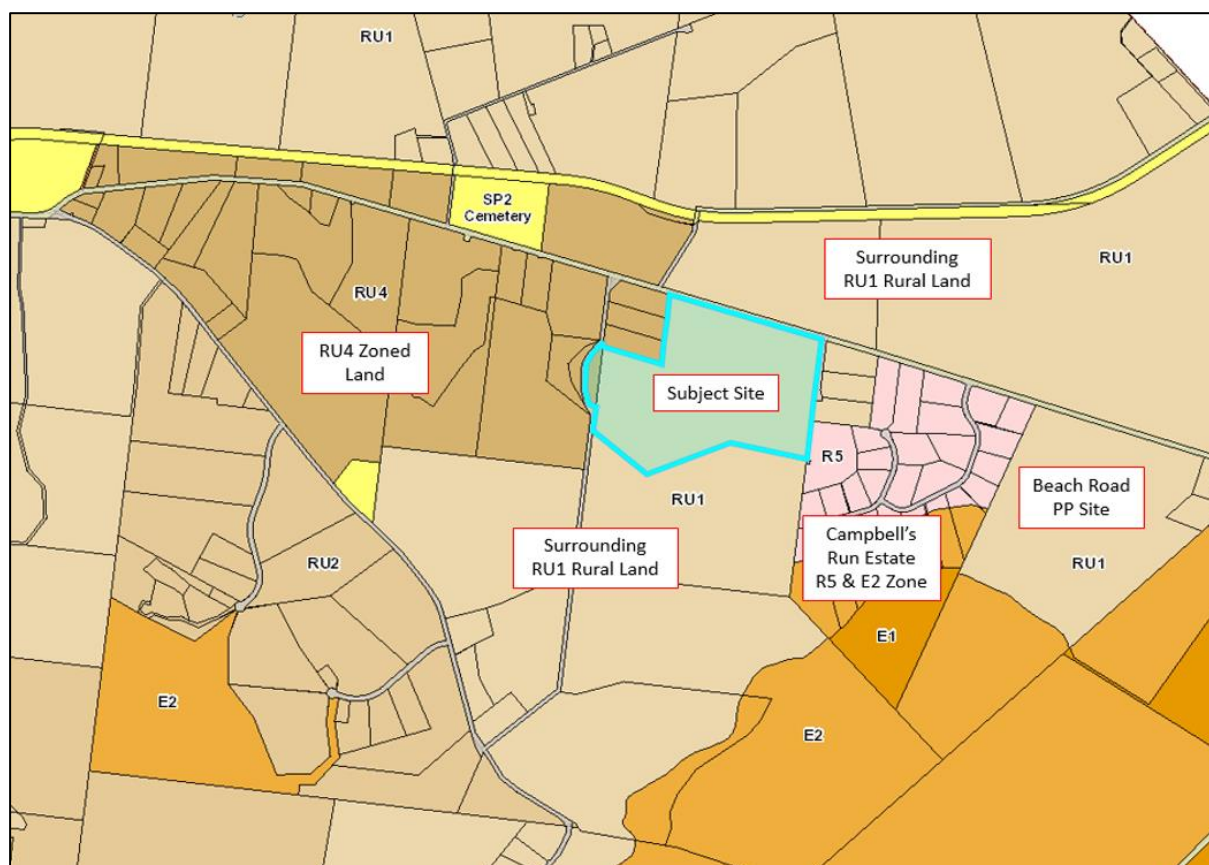


Figure 4: SLEP 2014 Zoning Map of the subject land and surrounding land.

The Proponent's PP

The proponent's PP document and accompanying technical studies were submitted to Council on 12 September 2019 by the landowners Merveilleux Pty Ltd. The PP document was prepared by Indesco Pty Ltd

The proposal seeks to amend LEP 2014 to enable a rural-residential development of potentially twenty-nine (29) 1-hectare lots. Figure 5 below is a concept subdivision layout that was provided as part of the PP document.

The proposal is described in the PP document as 'in-fill' development between two existing rural residential developments with the aim of meeting the market demand for 'prestigious' rural lifestyle properties in the Berry area. The changes proposed to the planning controls in the LEP include:

- Rezoning the entire site to R5 Large Lot Residential, and
- Reducing the mapped minimum lot size for subdivision of the entire site to 1 hectare.

The PP document is accompanied by several technical studies including:

- Land Supply and Demand Analysis Report.
- Agricultural Assessment.
- Ecological Constraints Assessment.
- Water Cycle Management Plan.
- Preliminary Site Investigation.
- Bushfire Assessment.

All the documents can be viewed on Council's website at:

<http://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D19/321948>

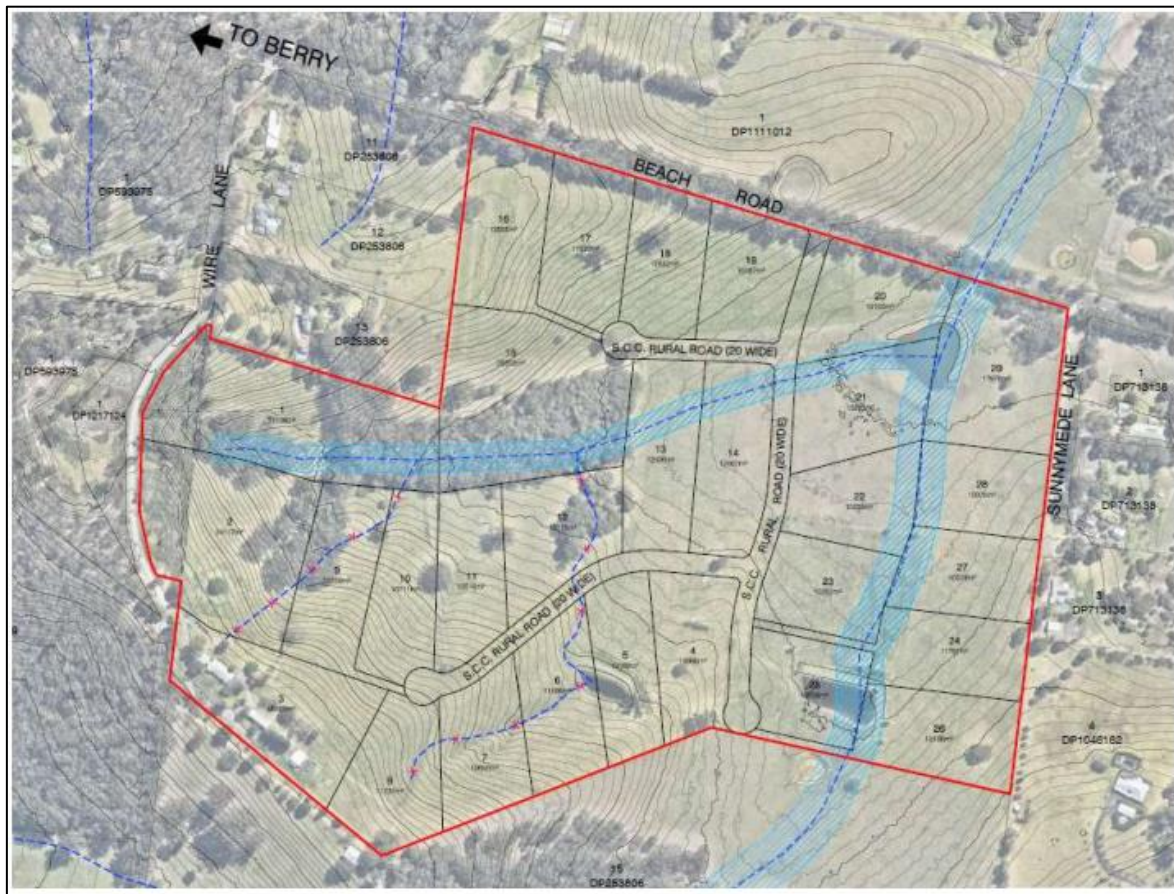
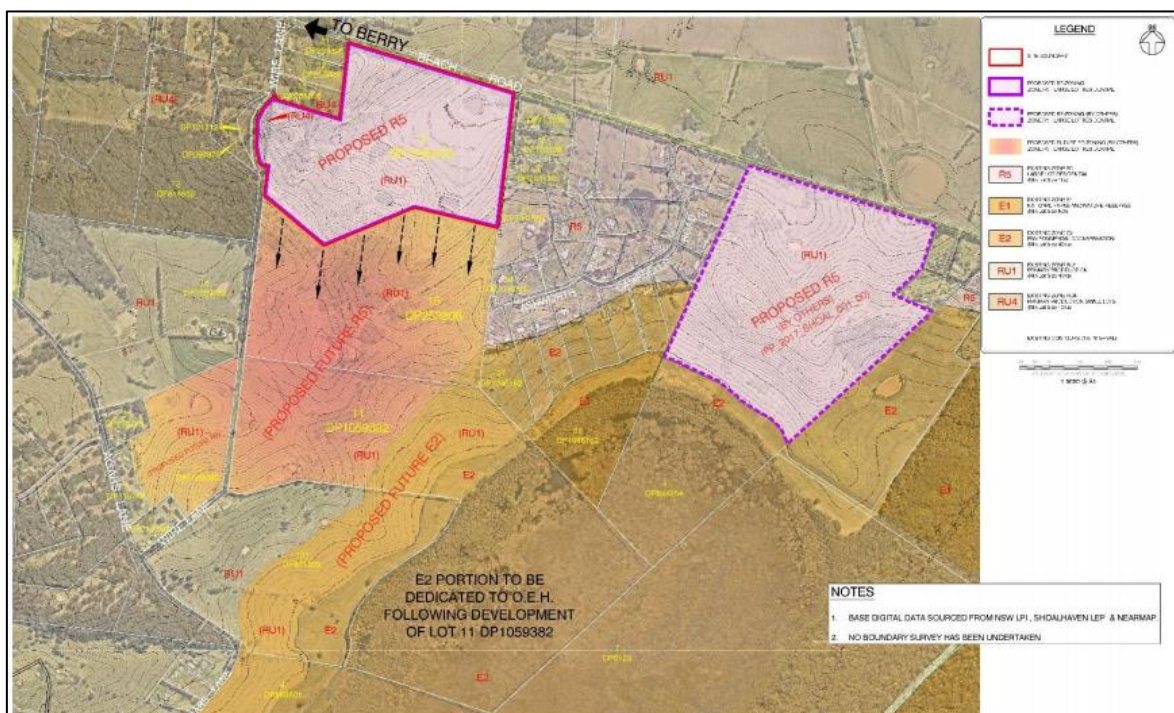


