

Development & Environment Committee

Meeting Date: Tuesday, 02 March, 2021
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 5)
Clr Mitchell Pakes - Chairperson
Clr Bob Proudfoot
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. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
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8. Confidential Reports

Nil

Development & Environment Committee

Delegation:

Pursuant to s377(1) of the *Local Government Act 1993* (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, as well as the preparation, entry into, and review of works in kind agreements that provide a material public benefit in part or full satisfaction of a condition imposed 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: Monday, 18 January 2021
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.04pm

The following members were present:

Clr Mitchell Pakes - Chairperson
Clr Amanda Findley
Clr Joanna Gash
Clr John Wells
Clr Patricia White
Clr Kaye Gartner – (Remotely)
Clr Nina Digiglio
Clr John Levett
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

Apologies / Leave of Absence

Apologies were received from Clr Alldrick and Clr Guile.

Confirmation of the Minutes

RESOLVED (Clr Findley / Clr Levett) MIN21.1

That the Minutes of the Development & Environment Committee held on Tuesday 01 December 2020 be confirmed.

CARRIED

Declarations of Interest

Nil

MAYORAL MINUTES

Nil

DEPUTATIONS AND PRESENTATIONS

Nil

REPORTS

DE21.1	Post Exhibition Finalisation - Voluntary Planning Agreement Policy and Works in Kind Policy Package	HPERM Ref: D20/424616
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Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the draft Voluntary Planning Agreement (VPA) and Works in Kind Agreement (WIKa) Policy Package as exhibited, with changes shown in Attachment 2 to the report.
2. Endorse the exhibition of the proposed new fee structure for VPA and WIKa applications (\$280 per agreement) as part of the 2021/22 Fees and Charges process and review the fee amount after a 12-month period.
3. Delegate the management of the VPAs and WIKAs outlined in Table 2 of this report to the Chief Executive Officer (or his delegate) for consideration and resolution, with the following VPAs and WIKAs being reported to Council:
 - Those that fall outside the criteria in Table 2 in this report, or
 - As a result of negotiations, additional or different provisions or credit arrangements were required to be included, or substantial objections or issues were raised as a result of public notification.
4. Advise the Development Industry Representatives and those who made a submission of this resolution.

RESOLVED (Clr Findley / Clr Digiglio)

MIN21.2

That Council:

1. Adopt the draft Voluntary Planning Agreement (VPA) and Works in Kind Agreement (WIKa) Policy Package as exhibited, with changes shown in Attachment 2 to the report.
2. Endorse the exhibition of the proposed new fee structure for VPA and WIKa applications (\$280 per agreement) as part of the 2021/22 Fees and Charges process and review the fee amount after a 12-month period.
3. Delegate the management of the VPAs and WIKAs outlined in Table 2 of this report to the Chief Executive Officer (or his delegate) for consideration and resolution, with the following VPAs and WIKAs being reported to Council:
 - Those that fall outside the criteria in Table 2 in this report, or
 - As a result of negotiations, additional or different provisions or credit arrangements were required to be included, or substantial objections or issues were raised as a result of public notification.
4. Advise the Development Industry Representatives and those who made a submission of this resolution.

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

AGAINST: Nil

CARRIED

DE21.2	Post Exhibition Finalisation - Shoalhaven Contribution Plan 2019 - Amendment No.1 (CP2019.1)	HPERM Ref: D20/519119
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Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt Amendment No.1 (CP2019.1) to Shoalhaven Contributions Plan 2019 as exhibited and proceed to finalise it.
2. Advise relevant industry representatives of this decision and when the amendment to Shoalhaven Contributions Plan 2019 will be made effective.

RESOLVED (Clr Findley / Clr Gash)

MIN21.3

That Council:

1. Adopt Amendment No.1 (CP2019.1) to Shoalhaven Contributions Plan 2019 as exhibited and proceed to finalise it.
2. Advise relevant industry representatives of this decision and when the amendment to Shoalhaven Contributions Plan 2019 will be made effective.

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

AGAINST: Nil

CARRIED

DE21.3	Proposed Natural Disaster Clause - NSW Standard Instrument Local Environmental Plan	HPERM Ref: D20/522846
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Recommendation (Item to be determined under delegated authority)

That Council:

1. Not opt-in to the new Standard Instrument Local Environmental Plan Natural Disaster clause and advise the NSW Department of Planning, Industry and Environment accordingly (by 15 February 2021) based on the content of this report.
2. Consider including a different version of the clause, that better meets Shoalhaven's needs, via the standard Planning Proposal process at the appropriate point in time and receive a future report.

RESOLVED (Clr Watson / Clr Levett)

MIN21.4

That Council:

1. Not opt-in to the new Standard Instrument Local Environmental Plan Natural Disaster clause and advise the NSW Department of Planning, Industry and Environment accordingly (by 15 February 2021) based on the content of this report.
2. Consider including a different version of the clause, that better meets Shoalhaven's needs, via

the standard Planning Proposal process at the appropriate point in time and receive a future report.

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

AGAINST: Nil

CARRIED

DE21.4	Proposed Planning Proposal - Riverview Road Precinct (Nowra) and Huntingdale Park Estate Precinct (Berry)	HPERM Ref: D20/538996
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Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the preparation of a Planning Proposal with the following scope, and proceed to submit it to the NSW Government for a Gateway determination, and if this is favourable, proceed to exhibition as per the legislative and any determination requirements:
 - a. Riverview Road Precinct (Nowra):
 - i. Insert a new local clause (similar to clause 4.1A) setting a parent lot size for the erection of a dual occupancy development that is 1,500m².
 - ii. Establish a clause map to identify the land to which the local clause would apply (the land in Figure 1 of this report).
 - iii. Amend clause 4.6(8) to ensure that the parent lot size set in the new local clause could not be varied.
 - b. Huntingdale Park Estate Precinct (Berry):
 - i. Rezone the subject land to R5 Large Lot Residential.
 - ii. Set a 2,000m² minimum lot size for the entirety of the subject land.
2. Receive a further report following the conclusion of the public exhibition period or if the Gateway determination is not favourable.
3. Advise key stakeholders of this decision and the resultant exhibition arrangements, including affected landowners, relevant Community Consultative Bodies and Development Industry representatives.

RESOLVED (Clr Watson / Clr Wells)

MIN21.5

That Council:

1. Endorse the preparation of a Planning Proposal with the following scope, and proceed to submit it to the NSW Government for a Gateway determination, and if this is favourable, proceed to exhibition as per the legislative and any determination requirements:
 - a. Huntingdale Park Estate Precinct (Berry):
 - i. Rezone the subject land to R5 Large Lot Residential.
 - ii. Set a 2,000m² minimum lot size for the entirety of the subject land.
2. Receive a further report following the conclusion of the public exhibition period or if the Gateway determination is not favourable.
3. Advise key stakeholders of this decision and the resultant exhibition arrangements, including affected landowners, relevant Community Consultative Bodies and Development Industry representatives.

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

AGAINST: Cllr Findley, Cllr Gartner, Cllr Digiglio, Cllr Levett and Stephen Dunshea

CARRIED

DE21.5 Update - 'Legacy' Planning Proposals - Timing and Progression - NSW Government Direction

HPERM Ref: D21/936

Recommendation (Item to be determined under delegated authority)

That Council

1. Acknowledge that the Gateway determinations for the Planning Proposals (PPs) in question were terminated by the NSW Department of Planning, Industry & Environment (DPIE) on 15 December 2020.
2. Continue to progress each PP as follows:
 - a. Warrah Road, Bangalee (PP005): seek a new Gateway determination immediately and if the outcome is favourable, place the PP and supporting documentation on public exhibition.
 - b. Halloran Trust Land, Culburra (PP006): seek a new Gateway determination at the appropriate point once potential development footprint is more fully resolved in consultation with the proponent and DPIE.
 - c. Nebraska Estate, St Georges Basin (LP145.1): seek a new Gateway determination at the appropriate point once the policy is adopted that will help resolve the tenure and management of the proposed E2 land (as per Council resolution MIN20.885) to help secure certification for the new planning controls under Clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017.
 - d. Badgee Lagoon Deferred Areas, Sussex Inlet (LP407): seek a new Gateway determination for each 'deferred' area at the appropriate point, subject to considering a new PP request that will include land adjacent to the northern deferred area and an accompanying overall draft Biodiversity Certification Assessment Report (BCAR).
 - e. Inyadda Drive, Manyana (PP007): seek a new Gateway determination at the appropriate point once the outcome of the proponent's upcoming referral under the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (EPBC Act) is known.
3. Receive further reports on the above matters as appropriate.
4. Receive a future report on revising/updating Council's Planning Proposal Guidelines once DPIE has updated it is relevant guidelines and the revised Planning Proposal process is clearer.

RESOLVED (Cllr Watson / Cllr Wells)

MIN21.6

That Council:

1. Acknowledge that the Gateway determinations for the Planning Proposals (PPs) in question were terminated by the NSW Department of Planning, Industry & Environment (DPIE) on 15 December 2020.
2. Continue to progress each PP as follows:
 - a. Warrah Road, Bangalee (PP005): seek a new Gateway determination immediately and if the outcome is favourable, place the PP and supporting documentation on public exhibition.

- b. Halloran Trust Land, Culburra (PP006): seek a new Gateway determination at the appropriate point once potential development footprint is more fully resolved in consultation with the proponent and DPIE.
 - c. Nebraska Estate, St Georges Basin (LP145.1): seek a new Gateway determination at the appropriate point once the policy is adopted that will help resolve the tenure and management of the proposed E2 land (as per Council resolution MIN20.885) to help secure certification for the new planning controls under Clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017.
 - d. Badgee Lagoon Deferred Areas, Sussex Inlet (LP407): seek a new Gateway determination for each 'deferred' area at the appropriate point, subject to considering a new PP request that will include land adjacent to the northern deferred area and an accompanying overall draft Biodiversity Certification Assessment Report (BCAR).
 - e. Inyadda Drive, Manyana (PP007): seek a new Gateway determination at the appropriate point once the outcome of the proponent's upcoming referral under the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (EPBC Act) is known.
3. Receive further reports on the above matters as appropriate.
 4. Receive a future report on revising/updating Council's Planning Proposal Guidelines once DPIE has updated it is relevant guidelines and the revised Planning Proposal process is clearer.
- FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea
- AGAINST: Nil
- CARRIED

DE21.6	Proposed Council Submission - Draft Local Character Clause - Local Environmental Plan	HPERM Ref: D20/548440
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Recommendation (Item to be determined under delegated authority)

That Council make a submission (Attachment 1 to this report) to the NSW Department of Planning, Industry and Environment in relation to its draft Standard Instrument LEP Local Character Clause.