Figure 5: Concept lot layout (Water Cycle Management Study)

While the proposal seeks to change the planning controls applying to 55 Wire Lane, it also identifies a potential 10-year rural lifestyle land release (Figure 6) over the two lots south of the site (70 and 181 Wire Lane). The proposal indicates this would continue to meet a market demand for rural-residential living and help protect additional areas of Coomonderry Swamp.



DE19.128

Figure 6: Potential long-term strategy for a rural lifestyle land release.

The subject land ('proposed R5') and part of the two additional parcels ('proposed Future R5') identified in Figure 6 were previously considered for rural residential zoning through the Rural Plan amendments to LEP 1985 and this was ultimately not supported, based on advice from the NSW Government (DUAP).

It is noted that Council staff received a request in December 2018 for advice/feedback on the broader rezoning proposal shown in Figure 6. The relevant feedback that was provided in response via email was as follows:

- *The current PP that we are progressing in this vicinity was only considered because of the circumstances of that case – was between two areas that had been previously rezoned to enable rural residential/large lot residential development.*
- *Importantly as part of this PP the proponent sought a 'pre gateway' review. As part of that the Joint Regional Planning Panel, whilst supporting the PP progressing given its "infill" nature, made findings/recommendations that are relevant to your request.*
- *Attached is a copy of the JRPP's report to the Minister.*
- *Thus, at present there is no strategic basis to consider further rural residential rezonings in this locality.*
- *Please note that Council has commenced a review of its Growth Management Strategy for Shoalhaven and one of the aspects that will be considered as part of that process is the need for additional rural residential (or similar) development in the City.*

A formal pre-lodgement meeting then occurred in March 2019, relating only to the subject land and not the broader proposal shown in Figure 6. At this meeting, Council staff again advised that it was unlikely they would recommend Council progress a PP as it did not demonstrate strategic merit, is not consistent with current strategic land-use planning documents, and pre-empts a broader body of work determining the value and future role of rural land in Shoalhaven. Council again provided a copy of the Regional Planning Panel's 2016 advice on the 'pre-gateway' review of the PP for 510 Beach Road given its relevance. This advice recommended no further rural residential subdivision be considered by Council until a rural-residential strategy had been developed and regionally significant agricultural lands identified. More detail on the outcome of this review and its relevance later in the report.

The pre-lodgement meeting notes that were subsequently provided to the proponent can be viewed on the internet at:

<http://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D19/323550>

The Southern Regional Planning Panel's advice (report) to the Minister dated 22 November 2018 on the PP for 510 Beach Road can also be viewed on the internet at:

<https://www.jrpp.nsw.gov.au/DesktopModules/JRPP/getdocument.aspx?docid=19795>

Preliminary Assessment of the Proposal

The first step for any proposed change to planning controls is to demonstrate the 'strategic merit' or consistency with strategy of the proposed changes. This requires a review of the PP against strategic land-use planning policy documents including:

- Council's Planning Proposal (Rezoning) Guidelines 2017 and other land-use planning strategies.
- Planning Directions (Section 9.1) issued by the NSW Minister for Planning & Public Spaces (the Minister), and

- Illawarra-Shoalhaven Regional Plan 2015.
- NSW Government's Guide to Preparing Planning Proposals
- Other relevant advice or decisions.

The PP makes a series of assertions that, in the opinion of Council staff, are incorrect and/or inconsistent with prevailing state, regional and local policy. The following is an overview of strategic planning documents and directions relevant to this proposal and commentary where relevant.

1. Council's Planning Proposal (Rezoning) Guidelines

These adopted guidelines detail the circumstances when a PP is likely to be supported by Council, noting a proposal is likely to be supported in the following circumstances:

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

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

The Proponents have argued that the PP is justified because the land has limited agricultural capacity and presents as an 'in-fill development' between two existing rural lifestyle areas. It also appears that the diagram included in their PP document (see Figure 6 above) and associated commentary is an attempt to put some strategy around the current request that does not currently exist. This is considered pre-emptive and does not provide a basis for concluding that this PP is consistent with strategy.

As indicated earlier in the report the subject land and the additional two lots (70 and 181 Wire Lane) that are covered by the proponents 'potential long-term strategy for a rural lifestyle land release' were previously discounted for rural residential rezoning through the Rural Plan process.

The suggestion that the PP presents an 'in-fill development' is also not supported based on the history and circumstances of the existing land use zones that exist to the west and east of the subject land. The proposed development outcome of an R5 zone is not consistent with the adjoining RU4 zone to the west, and the proposed minimum lot size of 1ha is significantly smaller than the mapped minimum lot sizes of 10ha to the both the west and east, irrespective of the prevailing lot sizes and configuration in these areas.

The PP is considered to be inconsistent with Council's guidelines because it does not meet any of the three identified criteria for support.

2. S9.1 Ministerial Planning Directions

The directions issued by the Minister cover a range of matters addressing employment and resource land, environment and heritage, urban development and infrastructure, hazard and risk, and administrative plan making. The directions which must be considered by this PP include:

- *Direction 1.2 Rural Zones* - aims to protect the agricultural production value of rural land by directing Councils to not rezone land from rural to residential unless justified by a study, strategy or in accordance with the Regional Plan.

The PP acknowledges a potential inconsistency with this Direction and provides an Agricultural Assessment which seeks to justify the proposal by asserting the land has limited agricultural capabilities.

This view is however not supported based on the land's identified agricultural value – it is currently mapped as 'prime crop and pasture land'. The importance of protecting this land for the future has been identified through previous zoning decisions that sit behind its current RU1 Primary Production zoning.

Additionally, it is questioned whether the Agricultural Study provided by the proponents with the PP can be construed as a 'study' for the purposes of this direction.

Irrespective of the above, the PP is considered to be inconsistent with the strategic direction to protect rural land set by the Illawarra-Shoalhaven Regional Plan which is discussed further below.

- *Direction 1.5 Rural Lands* - aims, amongst other things, to facilitate the orderly and economic use, management, protection and development of rural land for rural purposes. This direction sets several considerations that must be met before land use zones and development standards can be changed.

The PP again acknowledges a potential inconsistency with this Direction; however, asserts its consistency with the rural subdivision provisions of LEP 2014 based on the premise of 'in-fill development'. However, the PP does not address the underlying issues of rural land fragmentation and the lack of strategic merit/consistency with strategy.

In addition, the provisions in this direction are intended to manage development on appropriately zoned land, not to argue the case for rezoning of existing rural land.

- *Direction 5.10 Implementation of Regional Plans* - requires proposals to be consistent with the directions of the Regional Plan.

The PP asserts that it is 'not inconsistent' with this Direction. However, an assessment of the proposal against the Regional Plan identifies several inconsistencies, as detailed and discussed below.

3. Illawarra Shoalhaven Regional Plan 2015

The Regional Plan sets the strategic policy, planning and decision-making framework to guide the sustainable growth of the region, through a series of Goals, Directions and Actions.

The Directions within the Plan that are relevant to this proposal include:

- *2.1 Provide sufficient housing supply to suit the changing demands of the region.*
- *2.2 Support housing opportunities close to existing services, jobs and infrastructure in the region's centres.*
- *4.1 Protect regionally important agricultural lands as an asset to food and fibre production.*
- *5.1 Protect the region's environmental values by focusing development in locations with the capacity to absorb development.*

The PP states that it is consistent with Direction 2.1 as it will "address a specific market demand for rural-lifestyle lots in the northern Shoalhaven". While the accompanying *Land Supply and Demand Analysis Report* indicates strong demand for rural lifestyle lots, particularly in the Berry area, the proposed development will have a limited contribution to the number of new homes and does not address the underlying issues associated with housing location, affordability, or diversity – in short is additional rural residential zoning/development needed in Shoalhaven, if so in what location/s based on appropriate consideration and in what form?

The PP does not address Direction 2.2, which identifies the Berry township as a potential growth centre with opportunities for increased densities through dual occupancy development. The proposal is fundamentally inconsistent with this Direction as this out-of-

centre location will not make efficient use of existing infrastructure and services, or provide homes close to jobs, shops and services.

The PP claims Direction 4.1 does not apply as the site is not identified on the *Biophysical Strategic Agricultural Land (BSAL) Map* – the current tool used to identify regionally important resource land. However, a review of this map indicates the site is partially identified as strategic agricultural land “*highly suitable for agriculture*” and “*capable of sustaining high levels of productivity*” (**Attachment 1**). It is noted that this mapping was prepared for use in association with State Environmental Planning Policy (SEPP)(Mining, Petroleum Production and Extractive Industries) 2007. One of support documents in this regard notes the following:

- *As this land is mapped at a broad regional scale, there may be circumstances in which the maps do not fully reflect the existence of BSAL on the ground.*
- *A site verification process has been introduced to confirm whether a specific site does, in fact, contain BSAL, before proceeding through the Gateway process. (Note: Gateway process under the SEPP).*

Direction 4.1 also highlights the importance of agricultural land in Berry, noting it “*is one of the features of the landscape that attracts both residents and tourists*”. The PP provides no commentary in this regard.

The PP does not address Direction 5.1, which discusses the importance of protecting biodiversity corridors linking areas of high environmental value. The subject site is partially mapped as a biodiversity corridor connecting to and supporting the nearby Seven Mile Beach National Park and Coomonderry Swamp (**Attachment 2**), which are identified in the Regional Plan as areas of high environmental value. While the PP does not explicitly propose the removal of native vegetation and is accompanied by an Ecological Constraints Assessment, it does not consider the contribution of the site to the broader wildlife corridor identified in the Regional Plan.

4. NSW Government’s Guide to Preparing Planning Proposals

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

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

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

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

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

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

The consistency with the existing Regional Plan is discussed above.

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

The consistency with the Shoalhaven Growth Management Strategy is discussed below.

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

The PP suggests that it is 'not inconsistent' with SEPP No.55 Remediation of Land. A Stage 1 Preliminary Site Investigation (PSI) has been prepared and a single area of concern identified that has been suggested should be further assessed. The PSI concludes that the site may be considered suitable for the proposed use.

Interestingly, the PP does not comment on the Primary Production & Rural Development SEPP (2019) and only notes its relevance. One of the aims of this SEPP is to: 'reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources'.

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

The consistency, or otherwise, with relevant Ministerial Directions is discussed above.

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

At this stage, given the significant inconsistency with strategy, the supporting reports provided by the proponents have not been reviewed in any detail by Council staff.

It is however noted that the provided 'Ecological Constraints Assessment' identified some areas of 'moderate' ecological constraint and no areas of 'high' ecological constraint.

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

At this stage given the significant inconsistency with strategy the supporting reports provided by the proponents have not been reviewed in any detail by Council staff. If the PP is supported to move forward, then appropriate technical reviews and assessments will be required.

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

The argument advanced by the proponent essentially relies on the benefit provided by the proposed additional rural lifestyle lots in northern Shoalhaven that would result from the PP

The broader social and economic effects that may result from the PP have not been addressed.

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

The Proponent has argued that there is adequate infrastructure for this low scale proposal.

If this PP were supported, this would be investigated in detail after a Gateway determination is issued.

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

No Gateway determination has been sought or issued at this stage and the views of any government authorities are unknown.

5. Regional Planning Panel Advice – PP at 510 Beach Road, Berry

As discussed earlier in this report, Council is currently finalising another proponent-initiated PP for 510 Beach Road, Berry with the aim of implementing the earlier plan of delivering a balanced rural-residential and environmental outcome associated with Coomonderry Swamp.

This PP was subject to an independent rezoning review (pre-gateway) carried out by the Regional Planning Panel. In its report to the Minister the Panel concluded the following:

- *Council has not undertaken a strategic exercise of identifying lands suitable for rural residential landscape and subdivision.*

- *It is the Panel's view that Council needs to address this strategically to avoid future ad hoc decisions.*

In this regard the Panel recommended that:

- *There should not be any further consideration of rezoning proposals for rural residential subdivision until Council has developed a rural residential strategy (it is understood that there is a current resolution to develop a new position on rural land) and has identified regionally important agricultural lands.*

The review report and its conclusions/recommendations were brought to the attention of the proponent as part of the pre-lodgement discussions. The proponent's PP is however silent in this regard.

The development of a new rural-residential strategy for Shoalhaven identifying the value and future use of rural land needs to be programmed and resourced, an outcome likely to be formalised in the first *Shoalhaven Local Strategic Planning Statement*.

The PP is however seeking an 'ad-hoc' outcome which is at odds with the recommendations of the Panel.

6. Shoalhaven Growth Management Strategy (GMS) 2014

The current GMS provides the strategic framework for growth in Shoalhaven for the next 20 years identifying the location and supply of new dwellings. It represents an endorsed position of the Council and NSW Government. This Strategy identifies five areas as potentially suitable for accommodating future population growth. Although Berry is identified as having some longer-term growth potential the confirmed locations for potential new dwellings are in areas immediately adjacent to the town expanding its urban footprint, and not at this point in rural areas. This Strategy also found enough capacity in existing rural-residential zones to meet the demands for rural lifestyle housing.

Work has started on the update of this Strategy to ensure Council continues to meet the housing needs of its growing communities. This includes estimates of the supply of rural-residential style lots indicating a supply of land (6,000 hectares) and potential lots (about 1,200) to meet the demand for this type of housing for several years. These figures are contested in the PP.

Initial community consultation on the GMS review indicates a strong connection to rural landscape values, particularly in the Berry area, and suggests a comprehensive body of work needs to be undertaken to guide future development of rural land, rather than an isolated one-off decision.

7. Other Planning Considerations

A range of other matters were reviewed, including:

- *Preparation of the Shoalhaven Local Strategic Planning Statement*

Council is currently preparing its *Local Strategic Planning Statement (LSPS)*, a new NSW Government requirement, with an anticipated completion of mid-2020. The LSPS will set a 20-year vision for strategic land use planning, setting planning priorities to be implemented through future amendments to the LEP and supporting documents.

It is highly likely the LSPS will identify the need for a contemporary rural land strategy to identify the future values and use of Shoalhaven's rural land and this PP pre-empts this important body of work.

From experience with the last Shoalhaven Rural Plan the task of preparing a new rural land strategy will not be an easy one and will be time consuming.

- *Planning Precedent*

The PP, if supported, is highly likely to set an undesirable precedent for similar rezoning requests.

The proponent attempts to justify the PP by suggesting that the proposal “presents as an in-fill of rural lands located between two existing rural residential subdivisions”. As discussed earlier in this report, this view is not supported by Council staff due to the inconsistencies of the proposal with the adjoining land zone to the west, and the substantial variation to the prevailing mapped minimum lot size of 10ha to both the east and west of the subject site.

The RU4 Primary Production Small Lots land to the west is a result of historic, ad-hoc subdivision patterns dating back to the mid-1930s onwards, which has resulted in a diversity of agricultural uses, dwelling types, lot sizes and configurations throughout this area. This is distinctly different to the Campbell's Run Estate to the east of the subject site, which was created in 2002 and has subsequently developed with recognisably rural residential character. It is this style of rural residential development outcome that the PP seeks to achieve, albeit with a smaller lot size, which is considerably different to the RU4 area to the west. Thus, the proposal is not considered to be ‘in-fill development’.

Council has also received many similar requests/approaches during its strategic planning projects, particularly during the public exhibitions of the draft LEP and also on an ongoing basis. There are likely to a lot of land parcels in the Shoalhaven that, if the basis of this PP is accepted, could also argue that they are also ‘in-fill’ in nature.

The proposal itself indicates an intention for further rural-residential development immediately to the south of the site. When considered in its entirety, this intended development would potentially result in the loss of about 120 hectares of productive agricultural land.

Arrangements to protect Coomonderry Swamp on the targeted land are already understood to be in place via Property Vegetation Plan, registered on title, that commenced on 17 November 2015 and requires the protection of native vegetation. As such the transfer of the part of the swamp identified is not necessarily required to ensure its long-term protection.

- *Technical Studies*

The site-specific considerations of the proposal for matters such as land capability and environmental constraints has not been undertaken at this stage due to the proposal's absence of strategic merit. No detailed comment is provided on the validity of the various supporting technical studies as a result.

The exception to this is the Agricultural Assessment. This document claims the current agricultural enterprise is not viable but does not balance this by identifying the type and viability of agricultural activities that could be suitable on the proposed lots. It also concludes that 40ha is too small to make a sustainable profit from cattle grazing which is the only form of agriculture that can be practiced on the property. The current 40ha standard for the general subdivision of rural land was identified by NSW Agriculture as the minimum viable lot size. At present, this has not been revisited locally. It is also noted that the RU4 zoned land to the west currently has a minimum lot size of 10 ha to specifically allow opportunities for other forms of agriculture on smaller lots.

Conclusion

The PP is inconsistent with long-standing Council and State Government Policy to retain and manage existing agricultural land and avoid making ‘ad-hoc’ planning decisions about rural residential development. The proposal is considered to lack the strategic justification to proceed through to the Gateway process as it is fundamentally inconsistent with Ministerial Directions for plan-making, the Regional Plan and Council’s own strategic land-use planning documents.