RESOLVED (Clr Wells / Clr White) MIN21.7

That Council make a submission (Attachment 1 to this report) to the NSW Department of Planning, Industry and Environment in relation to its draft Standard Instrument LEP Local Character Clause.

- FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Levett, Clr Kitchener, Clr Proudfoot and Stephen Dunshea
- AGAINST: Clr Watson
- CARRIED

DE21.7	Information Report - NSW Productivity Commission Report - Infrastructure Contributions System	HPERM Ref: D20/563814
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Recommendation (Item to be determined under delegated authority)

That Council receive the report on the release of the NSW Productivity Commission's report on the NSW Infrastructure Contributions System for information.

RESOLVED (Clr Watson / Clr White)

MIN21.8

That Council receive the report on the release of the NSW Productivity Commission's report on the NSW Infrastructure Contributions System for information.

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

AGAINST: Nil

CARRIED

DE21.8 Companion Animals - Activities for 2019-20

**HPERM Ref:
D20/435757**

Recommendation (Item to be determined under delegated authority)

That Council receives the report Companion Animals – Activities for 2019-2020 for information.

RESOLVED (Clr Wells / Clr Gash)

MIN21.9

That Council receives the report Companion Animals – Activities for 2019-2020 for information.

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

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 6.29pm.

Clr Pakes
CHAIRPERSON

DE21.9 Replacement of Nominated Member of Southern Regional Planning Panel

HPERM Ref: D21/14847

Department: Business Assurance & Risk

Approver: Kevin Voegt, Director - City Performance

Reason for Report

To determine the replacement Alternate Member of the Southern Joint Regional Planning Panel following the resignation of Mr Ernie Royston from the Panel.

Recommendation

That Council

1. Accept the resignation of Mr Ernie Royston as Alternate Member of the Southern Joint Regional Planning Panel; and
2. Allow this vacated position to remain vacant until representatives are re-determined at the Council meeting in October 2021.

Options

1. As recommended.

Implications: Nil. Council is represented on the Southern Regional Planning Panel by two nominated Councillor Members and two nominated Councillor Alternative Members.

2. Nominate a replacement third Alternate Member to the vacant position.

Implications: Although a third Alternate Member is not a requirement, this will ensure that Council has a third nominated Alternate Member until the Council meeting in October 2021 where all Committees and representatives are re-determined.

Background

Mr Ernie Royston advised the Chief Executive Officer on 14 January 2021 that he was tendering his resignation from the Committee effective immediately.

Community Engagement

This report is provided to allow Council to determine whether appoint a representative member to replace Mr Royston, or to leave his position vacant until the representatives on all Committees are re-determined at the call meeting in October 2021.

The members appointed by Council on 22 September 2020 (MIN20.664) for the period to 30 September 2021 were as follows:

- Clr Watson (Council Member)
- Clr White (Council Member)
- Clr Alldrick (Alternate Member)
- Clr Kitchener (Alternate Members)
- Mr Royston (Alternate Community Member)

The number of Panel Members which the Council is required to nominate is two (2), and Council may nominate alternatives who can be representatives should the full nominated members be unable to participate. Following Mr Royston's resignation, Council is represented by two nominated Councillor Members and two nominated Councillor Alternative Members. There is no obligation to nominate specifically three (3) Alternate Members.

DE21.10 Proposed Submission - Draft Illawarra Shoalhaven Regional Transport Plan

HPERM Ref: D21/24598

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Proposed Submission on the Illawarra-Shoalhaven Regional Transport Plan [↓](#)

Reason for Report

Obtain Council endorsement of a proposed submission to the NSW Government (Transport for NSW) on the draft *Illawarra-Shoalhaven Regional Transport Plan*.

Recommendation (Item to be determined under delegated authority)

That Council endorse the proposed submission (Attachment 1) on the draft *Illawarra-Shoalhaven Regional Transport Plan* and forward it to the NSW Government (Transport for NSW) for consideration.

Options

1. Endorse the proposed submission.

Implications: ensures a Council endorsed submission is sent to Transport for NSW for its consideration in the finalisation of the Plan ensuring the opportunity to help inform the final document is taken.

2. Amend the draft submission to add or remove content and endorse.

Implications: still allows a submission to be made on the draft document, but potential amendments and associated implications are unknown at this time. Changes, depending on nature and scale, may require further consideration or refinement and delay the submission.

3. Not make a submission.

Implications: removes the opportunity for Council to provide input on this key strategic plan for the region. It also requires the withdrawal of the 'placeholder' submission provided by Council staff.

Background

Transport for NSW (TfNSW) has invited public and stakeholder feedback on its draft *Illawarra-Shoalhaven Regional Transport Plan*. The draft Plan was publicly exhibited from 30 November 2020 to 29 January 2021.

Council received an early, high-level briefing from Council staff on 10 December 2020 and a further briefing from TfNSW staff on 21 January 2021.

Given the relatively short exhibition timeframe, existing resource commitments, and the Christmas/New Year period, it was not possible to report the draft Plan to Council for its formal consideration until now. However, a "placeholder" submission was provided to enable the draft document and the proposed submission to be considered at this meeting, with the

formal submission made/confirmed thereafter. TfNSW has agreed to an extension of time to allow Council to formally consider the draft Plan and provide feedback.

Draft Illawarra-Shoalhaven Regional Transport Plan

The Draft Illawarra-Shoalhaven Regional Transport Plan outlines the strategic framework for how the NSW Government, through TfNSW will respond to changes in land use, population, and travel demand across the region over the next 20 years.

It describes the long-term transport vision for the region and outlines the transport policies, initiatives, and infrastructure that will be needed to support the future growth and development of the region. It has been developed with input from the NSW Department of Planning, Industry and Environment to ensure it aligns with the draft *Illawarra Shoalhaven Regional Plan 2041* that was also exhibited for comment in late 2020.

The draft Plan identifies the following anticipated changes for the Region:

- Region's population is projected to grow by 100,000 people by 2041.
- Regionally significant precincts identified in Draft Regional Plan 2041 will need multi-modal transport solutions.
- Freight traffic is forecast to grow over the next 40 years to support the regional economy.
- The importance of the connection between the Illawarra and Western Sydney will continue to grow.
- The role of the transport sector in supporting a transition to a low emissions economy will increase.

The current draft Plan identifies transport challenges/opportunities, outlines a transport vision, and identifies initiatives for delivery (0-10 years), planning (0-10 years), and investigation (0-20+ years). These initiatives aim to improve the connectivity, safety, productivity, and resilience of the transport network.

The draft Regional Transport Plan and supporting information is still available online at the following link:

<https://future.transport.nsw.gov.au/plans/draft-plans/draft-illawarra-shoalhaven-regional-transport-plan>

Proposed Submission

The proposed submission (see Attachment 1) supports several initiatives of the draft Transport Plan, including:

- Development of 30-minute public transport catchments for Nowra and Ulladulla.
- Inclusion of Nowra in the 16 Cities Program (prioritising the planning and funding of transport infrastructure).
- Expansion of the Opal payment system.

Urgent initiatives are requested to:

- Address traffic congestion in the Nowra-Bomaderry area.
- Recognise and advance the planning and delivery of the Nowra-Bomaderry Bypass.
- Service more settlements across Shoalhaven through network-wide improvements to public transport.

Relevant matters are raised, including, amongst others, the following recommendations for consideration and inclusion in the final Transport Plan:

- An initiative to provide 6 continuous lanes of traffic through Nowra-Bomaderry alongside local road projects to spread the load and facilitate more efficient travel along the Highway.
- Upgrade of Moss Vale Road to accommodate future planned residential growth (Moss Vale Road release-areas) that is recognised in existing NSW Government and Council plans.
- Increased planning and investment in active transport infrastructure, particularly off-road shared paths.
- Greater investment generally in public transport infrastructure and services, including the duplication of the South Coast Rail Line to Bomaderry and the possible extension of the rail line south of Shoalhaven River.

Conclusion - Next Steps

Council needs to make a submission on this important regional plan and it is recommended that the proposed submission provided as **Attachment 1** to this report be endorsed and sent to TfNSW.

Following Council's endorsement of a submission, it will be forwarded to TfNSW for its consideration. At this stage, TfNSW has indicated it will complete its consideration and review of submissions on the draft document in coming months with the aim to finalise and publish the Plan later in 2021 (date to be confirmed).

Further update reports will be provided to Council as needed in this regard.

Community Engagement

TfNSW placed the draft Plan on public exhibition between 30 November 2020 and 29 January 2021 (2 months), inviting residents, community members, business owners, and key regional stakeholders to provide feedback on the draft Plan.

Policy Implications

There are currently no known or direct policy implications for Council. These may however emerge as work on the final plan occurs.

Endorsing and providing the recommended submissions ensures Council makes full use of the opportunity to influence the scale and scope of the proposed initiatives.

Financial Implications

There are currently no known financial implications for Council's consideration.

Draft Shoalhaven City Council Submission on the *Draft Illawarra-Shoalhaven Regional Transport Plan*

Introduction

Shoalhaven City Council supports the development and delivery of a Regional Transport Plan as an important element in the strategic land-use and transport infrastructure planning for the region. It is also an important advocacy document for the region.