The Regional Planning Panel has relatively recently considered a similar PP in close proximity to this one, advising against additional ‘ad-hoc’ rural-residential rezonings, and recommending a strategic planning approach to determine the value and future use, including rural-residential development, of rural land in Shoalhaven.

This PP, and others of a similar nature seeking the rezoning of rural land to provide rural-residential development should not be considered or supported until a rural lands or similar strategy has been completed to identify the value and role of Shoalhaven’s rural land. It is intended to formalise this work through the development of the LSPS. The proponent is invited to engage with this process and associated work on any rural land strategy and the review of the Growth Management Strategy.

Community Engagement

Adjoining landowners and the Berry Forum, Council’s Community Consultative Body (CCB), were advised of the receipt of the PP. As a result of this notification 27 submissions were received, including one from the CCB, one from Berry Landcare Inc., with the remaining 25 from neighbouring landowners/residents.

26 of the submissions strongly objected to the proposal. The remaining submission did not object, instead raising concerns about potential traffic impacts.

The submissions are summarised in **Attachment 3** and copies of the actual submissions received will be available for review in the Councillors Room. Due to the length and detail of three of the submissions and associated challenge in summarising, they are provided in their entirety (relevant personal information redacted) at the end of this Summary Table.

The key concerns raised in the submissions included:

- Inconsistency with current strategic land-use policy documents and the advice of the Regional Planning Panel.
- Loss of productive rural land.
- Inadequate justification for ceasing agricultural activity and feasibility constraints.
- Incompatibility of the proposal with the prevailing rural character.
- Potential precedent for additional rezoning requests from other rural landholders.
- Negative impacts on scenic values, local amenity and rural character.
- Negative impacts on biodiversity corridors.
- Increased traffic and impacts on local infrastructure.
- Adequate capacity to manage wastewater; and
- Accuracy and adequacy of the technical information.

If the recommendation is adopted by Council, no further community consultation is required.

If an alternative resolution is made to proceed, the PP will be submitted to the NSW DPIE for consideration and review through the Gateway determination process, which will set further opportunities for community engagement.

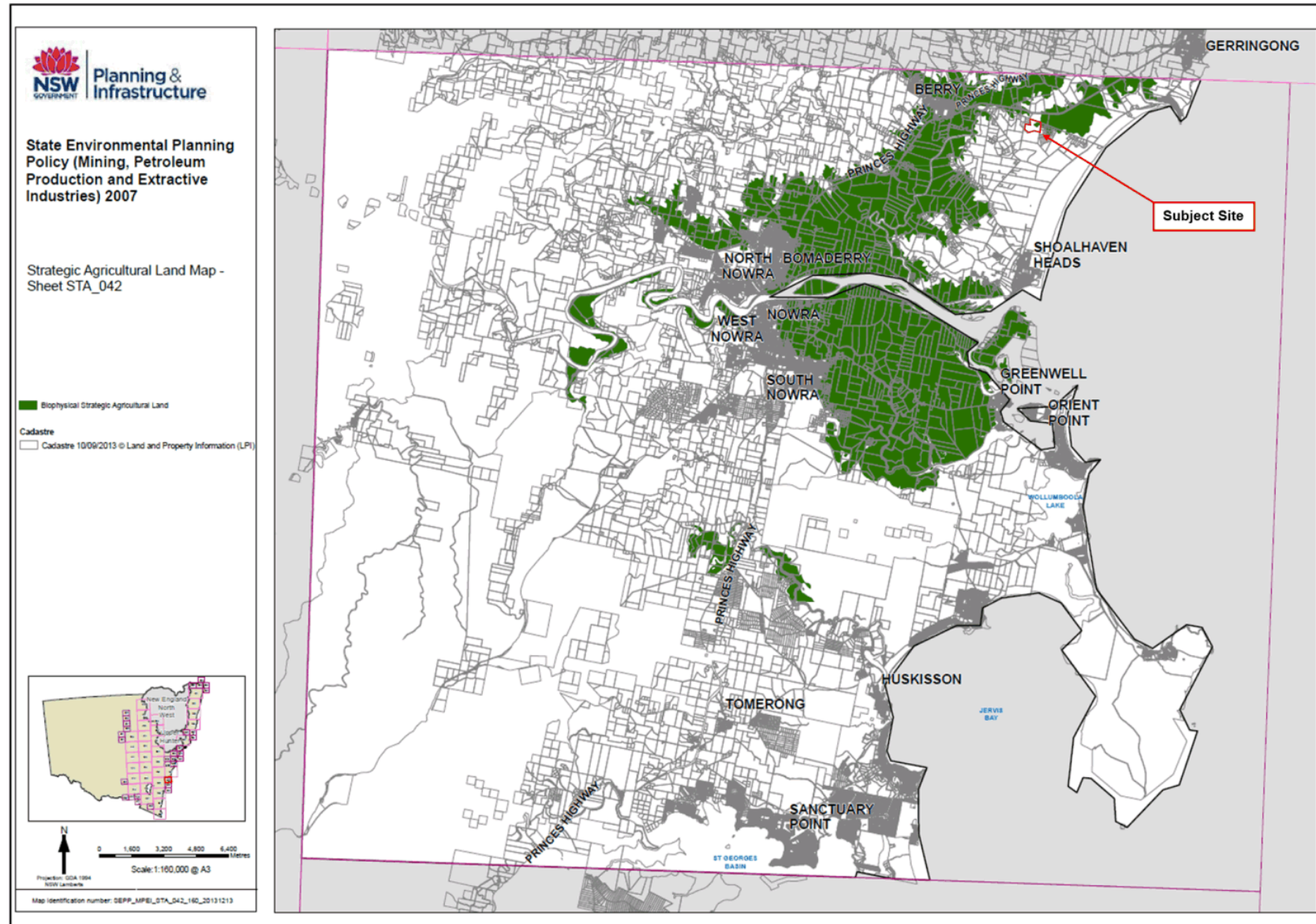
Policy Implications

The PP is inconsistent with inconsistent with Ministerial Directions for plan-making, the Regional Plan, and Council's own strategic land-use planning documents. Supporting this proposal would pre-empt future strategic planning work to identify the value and role of rural land in Shoalhaven. It would also potentially set a precedent for similar rezoning proposals.

Financial Implications

None if the PP is not supported, other than the Council staff time required to respond to any rezoning review that might eventuate.

If an alternative resolution to support the submitted or an amended PP is made, future work will be funded on a 100% cost recovery basis from the proponent in accordance with Council's adopted fees and charges.





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DE19.129 Update - Land at Seaspray Close, Narrawallee - Possible Acquisition

HPERM Ref: D19/402682

Section: Strategic Planning

Approver: Phil Costello, Director Planning Environment & Development Group

Attachments: 1. Previous Council Report - VPA - Seaspray Close, Narrawallee [↓](#)

Reason for Report

Report the outcomes of approaches to relevant NSW Government bodies back to Council for consideration and to determine the approach Council wishes to take.

Recommendation (Item to be determined under delegated authority)

That Council receive the update report on the possible acquisition of Lot 29 DP874275 Seascape Close, Narrawallee for information and note the response received from the NSW Biodiversity Conservation Trust in this regard.

Options

1. Receive the report for information.

Implications: This will effectively mean that no further action is taken by Council at this time and the subject land will remain in private ownership.

2. Resolve to proceed to purchase the subject land, pursue options to assist with the purchase and generate an ongoing conservation income to assist with its management and maintenance.

Implications: Council will need to find the funding required to acquire the property and see what funding opportunities exist to support this. It is noted that the subject land is currently listed for sale at \$2.5 million.

3. Request that the NSW Government assist with or acquire the subject land, given its high conservation value, for addition to the Garrad Reserve.

Implications: This would involve making further approaches to the NSW Government and to the Local Member requesting that the government proceed to acquire the subject land and work with Council on its future management/maintenance.

Background

The subject land (Lot 29 DP874275) is 14 ha in size and is located adjacent to Seascape Close on the western edge of Narrawallee. The land is currently zoned part E2 Environmental Conservation, part R2 Low Density Residential and part R1 General Residential under Shoalhaven LEP2014. Part of the E2 land is also identified on the 'scenic protection' and 'terrestrial biodiversity' (part of a habitat corridor) overlays in the LEP.

Lot 29 is also linked via a Voluntary Planning Agreement (VPA) to Lot 300 DP792411, Ross Avenue, Narrawallee (6.5 ha) that is mainly zoned E2 and contains Garrads Lagoon.

This matter was the subject of community approaches and also an approach on behalf of the landowner regarding the VPA that applied to the subject land.

The landowner's approach was reported to the Development & Environment Committee on 3 September 2019 – see **Attachment 1**. This report provides a range of background information on the subject land and its planning history.

Following consideration of the report on 3 September 2019, Council resolved to:

1. *Agree to the amended Deed of Novation, presented as Attachment 1 to this report, related to the Voluntary Planning Agreement that is in place for land at Narrawallee owned by Hanson South Coast Pty Ltd.*
2. *Approach the Biodiversity Conservation Trust to seek the purchase of Seaspray Close, Narrawallee as an addition to the Garrads Reserve.*

In regard to part 1 of the resolution, the landowner's solicitors were advised of the Council decision following the meeting, however nothing further has happened in regard to the VPA and the Deed of Novation since.