The following initiatives are strongly supported:

- Improving roads and road safety, offering its full support to the “Towards Zero” goal of zero fatalities and serious injuries in roads by 2056.
- Progressive upgrades to the Princes Highway throughout Shoalhaven and further to the south.
- Improving public transport journey times, frequencies, and service catchments, with a cautionary note that increased commuter services, including any high-speed rail line, must balance limitations on the frequency and duration of freight train paths between Bomaderry and Port Botany.
- Improvements to public and on-demand transport services, supporting the use of electric vehicles, and providing for alternative forms of transport (both in infrastructure delivery and individual developments).
- The Toolijooa rail passing loop delivering commuter train efficiencies and increased opportunities for freight movement.
- Improvements to the Moss Vale to Unanderra line and Coniston Junction, noting the need for a train turnaround siding between Unanderra and Coniston to avoid having to send trains around the Port Kembla loop to travel between Bomaderry and Moss Vale.
- Creating connected, liveable places, noting the potential contribution to Council's proposed work to upgrade and enhance the feel and use of Shoalhaven's regional, local and neighbourhood centres.
- Developing a place-based transport plan for Nowra City Centre.
- Designing new neighbourhoods to be walking and cycling friendly and the delivery of new bus services during the initial stages of development of new release areas.
- Reducing emissions.

Whilst Council agrees with the identified opportunities, need for behavioural change and the proposed approach to encourage and facilitate the transition from largely car-based to alternative forms of transport, including expansion of public transport and greater active transport for local trips, this should not be promoted as a solution or movement away from delivering the transport infrastructure required to service existing communities. This is important given the nature of Shoalhaven and its current issues. The Plan should acknowledge those projects which are essential to overcome the lag to date between population growth and infrastructure delivery.

The fragmented nature of Shoalhaven's towns and villages should also be a key focus in delivering the transport infrastructure required to service existing communities, some of which are relatively isolated with a single access road in/out. As well as a population that is spread across a large area, employment land in Shoalhaven is located outside the Nowra CBD and with precincts established or emerging at HMAS Albatross, South Nowra, and Bomaderry.

Draft Shoalhaven City Council Submission on the Draft Illawarra-Shoalhaven Regional Transport Plan

Key Matters to be Addressed

The following matters are notable omissions or key areas of concerns, and Council requests these be considered and addressed in the final Plan:

1. Initiative 36 "Nowra Safety and Reliability Improvements" and Initiative 51 "Work with State Agencies and Local Government to develop a Place-based Transport Plan for Nowra City Centre".

These currently have a timeframe for investigation of 0-10 years. This does not recognise or address the urgency of managing congestion through the Nowra-Bomaderry area. These initiatives are needed now. Thus, Council recommends tighter and more immediate timeframes to develop and implement solutions for addressing congestion on the Highway through Nowra and Bomaderry in association with Council and the community.

Following the completion of the Albion Park Bypass, motorists travelling from Sydney to Shoalhaven will travel continuously on a high-speed motorway and encounter the first set of traffic lights at Bolong Road, Bomaderry. Resulting from this, the Albion Park Rail experience should not be repeated at Nowra-Bomaderry. This needs to be avoided and Council recommends immediate and progressive planning and implementation to avoid this.

Council's supports the program of Princes Highway improvements being planned and delivered south of Nowra but recommends the program also includes required highway upgrades through Nowra and Bomaderry. The current 4-lane road is inadequate to accommodate the envisaged growth. The Highway already (and increasingly) becomes gridlocked during daily peak periods and times of higher seasonal demand. The identified optimal upgrade to assist in this regard includes six (6) continuous lanes of traffic through Nowra and Bomaderry in addition to other key local road projects (such as the East Nowra Sub-Arterial and possible Hillcrest Road to Yalwal Road Sub-Arterial) to spread the traffic load and facilitate more efficient travel along the Highway.

2. The plan does not recognise or identify the Nowra-Bomaderry Bypass and this a significant omission that is of concern to Council.

The bypass is a vital longer term project that needs to be recognised and given weight in the final Plan. This recognition should be accompanied by an initiative to commence its planning within the next ten years and delivery within a 10–20-year time frame or sooner if needed.

3. Moss Vale Road forms part of the State Road network through northern Shoalhaven and needs to be identified and recognised in the Plan. The very significant upgrades required to this road to accommodate the regionally significant planned residential growth (3,000+ dwellings in the Moss Vale Road release areas) need to be recognised and confirmed in the plan. These include works to ultimately transform the current high-speed, two-lane, rural road into an urban arterial road connecting these growth areas to the Princes Highway and the broader Nowra-Bomaderry area.
4. The draft Plan's aim to "[...] *focus development of 30-minute public transport catchments around regionally-significant centres across the Illawarra-Shoalhaven*" needs to acknowledge significant planned expansion of new residential areas south west of Nowra and employment land in South Nowra and Flinders Industrial Estate.

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Council also recommends that Initiative 56 (electrification of the South Coast Line between Kiama and Bomaderry) and Initiative 58 (Sydney to South Coast Fast Rail Improvement) are strengthened with an initiative to investigate the possible extension of the rail line across the Shoalhaven River to service communities and employment precincts in Nowra and South Nowra. The duplication of the rail line to allow increased services and separation of freight is also recommended as a key initiative that should be recognised in the final Plan.

5. Council notes and welcomes the 16 Cities Program and the aim to “[...] *make walking, cycling and public transport a realistic alternative to the private vehicle for more people* [...]”. The current initiatives need to be expanded beyond the current, single focus of investigating a rapid bus services to Metro Wollongong. Including statistics for each individual Council area, instead of combined information, will better indicate current levels of service and help to identify future focus areas or initiatives.

Access to public transport continues to be one of the most pressing and frequently raised community issues/needs in Shoalhaven. Expanding public transport services more broadly across the Shoalhaven should be recognised and be a key focus in the final Plan, not just services in the Nowra-Bomaderry and Milton-Ulladulla areas. This broader public transport work should improve services – access and frequency - to and between employment centres, educational establishments, rail connections and settlements along the coast. It should also consider the opportunities provided by shuttle, rapid, or on demand services.

6. The draft Plan promotes the Country Passenger Transport Infrastructure Grants Scheme as the means to provide better bus stop facilities. This scheme is limited due to the available funding (\$2,000-\$10,000 annually) – it limits the number and locations where Council can deliver new infrastructure. Increased funding is recommended to supplement this improvement program and its commitments.
7. The draft Plan promotes the delivery of active and public transport improvements and this is strongly supported. However there is a backlog of more than \$100m worth of paths, cycleways and associated infrastructure identified in Council plans. Thus, the initiatives that are currently proposed in the need to be expanded to include significant and ongoing government investment in Active Transport, primarily for off road paths.
8. The extension of the Opal Card payment system throughout Shoalhaven is strongly supported as it will improve the currently problematic coverage due to the lack of roll-out beyond Bomaderry Train Station. It is also not in operation on local public transport. However, Council recommends this initiative is accelerated and delivered quicker than the proposed 0-10 years.

Additional matters for consideration

Council has identified the following additional matters for consideration and inclusion in the final Plan:

1. Developing of additional Place-based Transport Plans for:
 - Milton-Ulladulla - especially considering anticipated delivery of the Milton-Ulladulla Bypass in coming years. Connectivity to the Bypass and a package of works to transform the main streets of the bypassed town centres should be considered.

Draft Shoalhaven City Council Submission on the Draft Illawarra-Shoalhaven Regional Transport Plan

- Jervis Bay-St.Georges Basin - should be identified as a regionally significant area and have its own Place-based Transport Plan due to the area's current growing population, ageing population, significant visitor economy and its service centre role for a broader area.
- 2. Increasing the regions resilience by strengthening or providing additional access and egress routes for settlements identified to be at risk from isolation during flood and bushfire events.
- 3. Recognising potential links between areas of aeronautical engineering, high-tech industrial, and advanced manufacturing in Shoalhaven with the Western Sydney Airport. In this regard the current *Figure 4 Key precincts in Western Sydney likely to generate increased travel demand to and from Illawarra-Shoalhaven up to 2041* does not extend as far south as Shoalhaven.
- 4. Recognising potential links with Canberra and the services it provides – airport, education, health, business and government, noting the route via Braidwood is not the shortest route between Canberra and Nowra.
- 5. Supporting the balancing of the region's visitor economy with environmental and amenity impacts with related transport infrastructure and services, such as park and ride schemes (which could be considered along the Highway at all connecting coastal town/village access roads) as well as at strategic locations on both sides of Nowra-Bomaderry and Milton-Ulladulla, provision of more rest areas and public amenities, transport interchanges at train stations and on-demand services.
- 6. Improving pedestrian crossing facilities on the Princes Highway, especially at Bomaderry, Nowra, South Nowra, Milton, and Ulladulla and ensuring that future Highway upgrades consider and provide good overall urban design outcomes for the broader community consistent with the *Beyond the Pavement 2020*.
- 7. Improving the freight network through the immediate investigation of more efficient freight routes across the Illawarra Escarpment and between Nerriga and Tarago, and also delivery of the planned intermodal hub at Bomaderry. The final Plan should also confirm the importance of existing freight transport infrastructure, including the South Coast Rail Line and Moss Vale to Unanderra rail link. The Moss Vale Line will become increasingly important as a containerised facility is delivered at Port Kembla.
- 8. Accessibility improvements for Berry and Bomaderry train stations and all formal bus stops across Shoalhaven.
- 9. Expand transport data collection, including installation of permanent counting stations at key locations across the network, to inform the scope and scale of projects, better inform decisions, and validate the results of traffic modelling exercises.
- 10. To facilitate the use of Performance Based Standard Heavy Vehicles on the network, connectivity to the mobile communications network needs to be increased to 95% of the Highway network. Additional benefits of this include coverage for business vehicles, added safety, and a contribution to increased resilience during emergencies.