This report provides a summary of the outcomes in regard to part 2 of the resolution.

Approaches to NSW Government Bodies

Approaches were made to both the NSW Office of Environment & Heritage (OEH) and also the NSW Biodiversity Conservation Trust (BCT) to see what opportunities exist to enable the lot to be acquired and added to the existing adjacent Garrad Reserve 'biobank' site.

OEH advised that whilst the land is worthy of protection as it is identified as having high environmental value in the Illawarra-Shoalhaven Regional Plan, at present it was not a priority for acquisition under the reserve acquisition fund. They advised that the NSW Biodiversity Conservation Trust (BCT) also have funding programs that could possibly assist in this regard and another option could be Council's acquisition of the site and recouping some of the costs by establishing a Biodiversity Stewardship Agreement to offset works elsewhere.

Following the above resolution, Council wrote to the BCT to formally request that they consider acquiring Lot 29 for addition to the Garrad Reserve given its high biodiversity value. The BCT responded in late September 2019 acknowledging the site's high conservation values but advising that unfortunately the BCT is not currently in a position to purchase the site. The letter then went on to detail the funding assistance opportunities that exist under the BCT should Council be in a position to purchase the property. Council staff subsequently met with representatives of the BCT on 18 October 2019 to better understand the BCT funding programs and the options that may exist for the subject land.

From the discussions with the BCT it was concluded that funding options do exist to possibly generate an ongoing conservation income from the site, but that Council or another third party would need to acquire the property for these to be considered.

Representations have also been received from the Member for South Coast, Shelley Hancock MP, enquiring on behalf of constituents about this matter and the status of Council's actions in relation to it. The Council response provided background information and also a summary of the responses from the Government bodies. It concluded by advising that the dialogue with the BCT will now be reported back to Council for formal consideration and to enable Council to consider options regarding the property, specifically whether it is prepared to consider acquisition of the site or not. It also noted that any assistance that the Local Member could provide in possibly sourcing government funding to acquire this site or assist with its acquisition would be greatly appreciated by Council.

Conclusion

Given the response received from the BCT, Council now needs to consider whether to take further action in this regard and, if so, what? One option could be for Council to consider acquisition of the property, noting that if this occurs then the ability for the site to generate an ongoing conservation income is possible for its upgrade, maintenance etc.

Community Engagement

There has been no direct community engagement as yet in this regard. It is acknowledged that there is community interest in seeing this land brought into public ownership and managed as bushland.

Policy Implications

The land is currently covered by a VPA that seeks to bring another area, in the same ownership, into public ownership if the subject land is subdivided.

Financial Implications

Depending on the option Council takes, there could be a direct financial implication for Council if it decides to pursue acquisition of the land that has not been budgeted for. It is noted that the subject land is currently listed for sale at \$2.5 million dollars.

DE19.87 Novation Request - Voluntary Planning Agreement - Seaspray Close - Narrawallee

HPERM Ref: D19/279715

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Amended Draft Deed of Novation - Narrawallee VPA

Purpose / Summary

Council adopted and signed a [Voluntary Planning Agreement](#) (VPA) that relates to two parcels of land at Narrawallee in 2011. This report provides background in this regard and details a request that has been made to novate the VPA.

Note: Novation in this instance is basically a deed that transfers the rights and responsibilities of one party in a given agreement to another party

One of the land parcels is currently listed for sale and this has attracted community attention.

Recommendation (Item to be determined under delegated authority)

That Council agree to the amended Deed of Novation, presented as Attachment 1 to this report, related to the Voluntary Planning Agreement that is in place for land at Narrawallee owned by Hanson South Coast Pty Ltd.

Options

1. Agree to the amended Deed of Novation presented as **Attachment 1**.

Implications: This is the recommended approach given that the current VPA includes a process to enable the novation to occur.

2. Not agree to proceed with the Deed of Novation.

Implications: This option is not recommended as the current VPA provides for this adjustment to be made.

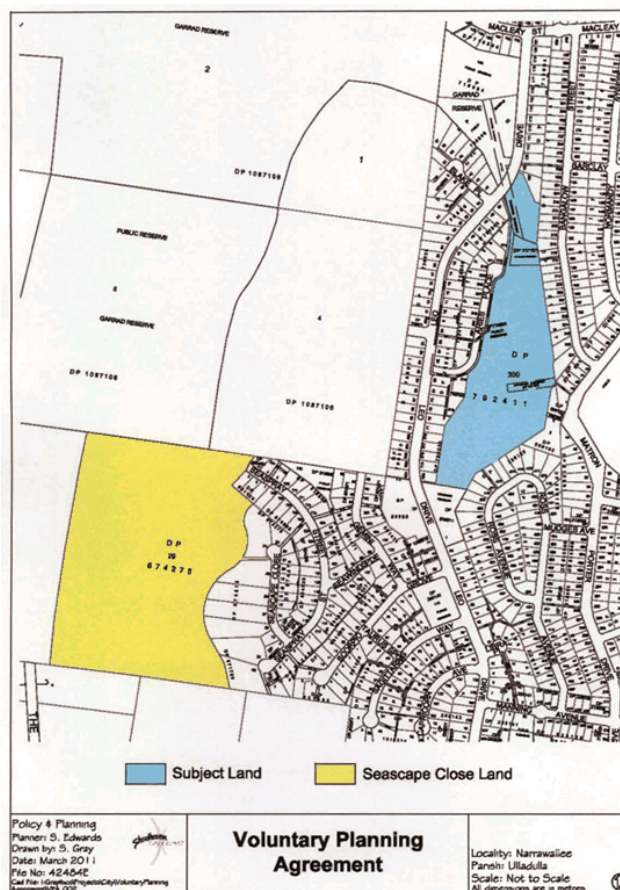
Background

The current VPA was finalised/signed in 2011 and relates to two parcels of land owned by Hanson South Coast Pty Ltd, namely:

Lot 300 DP792411, Ross Avenue, Narrawallee (6.5 ha) – zoned mainly E2 Environment Conservation and small part R2 Low Density Residential. The land is also identified on the 'terrestrial biodiversity' overlays in the LEP as containing significant vegetation and being part of a habitat corridor. This lot contains Garrads Lagoon.

Lot 29 DP874275, Seaspray Close, Narrawallee (14 ha) – zoned part E2 Environmental Conservation, part R2 Low Density Residential and part R1 General Residential. Part of the E2 land is also identified on the 'scenic protection' and 'terrestrial biodiversity' (part of a habitat corridor) overlays in the LEP.

The following map shows these two land parcels and to which the VPA relates.



Both lots were the subject of detailed planning work that also concluded in 2011 when the lots were rezoned to assist facilitate an outcome, whereby Lot 300 would eventually come into public ownership when Lot 29 is developed. The LEP contains a detailed clause related to the development of Lot 29 that requires consideration of visual impact, vegetation retention and bushfire impacts in any subdivision application.

The VPA supports the rezoning that occurred, links both properties to facilitate the eventual transfer of the Garrads Lagoon area into public ownership. This is triggered when the residential subdivision of the Seascape Close land occurs.

The VPA between Council and Hanson South Coast Pty Ltd (current owners of both properties) encompasses the following:

- Surrendering the development consent over Lot 300 and dedicating the land (Lot 300) to Council once the LEP is amended (partially occurred) and subdivision consent is issued for Lot 29 (has not occurred).
- The inclusion of a restriction on Lot 29 that it will not be subdivided until Lot 300 is transferred (occurred).

It is noted that a subdivision application (45 lots) was lodged in July 2013 over Lot 29 and withdrawn in October 2017. Given that subdivision consent has not been issued over Lot 29, the related transfer has not occurred and both parcels are still in a common ownership.

VPA Novation

It came to Council's attention that Lot 29 has been listed for sale. As a result, contact was made with the landowner requesting confirmation on:

- Intentions in regard to the VPA and the commitments in it that relate to the subject land.
- Assurance that prospective purchasers are made aware of the existence of the VPA and also the related restriction that was placed on the property in regard to future subdivision.

The landowner's solicitors (Paine Ross & Co) have advised that:

- The contract of sale includes both lots and contains a copy of the current restriction on Lot 29 and a complete copy of the VPA.
- The contact will be provided to interested purchasers so they are aware of the constraints arising from the VPA and associated restriction.
- The sale can only be completed once the VPA is novated to the new owner of both lots. The VPA sets out a process for novation and both the landowner and Council's obligations as a party to that procedure. The contract and a draft deed of novation have been prepared on this basis.

As such, should the land sell, the novation of the VPA is required and Council has also received a draft Deed of Novation for review and approval.

Clause 15 of the VPA provides that a Deed of Novation is required in the event Hanson intends on having Dealings with respect to the Seascope Close and Ross Avenue Land. Dealings include the sale of the land. Clause 15 states:

Hanson must not have any Dealings with the Seascope Close Land or the Ross Avenue Land unless Hanson:

- a) First informs the proposed assignee, purchaser or other party (the Incoming Party) of this Agreement;*
- b) Provides the Incoming Party with a copy of this Agreement;*
- c) Enters into a novation deed with the Incoming Party and the Council, whereby the incoming party agrees to perform the obligations of Hanson under this Agreement;*
- d) Remedies any default by Hanson, unless such default has been waived by the Council; and*
- e) Pays the Council's reasonable costs in relation to the assignment and novation.*

Council staff have reviewed the draft Deed of Novation and propose some inclusions/changes – a tracked changes copy of the draft Deed is provided as **Attachment 1** with the proposed inclusions/changes shown in red.

The changes include a requirement that Hanson pay Council reasonable costs and expenses as required by the VPA and deal with any liabilities that may exist.

Conclusion

It is recommended that Council sign the requested Deed of Novation in this regard.

Community Engagement

There is no requirement that Council undertake community engagement in regard to this request as it is essentially an administrative step under an existing VPA.

Policy Implications

The existing VPA is in place and there are currently no proposals to amend its overall intent.

Financial Implications

Council's reasonable expenses will be met in this regard.

DE19.130 Opportunity - Special Activation Precinct - South Nowra Industrial Zone

HPERM Ref: D19/402679

Section: Strategic Planning

Approver: Phil Costello, Director Planning Environment & Development Group

Attachments: 1. Council Staff Submission - Proposed SAP Legislation [↓](#)

Reason for Report

Obtain formal endorsement to put the South Nowra Industrial Zone (and other relevant areas/projects within Shoalhaven) forward for designation as a Special Activation Precinct (SAP).

Recommendation (Item to be determined under delegated authority)

That Council

1. Make a formal approach to the NSW Government to have the South Nowra Industrial Zone, Nowra Riverfront Precinct and other relevant sub-precincts within Shoalhaven considered, either individually or together, as Special Activation Precincts.
2. Make representations to local members of the NSW Parliament seeking their support in this regard.

Options

1. As recommended.

Implications: This would see Council actively advocate for the inclusion of relevant areas in Shoalhaven as SAPs. This would potentially help realise these areas through NSW Government involvement via streamlined planning processes and funding.

2. Not make a formal approach to the NSW Government in this regard

Implications: The opportunities created by the proposed SAP legislation and associated would not be taken up and pursued by Council.

Background

In September 2019 the NSW Government released a package of information related to proposed Special Activation Precincts (SAPs) for review.

The released material noted that SAPs are unique to regional NSW and bring together planning and investment to focus on growing jobs and economic activity in an area. Precincts will support industries in line with the competitive advantages and economic strengths of each area. SAP's are being delivered by the NSW Government as part of the \$4.2 billion Snowy Hydro Legacy Fund.

The material released in September 2019 included the following:

- Explanation of Intended Effect – proposed Activation Precincts State Environmental Planning Policy (SEPP)

- Parkes SAP draft masterplan and associated technical documents

The proposed SEPP is intended to be a State-wide framework to simplify and streamline planning processes in SAPs. The Parkes SAP is the first of these and the draft master plan identifies the strategic intent for the Precinct at Parkes and is informed by a range of technical studies.

The exhibited material is still available on the NSW Planning Portal at the following link:

<https://www.planningportal.nsw.gov.au/exhibition/activation-precincts-sepp-and-parkes-draft-master-plan>

Given the short consultation period it was not possible to report this information to Council to enable the endorsement of a submission. As a result, a Council staff submission was provided to the NSW Department of Planning, Industry & Environment (DPIE) on 18 October 2019 – see **Attachment 1**.

Opportunities

Since the material was originally released in September 2019 the following has also occurred in regard to SAPs:

- Late October - [Funding announced](#) regarding NSW Government approval to Wagga Wagga Council for an internal loan to fund the purchase of 251 ha of key land for the long term growth of the Bomen Industrial Precinct. It was noted that the purchase of this land is a vital step in the development of the Wagga Wagga SAP.
- Early November – [Announcement](#) on the investigation of a broader Snowy Mountains SAP with the aim of building on the ‘Go Jindabyne’ masterplan to help grow year round tourism in the area.

In the recent submission to the proposed SAP legislation the South Nowra Industrial zone and the Nowra Riverfront Precinct were raised as precincts that could possibly be considered for inclusion under the legislation and the associated funding opportunities to help realise them.

Some initial representations have been also made in this regard to the Member for Kiama, Gareth Ward MP regarding the South Nowra Industrial Zone and to the NSW Deputy premier, John Barilaro MP regarding the SAP opportunity and the Shoalhaven more broadly.

In the letter to the Deputy Premier it was suggested that this new pro-active approach to employment land activation could play a role in the delivery of the South Nowra Industrial Zone, Nowra Riverfront Precinct and other sub-precincts in Shoalhaven.

Conclusion

The proposed SAP legislation and associated funding potentially provides an opportunity to help advance and realise key employment land activation with Shoalhaven. As such it is considered appropriate for the Council to make formal representations and put the South Nowra Industrial Zone and other areas within Shoalhaven forward to the NSW Government for inclusion as SAPs.

Community Engagement

DPIE has exhibited the proposed SAP legislation for community comment and a submission has been made to it.

Council has received ongoing representations from affected landowners and others regarding the development and realisation of the South Nowra Industrial Zone, Nowra Riverfront Precinct and other areas.

Policy Implications

There are currently no direct policy implications for Council in making the suggested representations. If Council is successful in having areas identified as SAPs then the proposed NSW Government legislation will apply to these areas and provide a streamlined approval process.

Financial Implications

At present, and consistent with resolutions, Council is funding initial infrastructure planning investigation work associated with the South Nowra Industrial Zone. If Council is successful in having this zone, and other precincts, identified as SAPs then funding opportunities are likely to follow.



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 | DX5323 Nowra | Fax 02 4422 1816

shoalhaven.nsw.gov.au     

Council Reference: 31157E (D19/361298)

18/10/2019

Executive Director
NSW Department of Planning, Industry & Environment
Compliance, Industry and Key Sites
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

Submission – Draft State Environmental Planning Policy– Activation Precincts

Council staff welcome the opportunity to provide comment on this important matter and supports the principle aim of the proposed *State Environmental Planning Policy– Activation Precinct* (the SEPP). The proposed SEPP is significant and has the potential to make a positive impact to the State of NSW, creating jobs, attracting investment and fuelling appropriate and planned economic growth based on existing economic drivers and through the coordinated approach to land-use planning. Council would however like to make the following comments for consideration in the preparation of the proposed SEPP and related supporting material.

General Comments

Considerable documentation was required to be reviewed in order for Council to provide a thorough and appropriate response to this proposal. As you can appreciate, the submission process takes time as it requires the coordination of comments from multiple sections in Council. For this reason, Council again requests that the Department provide appropriate extended comment periods for proposed legislation or policy of this nature, not only in order to provide an appropriate submission, but to allow the submission to go through the formal Council reporting processes so that it is an endorsed Council position.

Given the comment timeframes involved with this matter, this submission does not necessarily represent the views of the elected Council as it was not able to be reported.

At a broad level this proposed SEPP raises concerns about the apparent proliferation of new SEPPs and the increasing complexity of the planning system at a development assessment level for both Council planners and proponents as a result. It is assumed that someone within Government is checking these changes and the legislation aligns so there are not issues with regard to consistency or unintended consequences. With the increasing range of exempt and complying development and development without consent, along with the ever-expanding Code SEPP, the community is slowly having fewer opportunities to have a say, particularly with regard to the legislative changes. The community does not often understand policy or strategic planning but do understand when

something is built next to them or there are a set of architectural drawings showing what is proposed.

Specific Comments on Draft Activation Precincts SEPP

In the first instance, clarification is sought regarding Local Activation Precincts. The explanation of intended effect mentions, but does not expand, on the idea of or planning mechanisms for *Local Activation Precincts*. More advice regarding what a precinct is and the process to be considered would be useful, particularly if the clear intent is that this planning package will be able to be used in other areas of the State.

Master Planning

It is understood that the main purpose of the proposed SEPP is to streamline the planning process and reduce red tape, in order to remove uncertainty for developers, making it easier for business to expand in appropriate areas within NSW.

This will be achieved through the preparation of a Master Plan, identifying the vision, objectives and development constraints for each Special Activation Precinct (SAP). The Master Plan will be informed by a Strategic Environmental Impact Assessment and Environmental and Planning Technical Studies. Studies will allow compatible land use opportunities to be identified and early identification of infrastructure requirements established.

A new 'Regional Enterprise' zone is proposed for the SAP and an associated Land Use Table and Principle Development Standards are to be developed in conjunction with this new zone. The land use table will outline the approval pathways for land uses, including exempt, complying and prohibited development. Each SAP will contain an individual Schedule within the SEPP, endorsed by the Minister for Planning and Public Spaces, which will include:

- An approved Master Plan;
- An associated land use table; and
- Principle Development Standards

Development in accordance with the above planning documents will be able to undertake a fast-track approval pathway, including exempt and complying development. However, if a development is inconsistent with any of the above documents, it would not benefit from the fast-track approval pathway. In this instance, a development application would need to be submitted and it would be assessed under Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act).

Under the above approval pathway, there will be no reduction in environment protection licensing requirements or assessment of risk of potentially hazardous or offensive industries. The upfront strategic environmental planning and design of the Master Plan is considered to satisfy and mitigate many of those requirements through the inclusion of buffer areas and setbacks into the sub-precincts for many development types. As such, hazardous and offensive development would potentially be permissible as complying development. This possibly needs to be rethought and may not be possible in all circumstances, as it is considered that these types of development generally require the additional assessment and scrutiny of the development assessment process. There is

often community concern regarding the operation of facilities of this nature and they can have a significant impact should issues arise in the future. As such they require an appropriate assessment path.