Draft Shoalhaven City Council Submission on the *Draft Illawarra-Shoalhaven Regional Transport Plan*

Alignment with the *draft Illawarra Shoalhaven Regional Plan* and proposed *Illawarra Shoalhaven Special Infrastructure Contribution Scheme*

The current aligned work on the delivery of the new *Illawarra-Shoalhaven Regional Plan* and the *Regional Transport Plan* is strongly supported. The lack of supporting infrastructure planning was a criticism of the current *Regional Plan*. The current work provides a significant opportunity to improve the alignment of transport related “Initiatives” with land use planning “Objectives”. For example, confirming Transport for NSW’s role in:

- Developing a *Strategic Roadmap* to guide the development of Nowra City Centre.
- Supporting *Objective 4: Activate regionally significant employment precincts to support new and innovative economic enterprises* of the draft *Regional Plan*.
- Delivering *Objective 6: Activate the region’s harbours to promote a blue highway* of the draft *Regional Plan*. The draft *Transport Plan* is currently silent on this concept and associated work.
- Implementing *Objective 30: prepare for mobility changes that improve connectivity and sustainability* of the draft *Regional Plan*.

The proposed *Illawarra-Shoalhaven Special Infrastructure Contribution Scheme* also lists seven (7) transport infrastructure projects to support the development of the Nowra-Bomaderry Regional Growth Area, including:

- Upgrade of Moss Vale Road to increase its capacity and deliver new or upgraded intersections;
- The East Nowra Sub Arterial Road; and
- Princes Highway capacity and intersection upgrades between Bomaderry and South Nowra.

However, it is a concern that none of the proposed initiatives in the draft *Transport Plan* appear to align with these identified infrastructure commitments.

Alignment with Council’s Transport Planning

Like the “line of sight” confirmed between local and regional land use planning documents, the final *Transport Plan* should identify how it interacts with local transport planning. Council has committed to the preparation of an updated *Integrated Transport Strategy* and *Pedestrian and Mobility Access Plan* and the inclusion of a mechanism in the draft *Transport Plan* to consider and respond to the relevant findings and recommendations of local transport studies/plans would be appreciated.

The draft *Transport Plan* should also confirm any Transport for NSW commitment to work with Councils to share data and lead the update of the region-wide modelling of the traffic network – a task essential to inform and respond to land use planning decisions.

Improving Implementation

Several improvements have been identified to assist with the implementation of the plan. These include:

- Refining timeframes for the initiatives to provide greater certainty and commitment and confirm priorities than the currently proposed 10-year periods.

Draft Shoalhaven City Council Submission on the *Draft Illawarra-Shoalhaven Regional Transport Plan*

- Clarifying the proposed initiatives to provide a description of key projects, likely work and potential benefits, perhaps as an addendum, and providing links to individual project pages for further information.
- Confirming Transport for NSW's commitment to implementing the final plan, for example, direct funding, incentive schemes for developers, training, technical studies, sharing of research with Councils to inform implementation of shared initiatives etc.
- Improving implementation reporting to better the proposed yearly update and five-yearly review. This includes the identification of indicators to monitor the success of initiatives and provision of an online "dashboard" providing/connecting to project updates and other regional planning documents.
- Identifying those initiatives requiring Council's support for the reservation and acquisition of required land in Local Environment Plans.

Engagement Process

Early engagement with Council staff was unfortunately limited to occasional progress updates provided during meetings on the development of the draft Regional Plan and a visioning workshop. There was no sharing of proposed content or matters to facilitate preliminary discussions. In addition, no online resources, supplementary information, or webinars have been provided.

Early engagement with stakeholders, especially during the development of draft content, provides the ideal way to understand, at an early stage, alignment of priorities and resourcing commitments to implement the published Plan. This would have also helped inform the scope and scale of achievable work and could have limited the number of amendments identified above.

The exhibition period of the draft Transport Plan did not fully align with the exhibition of the draft Illawarra-Shoalhaven Regional Plan and proposed Illawarra-Shoalhaven Special Infrastructure Contribution. This limited the ability to undertake a coordinated review of related draft regional land use and transport planning documents.

Council recommends:

- Future regional transport planning documents should be developed, where possible, using a partnership approach to confirm the detail of agreed focus areas, anticipated resourcing requirements, and achievable commitments.
- The exhibition of draft documents of this nature should be supported with detailed workshops or presentations for Councillors to explain the background and intent of proposed initiatives.
- Wherever possible the exhibition of draft regional land use, infrastructure and transport planning documents should be aligned.

Draft Shoalhaven City Council Submission on the Draft Illawarra-Shoalhaven Regional Transport Plan

Detailed Feedback on the Proposed Initiatives

Initiative	Comment
No.1 (16 Regional Cities Program): <u>In delivery</u>	Supports the focus on public transport improvements, welcomes further collaboration on the project and will make a submission to the current call for community feedback on this program.
No.6 (Nowra Bridge Project): <u>In delivery</u>	<p>Raise concerns regarding several outstanding issues relating to the project, namely the:</p> <ul style="list-style-type: none"> • closure of Scenic Drive without addressing a new connection into the precinct from Hyam Street and an upgrade to the Hyam Street/Bridge Road intersection, • downgrade of the proposed new intersection (link to Hawthorn Ave) and removal of right turns and traffic signals, • lack of safe shared path access along the Highway to the north of Bolong Road, and • lack of grade separated pedestrian access linking east to west both to the north (under the Highway) and to the south of Bridge Road (over the Highway) linking to the Civic and Entertainment precincts and to Nowra CBD. • The eventual urban design and landscape outcome associated with the project and extending beyond its footprint.
No.7 (Princes Highway upgrade Berry to Bomaderry): <u>In delivery</u>	<p>Raise concerns regarding several outstanding issues relating to the project, namely the:</p> <ul style="list-style-type: none"> • lack of a "Warra Warra Rd style roundabout" on the northern fringe of Bomaderry, • no grade separated intersection at Croziers Road, and • no sealing of Pestells Lane due to the reassignment of Boxsells Lane traffic to the new Pestells Lane interchange.
No's. 8-19 (range of transport and road projects within the Region/Shoalhaven): <u>In planning</u>	Support continued work on these, noting the opportunities provided for Council to comment on detail and timeframes provided by proposed consultation activities. Further opportunities to provide input on those projects when appropriate is welcomed.
No.20. 30-minute public transport catchments for regionally significant growth areas: <u>For Investigation</u>	An appropriate or refined timeframe (currently 0-10 years) should be identified for this initiative to reflect the detailed land use planning work currently underway to facilitate the development of these areas. Development will start to occur in coming years and this initiative requires acceleration to ensure future communities are provided with adequate public transport services.
No.22. Bus Headstart Program for West Lake Illawarra and Nowra-Bomaderry Growth Areas: <u>For Investigation</u>	Supported. Development will start to occur in coming years and this initiative requires acceleration to ensure future communities are provided with adequate public transport services.
No.23. Encourage Local Government to necessitate all new developments include provision of secure bicycle parking and end-of-trip facilities: <u>For Investigation</u>	Councils DCP already includes some limited provisions in regard to bike parking. Inclusion of such facilities in new developments and retrofitting of existing development occurs as workplaces try to make workplaces more attractive and respond to changing transport modes in response to the ongoing COVID-19 pandemic.

20 January 2021

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Draft Shoalhaven City Council Submission on the Draft Illawarra-Shoalhaven Regional Transport Plan

Initiative	Comment
	<p>Transport for NSW should support this initiative by:</p> <ul style="list-style-type: none"> • Providing suggested controls for Councils to consider including in Development Controls Plans. • Demonstrating leadership by negotiating inclusion of similar requirements in the NSW Exempt and Complying Development Codes: <ul style="list-style-type: none"> ○ To require such facilities in new build, and ○ To encourage, by removing planning requirements, to retrofit in existing developments. <p>Whilst bike racks are relatively low cost, the provision of showers change rooms and lockers is really only affordable/justifiable in very large developments, accordingly Implementation support such as grant funding for developers should be considered to influence provision of these facilities.</p>
No.24 Encourage local government to transition their fleet to electric or hybrid passenger vehicles: <u>For Investigation</u>	Several Councils across NSW are already trailing the use of hybrid and electric vehicles. Hybrid vehicles are now a choice in Council's fleet of passenger vehicles. This transition is likely to occur as price parity between conventional and electric vehicles is reached, but if Transport for NSW want to accelerate this, it will need to explore the offer of supplementary funding.
No.25 Establish consistent public transport payment system across the region: <u>For Investigation</u>	The extension of the Opal Card system throughout Shoalhaven is strongly supported and should be implemented in the short term.
No.26 Investigate opportunities to safely accommodate micro-mobility transport options: <u>For Investigation</u>	This initiative is supported but should be expanded to ensure the sharing of research and findings with Councils to inform the update of local transport strategies/plans.
No.27 Ensure rest stops are provided at intervals consistent with guidelines: <u>For Investigation</u>	Supported.
No.28 Establish guidance for roadside vegetation management to improve bushfire resilience: <u>For Investigation</u>	Supported.
No.36 Nowra Safety and Reliability Improvements: <u>For Investigation</u>	Strongly supported. This initiative should be expanded to clarify the scope of improvements and changed for immediate delivery in the 0-10 year timeframe to address currently observed and anticipated congestion.
No.37 Trial on-demand transport services: <u>For Investigation</u>	Supported, noting many coastal settlements in Shoalhaven provide good opportunities for future trials to improve connections between villages with Nowra City Centre, Ulladulla Town Centres and the centres in the Bay and Basin area.
No.38 Prepare contingency plans to effectively respond to unplanned network disruptions: <u>For Investigation</u>	Strongly supported, noting current plans could be improved/updated now, and changed from "for investigation" to immediate delivery.