Whilst the aims in this regard are understood, consideration should be given to an alternative planning mechanism to the proposed policy. The proliferation of new SEPPs has already been raised, but of most concern is the SEPPs ability to override and conflict with a number of existing plans and policies, including other SEPPs, Local Environment Plans (LEPs), as well as the Local Strategic Planning Statements (LSPS) currently being prepared by Local Councils across the State.

An alternative mechanism that should be considered is an amendment to the Standard Instrument Template LEP, such as a model clause. This would allow for the introduction of the proposed new *Regional Enterprise* zone to occur, allowing assessment under Part 4 of the Act, as well as enable the rezoning process to take place. Additionally, this could provide an integrated approach to:

- a) planning the precincts and edges/interfaces,
- b) amending planning and development controls to support flow-on and complementary activities and industries,
- c) infrastructure provision, including the reservation and acquisition of land, and
- d) managing land-use impacts and conflicts.

Where appropriate, it is requested that the land use table accompanying the proposed new zone be considered as complying development, allowing for industries specialising in green, renewable, and hi-tech energy and technologies, as well as training facilities to support and increase the skilled workforce.

Shoalhaven has significant environmental constraints, and whilst it is assumed that technical and environmental studies would be conducted during the Government-led studies phase, the value that the Government will place on these reports needs to be clarified and ensured, given the main emphasis of the proposed SEPP is on economic drivers and facilitating economic outcomes. Whilst assessment under current legislation, such as the *Biodiversity Conservation Act 2016*, *State Environmental Planning Policy (Vegetation in non-rural areas)* and *State Environmental Planning Policy – 19 - Bushland in Urban Areas*, are not always ideal, these planning instruments are clear and transparent with regard to assessment and assessment outcomes and provide for consultation with both Councils and the community.

Delivery Plan

Once a Master Plan is approved, a Delivery Plan will be required to outline the detailed and coordinated land use and infrastructure planning at a Precinct or Sub-Precinct level and general standards for development. Delivery Plans and accompanying design guidelines will be more prescriptive and include information that would normally sit within development standards, such as building heights, setback requirements and landscaping treatments. Currently it is proposed that Delivery Plans will be prepared and approved by Regional Growth NSW Development Corporation and endorsed by the Secretary for NSW Department of Planning Infrastructure and Environment.

It is questioned whether Regional Growth NSW Development Corporation is the most appropriate government agency to prepare delivery plans and associated design guidelines, given that in many instances, they may also be the landowner? Given that a landowner cannot approve their own Proposal Certificate, it may not be appropriate for a landowner to be able to prepare their own Delivery Plan and associated design guidelines – as such this approach needs reconsidering. It is suggested that NSW DPIE develop and test Principle Development Standards for these uses in the applicable development code. This would allow the Principle Development Standards to be customised for each precinct and location and provide more defined, localised standards relevant to each region.

Special Activation Precinct Identification and Funding

Council welcomes and strongly supports the State Government's intention to set aside funding in order to undertake the early and expensive investigations. Funding for investigation and early implementation of enabling infrastructure is the biggest barrier to implementation, not time. With regard to water and electricity infrastructure, at this point it does not appear that servicing and supply issues have been adequately considered. Many regional areas have their own water authorities and similarly there are multiple electricity providers across the State. Clarification should be provided in regard to this and how it will be managed in the process. This may have implications for numerous water authorities, relating to maintenance and resourcing in the future, particularly if these functions fall back on Councils. Additionally, without servicing issues being resolved, industry will be unable to move in with any certainty which is likely to be important to them.

Prior to the release of the draft SEPP, State Government identified five priority areas, which included:

- **Water security in priority catchments:** Drought conditions across NSW highlight the importance of investing in water infrastructure at a regional and catchment level to increase community and industry resilience.
- **Investing in digital connectivity:** Making NSW mobile services black spot free.
- **Improve passenger road and rail:** Making regional travel faster, safer and easier between regional and metropolitan centres.
- **Freight linkages:** Improving regional freight networks to global gateways to increase exports, including the investigation of international air freight.
- **Establish special activation business precincts:** For investors this means access to unencumbered employment lands, streamlined planning approvals, investment in enabling infrastructure, and targeted financial incentives.

Under the current proposal only the State Government can identify and nominate current and future SAP locations. Perhaps outside of the proposed policy the following should also be considered:

- a) introducing a process for Joint Regional Organisations and Councils to nominate potential activation precincts against set criteria.
- b) clarifying the diversity of uses and industries supported in potential activation precincts, expanding the examples to include health and education, renewable

industries, or hi-tech and aviation industries to expand on the traditional manufacturing and industrial areas or resource recovery and recycling.

SAP locations obviously provide huge development and funding opportunities for regional areas; however, the current model does not enable many benefits for regions who do not contribute to the five priority areas identified. The above suggestion would increase the ability of regional areas to develop synergies between new and existing businesses and industries, increasing the region's chances to develop potential SAP locations and gain associated funding in the future.

Previously, within Shoalhaven, the State Government has recognised the economic potential of the Flinders Industrial Estate, with a joint venture taking place between the NSW Ministerial Corporation for Industry and Shoalhaven City Council; however, this joint venture came to an end, when the then State Government redirected its focus from Regional Employment Land Development. Shoalhaven currently has two areas it identifies as having long term significant economic potential - South Nowra Industrial Estate and the Riverfront Precinct; however, these are significantly smaller than the current Parkes and Wagga Wagga models. The immense size of the two current proposals is concerning. Council would argue that the geographical size of a precinct or project should not preclude an area being considered for SAP. Smaller size projects or project areas should still be able to be considered based on economic impact and other factors, such as local strategic impact/significance.

Currently funding will be provided through the Snowy Hydro Scheme; however, there is also a suggestion that development contributions may be applicable. Greater information is required relating to the funding model and development contributions and how these two funding mechanisms will interact. Given that funding from the Snowy Hydro scheme is being utilised to develop some of the major, enabling infrastructure, if economically viable developers should also contribute and be charged development contributions, that can either be invested back into the Snowy Hydro Scheme or the local community. Regardless of how this works, the process needs to be established early to ensure each SAP is being treated in a similar and equitable manner.

Stakeholder Consultation

Engagement and consultation with both Council and the community is essential and will need to be a key component of the process. Concerns are raised in relation to Council's involvement, or lack of involvement, in the SAP process, as currently this is not clearly identified. The proposed community participation activities for SAP should be clearly outlined as this is currently unclear.

There are many opportunities for NSW DPIE and the Regional Growth Development Corporation to elevate 'consultation' with councils to the creation of new partnerships. Partnerships should be formed to:

- a) undertake studies and planning analysis and develop the master plan, providing opportunities for the use of work already prepared by councils;
- b) create delivery plan and design guidelines, providing opportunities for adoption of existing development standards and controls to help integrate a precinct; and
- c) coordinate the business concierge function, providing opportunities to use and expand on networks already established by councils.

Additionally, the fast-track pathway relating to exempt and complying development provides the community with limited opportunities to provide feedback on what are likely to be significant developments. Although SAP developments that are inconsistent with the SEPP will continue to be assessed under Part 4 of the Act, if State significant, this will be approved by the Minister, again reducing the effected communities' ability to have a say.

Principal Certifying Authority

There are a range of potential concerns relating to Principal Certifying Authorities (PCA) and their role in the process. Firstly, the suggested approval timeframe of 30 days is unachievable and will potentially ultimately lead to poor environmental and planning outcomes. Additionally, as much of the development resulting from the proposed SEPP will be undertaken as complying development, Private Certifiers will be able sign off on SAP developments. Currently, Council's Compliance section receives a significant amount of work, as a result of Private Certifiers approving development in breach of conditions of consent. Given this and the significant nature of development occurring within SAP, there are concerns with Private Certifiers being responsible for development in accordance with the master plan and the SEPP.

It is suggested that Councils should be the PCA for developments within SAP. This would need to be matched with NSW Government funding, as it would require additional resourcing and responsibility from Councils relating to approval, monitoring and compliance action.

Whilst the intentions of a coordinated approach to land-use planning are appreciated and the benefits associated with Government funding the planning documents and technical studies is understood with regard to reducing timeframes for planning approvals and early delivery of enabling infrastructure, in order to stimulate economic development, the economic impetus behind this SEPP has the potential to raise concerns regarding protection of the environment, as well as the impact on the amenity of affected communities.

Thank you for the opportunity to comment on this important piece of proposed legislation. We look forward to its further development and the consideration of the detail raised in this submission. We would also welcome the opportunity to provide any additional feedback as is necessary before the SEPP is finalised and released.

If you need further information about this matter, please contact Gordon Clark, Planning Environment & Development Group on (02) 4429 3355. Please quote Council's reference 31157E (D19/361298).

Yours faithfully



Gordon Clark
Strategic Planning Manager

DE19.131 2018 -2019 State of the Environment Report Cards

HPERM Ref: D19/384918

Section: Environmental Services

Approver: Phil Costello, Director Planning Environment & Development Group

Attachments: 1. 2018/19 State of the Environment Report Cards (under separate cover)

Reason for Report

Inform Council of the completion of the Shoalhaven State of Environment (SOE) Report Cards for 2018/19.