Draft Shoalhaven City Council Submission on the Draft Illawarra-Shoalhaven Regional Transport Plan

Initiative	Comment
No.40 Transition Transport for NSW passenger fleet to comprise 30% electric or hybrid passenger vehicles by 2023: <u>For Investigation</u>	This initiative requires clarification – is it a corporate Transport for NSW goal (i.e., the vehicles used by staff to conduct business and operations) or is it aimed at the broader public transport fleet.
No.44 Work with Local Government, DPIE and industry to ensure regionally significant growth areas support walking and cycle-friendly neighbourhoods: <u>For Investigation</u>	These concepts have already been adopted by Council and are already being planned and delivered in urban release areas. Transport for NSW will be invited to join this work and provide feedback on draft planning and development controls as they are developed.
No.45 Work with local government, DPIE and industry to ensure significant places are supported with appropriate first and last mile freight solutions: <u>For Investigation</u>	Supported but clarification requested about what Transport for NSW will provide or commit to this work?
No.46 Work with local government and DPIE to protect key freight corridors from incompatible land uses: <u>For Investigation</u>	Noted, opportunities will be provided through stakeholder consultation to inform the development of new planning and development controls.
No.47 Work with local government and industry to support provision of appropriate off-street loading facilities: <u>For Investigation</u>	Noted, opportunities will be provided through stakeholder consultation to inform the development of new planning and development controls.
No.48 Work with local government to improve wayfinding information in the vicinity of key transport nodes: <u>For Investigation</u>	Noted, opportunities will be provided through stakeholder consultation to inform master planning exercises for Nowra City Centre and Ulladulla Town Centre.
No.49 Work with NSW Department of education, Catholic Schools NSW, and local government to address barriers to walking and cycling to school: <u>For Investigation</u>	Supported, but should be promoted and supported with an increase in investment from all tiers of Government.
No.51 Work with State Agencies and Local Government to develop a place-based transport plan for Nowra City Centre: <u>For Investigation</u>	Strongly supported, noting the interaction with the "Strategic Roadmap" proposed in the draft Regional Plan. This initiative needs to be expanded to clarify scope of improvements and immediately changed to delivery in the 0-10 year timeframe to manage and prevent congestion.
No.52 30-minute public transport catchments for Shellharbour city centre, Kiama and Milton Ulladulla: <u>For Investigation</u>	Supported and recommend: <ul style="list-style-type: none"> • Changing from the 10-20-year period to the 0-10-year period, and • Expansion to include the Jervis Bay-St.Georges Basin, focussing on the emerging (and planned) hub of commercial and community facilities in Vincentia.
No.53 High Productivity Vehicle access for NR92 Nerriga Road between Nowra and Braidwood (fix typo in draft plan – MR92): <u>For Investigation</u>	Delivery of the Higher Mass Limits link is supported, with the exclusion of Braidwood. An alternative route is from Nerriga to Tarago crossing the Shoalhaven River at Oallen Ford, noting the significant upgrade of the current road cross section, pavement and bridges on MR92/Oallen Ford Rd/Sandy Point Rd /Cullulla Rd is required. This initiative should be changed from the 10-20-year period to the 0-10-year period.

Draft Shoalhaven City Council Submission on the *Draft Illawarra-Shoalhaven Regional Transport Plan*

Initiative	Comment
55 Moss Vale to Unanderra Line and Coniston Junction Rail Improvements: <u>For Investigation</u>	These improvements are supported but should include provision for a train turnaround siding between Unanderra and Coniston to avoid having to send freight trains around the Port Kembla loop to travel between Bomaderry and Moss Vale (0-5 years)
56 & 58 Electrification between Kiama and Bomaderry and Sydney to south coast fast rail improvements: <u>For Investigation</u>	Supported and recommend increase in priority.

DE21.11 Exhibition Outcomes - Proposed Finalisation of Planning Proposal (PP052) - The Arbour Victoria Street, Berry

HPERM Ref: D21/35289

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Summary of Submissions - PP052 [↓](#)

Reason for Report Report the outcomes of the public exhibition and enable finalisation of the Planning Proposal (PP052) to rezone part of Lot 6 DP 1204186, 10 Victoria Street, Berry (approximately 7,665 m²) from RU1 – Primary Production to R2 – Low Density Residential to allow residential use of the land, including seniors housing.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt and finalise Planning Proposal (PP052) as exhibited.
2. Forward PP052 to the Office of the NSW Parliamentary Counsel (PCO) with a request to draft the amendment to Shoalhaven LEP 2014.
3. Make the resulting amendment to Shoalhaven LEP 2014 using Council's delegation.
4. Advise the Berry Forum and submitters of Council's decision once the LEP amendment has been notified.

Options

1. As recommended.

Implications: This is the preferred option as it will enable the proposed amendments to Shoalhaven LEP 2014 to be finalised, consistent with the land's capability and constraints.

This option will allow the proponent to seek approval to construct a small additional seniors housing development in Berry, noting that the development application process will allow more detailed consideration of the proposed development.

This option is consistent with the Shoalhaven Growth Management Strategy (GMS) that was endorsed by the NSW State Government in 2014.

2. Defer the current proposal for further examination of the proposed minimum lot size and height of building controls or more generally.

Implications: This option is not supported. Assessment of the PP has demonstrated that the proposed minimum lot size and height of building controls are appropriate and consistent with adjacent development on the north side of Victoria Street. The proposed 500m² minimum lot size is reasonable in the circumstances and also consistent with the median lot size for Hitchcocks Lane (PP029) where lot sizes are proposed to be in the range of 350m² to 700m². The reduction in the maximum height of buildings from 11m to 8.5m is desirable to ensure that future building bulk

is not excessive. Comments made in submissions received do not justify more in-depth examination of the proposed controls.

3. Not proceed with the Planning Proposal.

Implications: This is not the preferred option as assessment of the PP has demonstrated that the subject land is suitable for low density residential development. The land is identified as part of a long term investigation area (LTIA) in the GMS endorsed by the NSW Government. A decision not to proceed may result in the under-utilisation of land suitable for development and prevent the delivery of a modest increase in seniors housing. Not proceeding with the PP would be inconsistent with LTIA in the GMS.

Location details

The land is situated at the north-east corner of Lot 6, DP 1204186, Victoria Street, Berry. The existing 'Arbour Retirement Village' is centrally located on the same property. The eastern boundary of the PP adjoins 'The Grange' retirement village as shown below in Figure 1. The subject land is currently zoned RU1 – Primary Production.



Figure 1 – Aerial Photo: Subject land

Background

Site Suitability Certificate Application

In 2019, Mbark Pty Ltd (the proponent) initially applied for a Site Compatibility Certificate (SCC) under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP) to allow an additional eleven (11) free-standing seniors housing dwellings to be constructed on the subject land. The SCC

DE21.11

process is managed by the NSW Department of Planning, Industry & Environment (DPIE) and is determined by the Southern Regional Planning Panel (SRPP). Mbark's application was referred to Council for comment in mid May 2019 and no objection was made to the proposed extension of seniors housing on the property.

However, the SRPP refused the SCC application on 8 October 2019, concluding that it did not satisfy the criteria of the Seniors Housing SEPP. The reasons for the decision are summarised in the PP document. A Local Environmental Plan (LEP) amendment or the Seniors Housing SEPP are the only statutory mechanisms available to facilitate use of the land for seniors housing/residential use.

As an alternative to again pursuing the SCC process, the proponent submitted a PP application to Council on 20 December 2019. The PP seeks to allow the low-density residential use of the land for seniors housing with a minimum lot size of 500m².

On 3 March 2020, Council resolved (MIN20.161) to support the proposed rezoning in principle; prepare a PP for Gateway determination; and if granted, to complete an Aboriginal Cultural Heritage Assessment (ACHA) prior to exhibiting the PP.

Planning Proposal

Gateway determination – conditions

Council received a favourable Gateway determination on 30 April 2020.

This included conditions requiring the preparation of an Aboriginal Cultural Heritage Assessment (ACHA) prior to public exhibition. The ACHA was received on 18 September 2020 and no changes were required to the PP as a result. Consultation with the *then* NSW Department of Planning, Industry and Environment (Biodiversity and Conservation), Endeavour Energy and Shoalhaven Water was also required and completed.

The PP is consistent with relevant Section 9.1 Ministerial Directions and there are no outstanding objections from public authorities.

The PP was made publicly available for review in accordance with Condition 2 of the Gateway (see below) and a public hearing was not required.

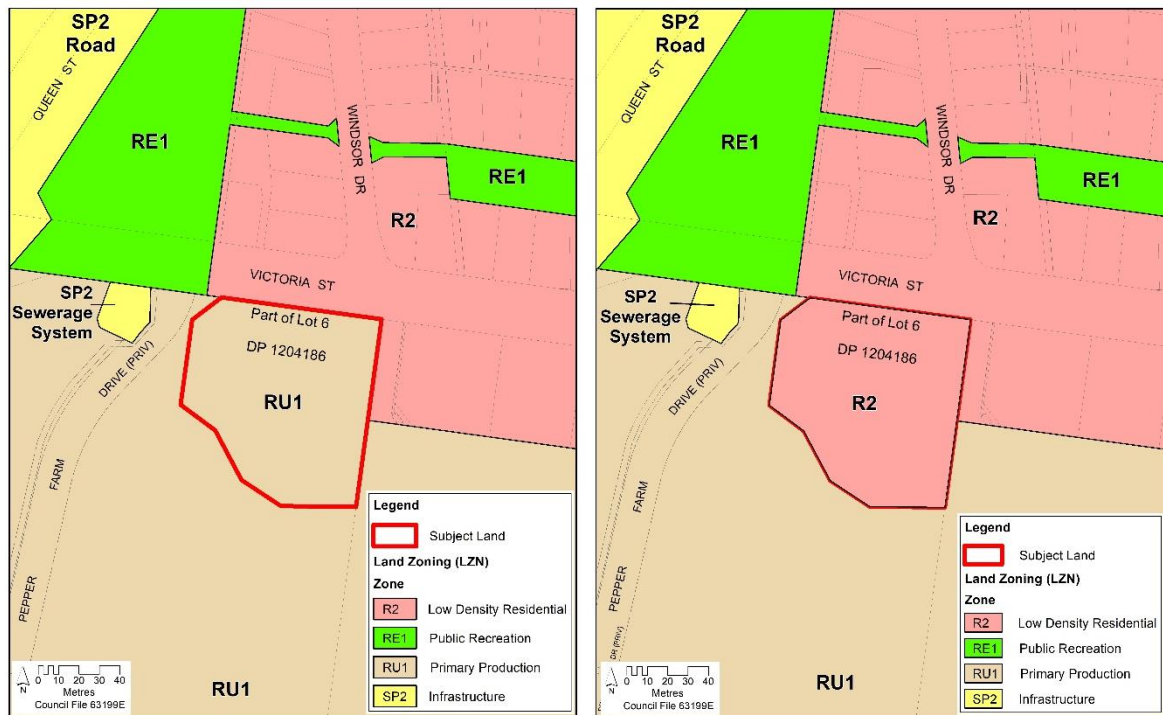
All conditions of the Gateway determination have been satisfied.

Proposed Amendments to Shoalhaven LEP 2014

The PP proposed the following amendments to the Shoalhaven LEP 2014:

1. Rezone the subject land from RU1 – Primary Production to R2 – Low Density Residential (see Figure 2).
2. Amend the minimum lot size map to reduce the minimum lot size from 40ha to 500m² (see Figure 3).
3. Reduce the height of buildings from 11m to 8.5m (see Figure 4).

Note: The existing 11m maximum height of buildings control is set out in Clause 4.3(2A) of the Shoalhaven LEP2014, thus the current Height of Buildings Map does not show a maximum height over the subject land.



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Figure 4 – Existing Height of Buildings control (left) and proposed (right)

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Community Engagement

Public Exhibition Overview

The PP and supporting material were publicly exhibited via Council's website from 4 November to 4 December 2020 (inclusive). The public exhibition was extended for an additional two weeks until 18 December 2020 (see *Note below) in response to representations received from the Member for Kiama, Mr Gareth Ward, MP on behalf of a constituent.

The exhibition package can still be viewed online on Council's website and includes the following:

- [Public Exhibition Notice](#)
- [Explanatory Statement](#)
- [Planning Proposal](#) (includes links to background studies)
- [ACHA Report](#)
- [Clarifications – Boundary Dimensions & Proposed Future Use](#)

The documents received from the proponent as part of the original application are listed in Table 1 of the PP (with links to them).

Written notification of the public exhibition arrangements was sent to adjoining and adjacent owners, the proprietors and residents of both *The Arbour* and *The Grange* retirement villages, the Berry Forum and the Nowra Aboriginal Land Council. The 'Berry Town Crier' also published details of the exhibition.

*Notes

Early in the exhibition period some adjoining residents of *The Grange* raised questions about the dimensions of the subject land, the length of the eastern boundary and the potential impact of future buildings on the Probable Maximum Flood level (PMF). In order to clarify the relationship between the subject land and constructed buildings forming

part of *The Grange* located on Lot 1008 DP 1107175 (No 22) Victoria Street, Berry, external dimensions of the subject land were superimposed on a diagram identifying the PMF and published as an additional “[Clarification](#)” on Council’s website. (The dimensions were digitised (i.e. approximated) and are subject to survey.)

Queries were also raised about the proposed future use of the land. The PP document discusses both residential subdivision for up to 10 lots (indicative plan only) and seniors housing as potential future uses. These matters were also covered in the ‘Clarification’ document.

Community Submissions Overview

Twenty-one (21) submissions were received during public exhibition and a summary of these is provided in **Attachment 1**. Copies of the actual submissions will be available for viewing in the Councillors’ Room prior to the meeting.

A summary of the key issues raised in the submissions and staff comment on them is provided below. There is some overlap between the issues.

1. Future use of The Arbour

Was suggested that Arbour residents have been misled about the future use of this land and that it was approved as landscaped area. Others commented that the proposal is for a separate development that is not integrated with the existing development and that, therefore, servicing of seniors housing would be difficult and “stretched”.

Staff comment:

- The PP applies to part of Lot 6 DP 1204186 and The Arbour retirement village is centrally located on the same property. The type of housing provided is self-care and therefore the only services provided to residents by the proprietor are property maintenance, landscaping and organised social activities. These services would be extended to include the additional seniors housing if the PP is finalised. In addition to these services, there are existing recreational facilities on site including a cinema, pool and gym. Other services are delivered to some residents either on-site or off-site by external providers, often under the National Aged Car Advocacy Program (NACAP)
- As noted above, the land is identified as part of a long term investigation area (LTIA) in the endorsed GMS.
- The proponent was asked to respond to these claims. The following information (in summary) was provided:

It has always been made clear that this land would be potentially developed and it does not have any active use in The Village.

Formal communication to village residents and the Berry community regarding the intended development of the subject land have taken place since 2019 (this includes more detailed notification to residents in early 2019, written notice in June 2019 and a briefing to the Berry Forum presented 13 June 2019).

- The loss of open space within a private development is essentially an internal matter for the proponent that does not impact on the assessment of the PP.

2. Flooding issues

Concerns were raised in five submissions that the PP would result in the intrusion of development into the “flood plain”. Comments were made about the potential impact on the intermittent watercourse and the “natural” water feature that serves as a wildlife

habitat for water birds and the like. Concerns were raised about the length of eastern boundary and that this should be reduced to 80 metres to protect against any impact on floodwaters.

Staff comment:

- Potential impact on the Probable Maximum Flood (PMF) and associated amenity impacts was one of the key issues raised in submissions leading to the publication of a “[Clarification](#)” as discussed previously. The following Figure 5 included in that document shows the boundary of the PMF which essentially traces the top of a small bank and skirts north of a slight depression in the south eastern corner of the PP area.



Figure 5 – Extent of flooding constraints and digitised dimension

- The proponent's revised conceptual scheme for seniors housing at Figure 6 shows that the southern building alignment is unlikely to extend beyond 85.4m. Subject to development approval, some groundwork and landscaping may be necessary in this area. Photo 1 below illustrates the proximity of one of existing apartment buildings within The Grange to the eastern boundary. The slight depression in the south eastern corner of the subject land is also evident.

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Photo 1

The Grange – Apartment building on the eastern boundary as viewed from the subject land

- Council's flood engineers commented on the earlier SCC proposal in May 2019 and noted:
"The Arbour planning report and Flood management site servicing strategy report have been reviewed. Based on the architectural design, it is identified that a minor portion of the development will be within the low hazard flood prone area. Flood evacuation will not be a significant issue. In general, the proposal complies with the Chapter G9 of SDCP 2014."
- In issuing the Gateway determination, DPIE agreed that the minor inconsistency with Section 9.1 Direction 4.3 Flood Prone Land was justified.
- Flooding issues would be considered in more detail at development application stage if the PP is finalised.

3. **Amenity and environment**

Loss of amenity was raised in four submissions. Comments were made that *"the loss of this important, and last remaining piece of rural zoned land is of no advantage to Berry or Berry residents"* as a whole and that the PP would be detrimental to the historic character, approach to and setting of Berry. Concerns were raised about potential impact on the streetscape of Victoria Street, loss of large liquid amber street trees, removal of the bus-stop and reduced amenity for residents of The Arbour.

Staff comment:

- As previously noted, the subject land is identified as a LTIA in the endorsed GMS. It is also not identified in any Environmental Planning Instrument as having any heritage values and it is also not included in the settlement map for Berry in the [Shoalhaven Character Assessments](#) document (2014).
- A separate Planning Proposal – Berry Heritage Investigations (PP056) is nearing completion for Gateway submission to the NSW Government. No new heritage

items or conservation areas are proposed within the immediate vicinity of the subject land.

- The subject land is well screened from the Highway by trees and shrubs within The Arbour's grounds. This screening will become more effective over time as recent plantings near the western boundary become more established.
- Asked to comment on the issue of the loss of amenity to residents of *The Grange*, the proponent offered (in summary) the following:

"The water feature was developed as part of the landscape design and is 'man-made'. The water feature and mature vegetation were undertaken under no obligation from planning controls at the cost of the owners."

- Streetscape impacts are more of a fine-grained matter to be considered in the future assessment of any resultant development application. However, the proponent has provided the following information about the proposed access arrangements:

"...the intended future development is seniors housing. The proponent has publicly presented this scheme to the Berry Forum and village residents in which access will be achieved through the existing private road – Pepper Farm Drive."

- In relation to wildlife habitat for waterbirds, the subject land is not identified as being environmentally sensitive in any Environmental Planning Instrument, e.g. existing conservation areas, native vegetation of high conservation value, threatened ecological communities and key habitats or important wetlands, coastal lakes and estuaries. However, it should be noted that the existing water feature is unlikely to be impacted by the PP (see Figure 5).
- Based on the above and specifically that no new access to Victoria Street is proposed in the seniors housing scheme, the issues raised are insufficient to justify not proceeding with the PP and can be further considered as needed as part of any future development application.

4. Local heritage values – Draft Illawarra-Shoalhaven Regional Plan 2041 (ISRP)

Two submissions commented that the PP is inconsistent with Strategy 23.1 – cultural heritage values of the draft ISRP. The concern was raised that the PP is not conserving the cultural heritage values of Berry because rezoning the subject land will *"change the heritage values of Berry"*.

Staff comment:

- The draft ISRP was exhibited between 2 November and 17 December 2020. Timing of the public notification of the PP (4 November) did not permit a review of the draft ISRP to be included in the PP, nor was it required by DPIE.
- There are three heritage items within the vicinity of the site that are listed in [Schedule 5](#) to the Shoalhaven LEP 2014 (No's 41, 109 and 111). These are all vegetated sites and are not impacted by the PP.
- The comments provided above in regard to 'amenity' are also relevant to this issue, as are the comments about the Shoalhaven Character Assessments document.
- No Aboriginal objects or areas of potential archaeological deposits were identified in the ACHA, that concluded that most of the PP area has been substantially disturbed and did not recommend any further Aboriginal heritage investigations.

- In conclusion, it is considered that the PP is not inconsistent with Strategy 23.1 of the draft ISRP.