Recommendation (Item to be determined under delegated authority)

That Council receive the State of the Environment Report for 2018/19 for information and note its contents.

Options

1. As recommended.

Implications: Nil.

2. Adopt an alternative recommendation.

Implications: Will depend on the recommendation.

Background

The purpose of the State of the Environment Report (SOE) is to provide a summary of the attributes of the local government environment and the human impacts upon that environment. It also provides a public record of the activities of government, industry and the community in protecting and restoring the environment. The preparation of the SOE Report is a requirement of the NSW Local Government Act 1993.

The attached SOE Report Cards for 2018/19 have been completed and will be published as part of Council's Annual Report and on Council's website.

The following are some of the significant stand out statistics for 2018/19:

Community Report Cards

- Total recyclables collected at kerbside has decreased by 16.7% since the 2017/18 reporting period. This can mostly be attributed to the container deposit scheme introduced in December 2017 which has diverted waste from the recyclable waste stream to buy back centres.
- 21% of the wastewater collected by Council during the year was recycled and reused. This figure is expected to increase significantly for 2019/20 due to the completed upgrade of the Nowra Sewage Treatment Plant which includes an extension of the recycled effluent management scheme to provide recycled effluent to farms on the northern side of the Shoalhaven River.

- Residential Water consumption decreased by 11% on last year and is well below the state average of 452 L per property / day at 385 L per property / day.
- More than 1000 water samples were collected and in excess of 10,000 tests were conducted over 20 catchments. Half of those samples taken were concentrated on Lake Conjola with 90% of these tests passing the Water Quality Guidelines for primary contact as against an average of 78% pass rate for the remaining catchments. Those sites that did not pass were mainly on smaller tributaries that are not used for swimming.
- The Beachwatch monitoring of 10 beaches found that they were all suitable for swimming during 100% of the summer reporting period. These beaches included Shoalhaven Heads, Tilbury Cove Culburra, Warrain Beach Culburra, Collingwood Beach Vincentia, Cudmirrah Beach, Mollymook Beach, Rennies Beach Ulladulla, Racecourse Beach Ulladulla, Bawley Point Beach and Merry Beach.

Corporate Report Cards

- Council's corporate energy consumption decreased slightly in 2018/19 and with the adoption of the Sustainable Energy Policy efficiencies across all Council's assets should continue to see improvement.
- 93.3% of Council's fleet is now made up of 4-cylinder vehicles. Whilst Council is currently tracking behind when compared to other Local Government Areas, most other councils do not operate their own garbage collection service or manage water and wastewater distribution across one of the largest local government areas in the State.
- Council has reduced its greenhouse gas emissions by 11% on 2010/11 levels. This data is calculated by considering Councils electricity usage, landfill emissions, wastewater emissions, corporate fleet fuel and gas emissions. Council is however, currently tracking higher emissions than average when compared against other Local Government Areas.
- Average water consumption at Council assets increased again in 2018/19 and has seen a 36% increase since 2016/17. However, Council is still currently tracking better than the regional average when compared against other local government areas.

Key Issues:

Reporting Improvements

The SOE Report uses Azility (previously Planet Footprint Pty Ltd) to provide a 'snapshot' of our state of the environment. These report cards reflect both the Shoalhaven community's environmental footprint and the Council's corporate environmental footprint.

This report is presented in a graphical format, which is easily converted to media releases and has many promotional applications. These report cards are included for information.

With the introduction of integrated reporting it is intended that the SOE Report reflects the environmental issues raised in Council's Integrated Strategic Plan. The SOE reports on how well these issues are tracking and can influence the direction of Council's Plans in the future.

Community Engagement

Extensive community consultation was undertaken for the Council's Community Strategic Plan. The information gathered in the surveys and face-to-face interactions were collated and used in the preparation of the Plan. This information will now be used to ensure that Council's SOE Report focuses on the environmental issues that the community considers are a priority.

DE19.132 Collingwood Beach Dunecare Group Action Plan Development - Progress Report

HPERM Ref: D19/394001

Section: Environmental Services

Approver: Phil Costello, Director Planning Environment & Development Group

Reason for Report

Report on the preparation of the Collingwood Beach Dunecare Group Plan as per Council minute MIN19.798

Recommendation (Item to be determined under delegated authority)

That Council receive this progress report on the development of a Group Action Plan for the Collingwood Beach Dunecare Group for information.

Options

1. As per the resolution

Implications: The group will continue to meet to take an active role in the management of the Collingwood Beach dune vegetation between Susan St and Moona Moona Creek.

2. Alternative recommendation

Implications: These will depend on the nature of any recommendations.

Background

At its Ordinary Meeting of the 29 October 2019, Council resolved (MIN19.798):

That Council:

1. *Note the steps taken to date and the continuing actions in regard to the development of the Collingwood Beach Dunecare Management Plan.*
2. *Receive a further progress report at the December Development and Environment Committee meeting.*

The steps taken towards the creation of the Collingwood Beach Dunecare Group and development of a Group Action Plan have been detailed at the October and November meetings of the Development and Environment Committee (DE19.102 and CL19.325).

Since the time of those reports, further steps have been taken to develop an action plan for the group.

As reported at the October meeting of the Development and Environment Committee, a meeting was held with volunteers of the Dunecare Group and Council officers on Friday 11 October 2019 to review and discuss the initial draft action plan. Following the discussions held, further input was sought from the volunteer group.

A revised draft was received from the group's volunteer coordinator by Council staff on Wednesday 6 November.

Council's Bushcare Coordinator met with the volunteer coordinator of the Collingwood Beach Dunecare Group on 8 November. An on-site inspection and good discussion on the further development of the draft action plan took place. Discussion included the various vegetation management issues pertaining to the area; the relationship of the draft plan to the Collingwood Beach Dune Vegetation Two-Year Trial Action Plan which is currently being implemented; the range of values attributed to the area; and the next steps for completing an action plan for the Dunecare Group. The key challenge is to draft an action plan that can gain broad acceptance amongst the existing group members and wider community which also addresses the main issues, being dune stability, habitat and amenity.

It was agreed at the meeting that the Bushcare Coordinator would revise the draft action plan early in the following week, based on the discussions held. This draft action plan will be completed working collaboratively with the group's coordinator. It will then be sent to all registered group members for further feedback.

Community consultation will then follow as per the level required in the Bushcare/Parkcare procedures. The aim is to complete community consultation in December, with the draft action plan to be reported to Council in the new year.

In the meantime, the Dunecare Group can continue with its working bees to implement activities that align with approved policies and plans for the reserve. Three working bees have already been completed with another scheduled for the end of November.

Community Engagement

Community engagement on the final draft plan will be carried out in accordance with the Bushcare/Parkcare procedures.

Policy Implications

The new action plan will conform to existing policies and procedures, so there are no policy implications.

DE19.133 South Mollymook Beach Cost Benefit and Distribution Analysis

HPERM Ref: D19/419498

Section: Environmental Services

Approver: Phil Costello, Director Planning Environment & Development Group

Reason for Report

To provide Council with information regarding the content and outcomes of the Draft South Mollymook Cost Benefit Distribution Analysis (CBA) report prepared by Origin Capital Group and Royal Haskoning DHV.

Recommendation (Item to be determined under delegated authority)

That Council consider the separate confidential report on this matter in accordance with Sections 10A(2)(c) and 10A(2)(e) of the NSW Local Government Act 1993.

Options

1. As recommended.

Implications: Consider a separate confidential report on the matter.

2. An alternative recommendation as determined.

Implications: This is not recommended given the nature of this matter.

Background

During the June 2016 East Coast Low (ECL), shoreline protection structures, including the gabion sea wall and block sandstone wall, at south Mollymook Beach were damaged. These shoreline protection structures provide protection for both public and private assets. These assets include a sewer line, sewer pump station, storm water outlet at the corner of Mitchell Parade and Ocean Avenue, road, pedestrian paths and the Mollymook Golf Club and Mollymook Surf Life Saving Club.

In accordance with the NSW Coastal Management Act 2016 and the NSW Coastal Management Manual, a cost benefit analysis of coastal protection structures are to be carried out prior to the NSW Government contributing funding to these structures. Council obtained 50% funding under the NSW coast and estuary grant program and contributed 50% to undertake a Draft South Mollymook Cost Benefit Distribution Analysis (CBA) report prepared by Origin Capital Group and Royal Haskoning DHV.

Community Engagement

The 2017 project inception meeting had discussions with Council staff, Office of Environment and Heritage, Mollymook Golf Club and Mollymook Surf Life Saving Club representatives where the program of delivery was discussed. The milestone for staff to commence consultation with the Mollymook Golf Club (MGC) was as soon as possible, as the club had expressed a desire to progress design for future renovations of the club building.

DE19.133

The feeling expressed at the Councillor Briefing on 3 October 2019 was that Council should engage with the Mollymook Golf Club and make the draft CBA report available to the club.

Policy Implications

Depending on which option is taken to make this site available there could be different financial implications for Council.

Financial Implications

Depending on which option is taken to make this site available there could be different financial implications for Council.

Risk Implications

Depending on which option is taken to make this site available there could be different financial implications for Council.

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.