5. Vehicular access

In addition to general streetscape impacts, several submissions raised very strong objections to the new cul-de-sac shown in the 10-Lot [Conceptual Residential Subdivision Plan](#) that was included in the PP. The access, proposed to be located between the driveways to *The Grange* and The Arbour retirement villages, was considered to be undesirable due to perceived traffic conflicts and impacts on a well-established line of liquid amber street trees and the bus-stop.

Staff comment:

- As the PP proposes to rezone the subject land to R2 – Low Density Residential, it was considered prudent to include an indicative subdivision layout in the PP to demonstrate how the land could potentially be subdivided in the future, if rezoned. The plan is conceptual and was provided for information only.
- As noted above, the proponent has confirmed that the intended future development is seniors housing (not including subdivision) and access will be from the existing private road within The Arbour grounds, Pepper Farm Drive.

6. Minimum lot size

Concerns were raised in three submissions about the proposed minimum lot size. Comments suggested that 500m² is too small and that the minimum lot size should be at least 2,000m², consistent with subdivision pattern of 8 lots to the east of the subject land fronting the south side of Victoria Street and the east side of George Street. The proposed cul-de-sac subdivision layout, showing 500m² lots, was considered to be “unsightly” and inconsistent with historic character of “old Berry”. Related comments were also made that future development should be set back from Victoria Street and that the PP should not replicate development west of the Highway.

Staff comment:

- The proposed 500m² minimum lot size is consistent with adjacent development on the north side of Victoria Street and the proposed R2 zone more generally. The proposed 500m² minimum lot size is reasonable in the circumstances and also consistent with the median lot size for the Hitchcocks Lane PP (PP029) where lot sizes are proposed to be in the range of 350m² to 700m².
- The proponent has indicated they have no intention to pursue a subdivision. Therefore, the proposed minimum lot size planning controls are unlikely to be relevant during any seniors housing development application assessment. Design and siting issues, including the setback from Victoria Street, can be considered at that time when there will be further opportunity for concerned residents to review the detailed plans.
- In the circumstances, the examination of the proposed minimum lot size controls does not warrant further review or change.

7. Height of Buildings (HOB)

One submission (from The Arbour) commented that “tall” buildings would impact on the rural outlook and park like appearance enjoyed by residents of *The Grange*.

Staff comment:

- The proposed height of building controls are consistent with adjacent land on the northern side of Victoria Street and the Berry township generally. The PP proposes to reduce the existing HOB planning control from 11m to 8.5m.
- The proponent's revised proposal is currently in keeping with existing housing product within The Arbour Village comprising free-standing, single-storey dwellings. It is also consistent with the objectives of the proposed R2 zone *"to provide for the housing needs of the community within a low density residential environment"* and *"to provide[...] for detached housing"*.
- The adjacent residential development to the east currently includes two-storey apartment product.
- There is no justification to further amend the proposed height of building controls in the PP.

8. Traffic and Parking

Some residents of Victoria Street, Windsor Drive, Albert Street, Bryces Road and The Arbour raised concerns that the additional traffic movements generated by the PP would exacerbate existing traffic and parking problems in the Berry township.

Staff comment:

- A traffic and parking study by GHD in October 2019 for the proposed seniors housing scheme comprising 11 dwellings concluded that no mitigation measures would be required:
"Based on the scale and nature of the proposed development, additional traffic generation will be minor which, combined with the existing low traffic volumes on Pepper Farm Drive and Victoria Street, will not have a significant impact on local traffic flows."
- The NSW Guide to Traffic Generating Developments nominates summary trip generation rates for seniors housing at 2.1 weekday daily vehicle trips (wdvt) per dwelling and 0.4 wdvt per dwelling in peak hour, noting that morning site peak hour does not generally coincide with the network peak hour. Based on these rates, the proposed development would generate approximately 23 additional daily movements and 4.4 during peak hour.
- There is no evidence to suggest that the proposal would result in any significant traffic and parking problems in Berry township. Traffic impacts will however be assessed in more detail as part of any future development application.

9. Services

Concerns were raised in two submissions about increased infrastructure, utility and community service impacts.

Staff comment:

- Endeavour Energy and Shoalhaven Water have raised no objections to the PP.
- The existing development (The Arbour) comprises 110 self-care dwellings and, therefore, the proposed additional 11 dwellings represent an increase of 10%.
- The proponent advises that The Arbour has the capacity to comfortably service the additional dwellings and that new residents would have access to the existing

village amenities including: Cinema, heated indoor pool, gym, pool room, library, entertaining spaces and landscaped gardens.

- Other services are delivered to residents either on-site or off-site by external providers, often under the National Aged Car Advocacy Program (NACAP) administered by the Australian Government.
- The concerns raised are noted, but a decision not to proceed with the PP cannot be justified on these grounds. These issues are also relevant to any future development application that results and this provides an opportunity for more detailed examination and comment is needed.

10. Seniors housing

Comments were made about seniors housing, in particular that there is an existing over-supply of this housing type in Berry. Others suggested that the site is not suitable for seniors housing as services are more than 500m away. Another suggested that the existing development footprint for The Arbour should be extended in lieu of this proposal.

Staff comment:

- The claim that there is an existing over-supply of seniors' housing in Berry is not substantiated by the evidence. The Arbour received development approval in 2006 and there have been no new approvals for seniors housing in Berry since that time. The proponent has also provided the following information:
 - The Arbour was sold out 12 months prior to completion in 2015.
 - Since completion, The Arbour has maintained 97% occupancy and has never had more than 3 homes for sale concurrently.
 - There is currently only 1 home offered for sale.
 - The Arbour maintains a paid active wait list of 22 people. Active marketing is unnecessary as demand exceeds supply.
- On the basis of the above, the claim of an over-supply of seniors housing is not substantiated. In any event, the PP if supported, will ultimately allow other residential uses to be considered if warranted, such as general housing.

11. Construction impacts

Both an adjoining and a nearby resident were concerned about the potential for long term construction impacts, in particular dust and noise.

Staff comment:

- Noted and actual construction impacts will be assessed more closely as part of a future development application. The proponent advised that the likely time frame for construction of the seniors housing scheme would be 18-24 months.

12. Property values

Comment was received that the PP would have a negative impact on the property values, particularly properties in *The Grange* who would lose the rural outlook from their homes.

Staff comment:

- The proponent has provided the following comment in this regard (in summary):

“Grange residents have immensely benefited from The Arbour’s dedicated landscaping and maintenance of privately owned green space. The Arbour is not responsible for the property values associated with the design/amenity of Grange apartments, noting the minimal setback the relevant apartment building from the eastern boundary.”

- The courts have acknowledged that views from a person’s home can have considerable value. However, that does not mean that a person has the power to protect and maintain their view as a legal, proprietary right. The law has been clear on this point since 1937. The Land & Environment Court has a well-established planning principle in respect of the assessment of impacts of development on views. [Lindsay Taylor Lawyers]
- If the PP is supported, the adjoining owners will have an opportunity to comment on the detailed design and siting of the proposed seniors housing as part of the subsequent development assessment process. Potential impact on property values is not a sufficient reason to not to proceed with the PP.

13. Tourism

A comment was received that maintenance of the character of the village should be prioritised by Council for the sake of local and regional tourism.

Staff comment:

- The Existing Character of Berry is recognised in the [Shoalhaven Character Assessments](#) (SCA) completed in February 2020. The Arbour (Lot 6, DP 1204186) however is not included in the settlement map. The SCA identifies the character elements that need to be retained and those that need to be improved. It also notes that:

Shoalhaven’s population is an ageing one [...] that brings with it a number of challenges that need to be planned for; specifically, availability and access to aged care services, and appropriate housing choices.

- In addition, a separate Planning Proposal – Berry Heritage Investigations (PP056) is also being progressed that seeks to heritage list additional properties within the older part of Berry and expand the number of Heritage Conservation Areas. This PP will be submitted to the NSW Government for a Gateway determination in the near future.

14. Extension of Time (EOT) request

Two submissions requested an EOT for the public exhibition. One of these was from the member for Kiama, Mr Gareth Ward on behalf of a constituent.

Staff comment:

- As a result, the public exhibition period was extended by two weeks, as noted elsewhere in this report.

15. Public Hearing

There were six requests for a public hearing or meeting to be held.

Staff comment:

- Under legislation, a person making a submission may request a public hearing be held. However, this does not mean that one has to be held. Council can decide

whether or not to hold one depending on the significance of any submissions raised.

- The Gateway determination did not require a public hearing to be held into this matter. The issues raised in submissions are addressed in this report and do not warrant a public hearing being held.
- Those who made submissions will be advised of the date when Council will consider this report and will have the opportunity to request a deputation in accordance with Council's current policy for deputations.

Agency Consultation

- *Endeavour Energy*

The proponent's [Site Servicing Strategy](#) states that *"An application for connection to Endeavour Energy will be submitted to confirm current infrastructure capacity and seek new connection approval. Substation will be required to supply power to this development if Endeavour Energy determines the current power infrastructure in Victoria and within adjacent Lot 1008 DP1107175 to be under capacity."*

Endeavour Energy was consulted prior to exhibition of the PP and comments received on 5 November 2020. These comments and the attached resources have been forwarded to the proponent. Endeavour advised:

"Subject to the following recommendations and comments Endeavour Energy has no objection to the Planning Proposal".

The "recommendations and comments", many of which are generic, relate to the design and provision of electrical supply to the site and are matters that need to be addressed during the design and construction of any future development.

A copy of the comments from Endeavour Energy is available [here](#).

- *Heritage NSW*

The Gateway determination required an Aboriginal Cultural Heritage Assessment (ACHA) to be undertaken. The determination also required consultation with the *then* Department of NSW Department of Planning, Industry and Environment (Biodiversity and Conservation) which included the Office of Environment & Heritage (now Heritage NSW).

Apex Archaeology (Apex) was engaged by Council and an archaeological survey of the PP area was conducted. No Aboriginal objects or areas of potential archaeological deposits were identified. It was concluded that most of the PP area has been substantially disturbed and further Aboriginal heritage investigations was not required. No changes to the PP were therefore necessary.

The ACHA was referred to Heritage NSW for review. The following advice was received:

"We advise Council that the Apex Archaeology ACHAR (September 2020) addresses Heritage NSW requires for preparing an ACHAR".

A copy of the comments from Heritage NSW is available [here](#).

Internal Council consultation

Comments were received from Development Services and Shoalhaven Water.

- *Development Services*

Provided a copy of feedback to DPIE on 30 May 2019 in relation to the SCC application. The comments are reproduced below. Essentially, no objection was raised to the use of the land for seniors housing although there were some concerns raised about the design and siting of the proposed development. These are matters that would be considered during the assessment of a development application.

1. Council has reviewed the documentation associated with the Site Compatibility Certificate application (SCC) for seniors housing and 10 Victoria St, Berry.
2. Council's Natural Resources Unit has reviewed the application and advised that based on the architectural design / site planning, it is identified that a minor portion of the development will be within the low hazard flood prone area. Flood evacuation does not appear to be a significant issue. In general, the proposal appears to comply with the provisions of Chapter G9 of SDCP 2014.
3. A pre-lodgement meeting was held with Council on 6 February 2019 to discuss the proposed SCC application and subsequent development application should the SCC be supported. In the meeting Council provided comment on the proposed SCC, flood management and site servicing.
4. Following a review of the documents submitted with the SCC, Council does not object to the proposed extension to the seniors housing on the property.
5. It is noted however that Council has not undertaken a detailed assessment of the proposal which will be subject to a future development application. Whilst we do not object to the concept, we are concerned about the presentation of the development to Victoria Street with the proposed 1.8m high boundary fence. Further consideration needs to be given to the design in this location, so that the development is seen to integrate / address the street.

- *Shoalhaven Water*

The following advice was provided:

"There is an existing sewer pumping station located in the north east corner of the land just to the west of the access road [on Lot 1 DP 1102281]. The proposed rezoning will allow for residential development within proximity to the SPS that may result in odour and or noise complaints. Minimum offset of 40m should be imposed over the proposed rezoned land to reduce the risk of residences being affected by the sewer pumping station."

Shoalhaven Water use the WSAA Sewerage Pumping Station Code of Australia WSA 04-2005 V2.1 as a reference/guideline document for the design and construction of sewerage pumping stations. Section 5.2.3 of the code outlines that where SPSs are less than 50m to residential areas (building line/s) that discussions take place early in respect of the design. See relevant extract from the Code is reproduced below:

5.2.3

Pumping station sites shall be located as far as practicable from residential properties and, where possible, be surrounded by public open space to minimise noise and odour nuisance during periods of normal operation and maintenance. If the centre of the proposed pumping station site is less than 50 m from the closest or potentially closest building alignment, the location of the site should be discussed at an early stage with the Water Agency.

Further discussions with Shoalhaven Water and the proponent confirmed that, subject to development approval, the 40 metre buffer from the centre of the existing SPS to the closest building alignment can be satisfactorily accommodated. Figure 6 illustrates that the required 40m buffer would not adversely impact any proposed building alignment shown in the proponent's most recent design for the seniors housing scheme.



Figure 6 – SPS 40m buffer requirement and proposed seniors housing scheme

Note: Diagram provided by proponent and all boundaries are subject to survey.

Conclusions

Whilst a range of issues were raised in the submissions that were received on this PP, it is considered that it should proceed to be finalised as exhibited. It is noted that at a strategic level the subject land is identified in an endorsed strategy, comments are provided in this report on the issues raised and also many will be further considered/addressed at the subsequent development application stage if the rezoning is finalised.

Financial Implications

There are no implications for Council's budget processes. PP052 is a proponent-initiated minor planning proposal and full cost (100%) recovery applies.

DE21.11

Summary of Submissions – PP052

Number	Date Received	Submission	Staff Comments
1. and 20 D20/530143 D20/560279	30/11/2020	Comment – Adjoining resident <ul style="list-style-type: none"> Concern that the proposal will intrude into the "Flood Plain" and impact the intermittent watercourse. Concerns raised about length of eastern boundary. Eastern boundary should be reduced to 80 metres. 	<ul style="list-style-type: none"> Proposed building works will not extend below the probable max. flood (PMF) although, subject to development application (DA), some groundwork/landscaping may be necessary in this area. Minimal impact on Grange properties due to mis-understanding about length of eastern boundary. Clarification issued. Revised scheme for seniors housing (by Proponent) shows southern building line at 85.4 metres.
2. D20/532695	30/11/2020	Objection – Arbour Resident Impacts on <ul style="list-style-type: none"> rural outlook of Grange residents and park-like appearance by tall buildings streetscape/historic properties in Victoria Street 	<ul style="list-style-type: none"> Minimal impact on Grange properties due to mis-understanding about length of eastern boundary. Clarification issued. Revised scheme for seniors housing (by Proponent) shows southern building line at 85.4 metres. Proposed max. height of buildings (HOB) is consistent with adjoining and adjacent areas of Berry. Proponent's revised scheme for seniors housing is single storey. Three heritage items in the Vicinity (41,109, 111). All are Vegetation & not impacted. No Conservation Area. PP056 – the nearest proposed new heritage item is at 44 Victoria Street, 400 m from the subject land, and will not impacted. Proponent has confirmed that access will be from Peppermint Farm Drive. Therefore, no impact on the streetscape of Victoria Street or street trees resulting from access construction.
3. D20/534472	26/11/2020	<ul style="list-style-type: none"> Reps on behalf of Ms B Smith Extension of time (EOT) requested 	<ul style="list-style-type: none"> Public exhibition extended until 18 December 2020
4. D20/534704	03/12/2020	Objection – Adjoining Resident Impacts on: <ul style="list-style-type: none"> rural outlook of Grange residents park-like appearance entrance to Berry Streetscape 	<ul style="list-style-type: none"> Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping. Land identified as a Long Term Investigation Area (LTIA) in The

Summary of Submissions – PP052

		<ul style="list-style-type: none"> Bird sanctuary Loss of open space and amenity for Arbour residents 	Shoalhaven GMS 2012 endorsed by the State Government in 2014.
5. D20/534752	29/11/2020	Comment – Adjoining Resident <ul style="list-style-type: none"> EOT request - granted. Public hearing request Flood issues Loss of rural land of no advantage and detrimental to character of Berry, Victoria Street and Arbour residents Arbour residents misled about future land use. Access impact on Liquid amber trees on Council land Loss of wildlife habitat, (water birds, etc) 	<ul style="list-style-type: none"> Public exhibition extended until 18 December 2020. No public hearing required and no public meetings due to Covid-19. Proposed building works will not extend below the PMF although, subject to DA, some groundwork/landscaping may be necessary in this area. Land identified as an LTIA in The Shoalhaven GMS 2012 endorsed by the State Government in 2014 Southern boundary of PP area does not impact water feature. In recent discussions proponents confirm access from Pepper Farm Drive.
6. D20/534780	02/12/2020	Comment – Berry Resident <ul style="list-style-type: none"> Public hearing request Additional traffic impacts No additional access from Victoria Street 	<ul style="list-style-type: none"> No public hearing required and no public meetings due to Covid-19. In recent discussions proponents confirm access from Pepper Farm Drive Only 2.1 car movements/day for Seniors
7. D20/534851	30/11/2020	Objection – Adjoining Resident <ul style="list-style-type: none"> Public hearing request Access impact on Liquid amber trees on Council land No additional access from Victoria Street Loss of rural land of no advantage and detrimental to character of Berry, Victoria Street and Arbour residents Important and last remaining open space 	<ul style="list-style-type: none"> No public hearing required and no public meetings due to Covid-19. Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping. In recent discussions proponents confirm access from Pepper Farm Drive
8. D20/534912	03/12/2020	Comment – Berry Resident <ul style="list-style-type: none"> Arbour residents misled about future land use. No additional access from Victoria Street Min lot size should be 2,500 m² consistent with subdivision pattern on cnr of Victoria and George Streets Traffic/parking/Infrastructure 	<ul style="list-style-type: none"> Proposed lot size is consistent with adjoining and adjacent in Berry. Smaller lots are needed for affordable housing although 500m² is larger than 350m² proposed for Hitchcocks Lane. Only 2.1 car movements/day for Seniors Construction impacts for 11 dwellings are relatively short term

Summary of Submissions – PP052

		<p>impacts on Berry</p> <ul style="list-style-type: none"> Long term construction impacts Loss of rural land/open space (as per DA approval) of no advantage/loss of amenity and detrimental to character of Berry, Victoria Street and Arbour residents 	<p>depending on contracting process. Proponent has advised 18-24 months to complete.</p> <ul style="list-style-type: none"> Indications are the proposed development can be serviced. Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping.
9. D20/535592	03/12/2020	<p>Objection – Adjoining Resident</p> <ul style="list-style-type: none"> Loss of rural land/open space (as per DA approval) of no advantage/loss of amenity and detrimental to character of Berry, Victoria Street and Arbour residents Loss of wildlife habitat, (water birds, etc) – over 30 different species Property devaluation for 8 families Flood issues 	<ul style="list-style-type: none"> Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping. Proposed building works will not extend below the PMF although, subject to DA, some groundwork/landscaping may be necessary in this area. Southern boundary of PP area does not impact water feature or high hazard floodway.
10. D20/535968	03/12/2020	<p>Objection – Far Meadow Resident</p> <ul style="list-style-type: none"> SCC application refused. Lot size too small, out of character Existing over supply of seniors housing Exacerbate existing traffic and parking problems in Berry Contrary to Strategy 23.1 in draft REP – cultural heritage values, ie rezoning will change heritage values of Berry Unightly infill of green space and natural character of Berry 	<ul style="list-style-type: none"> There is a demand for both affordable/seniors housing of all kinds in Berry. Proponent has provided turnover/vacancy rates. Only 2.1 car movements/day for Seniors Not inconsistent with 23.1. ACHA done. No aboriginal cultural values or sites. No existing heritage items impacted. PP56 proposes to expand the conservation area within the township but does not include the subject land. Green space is landscaped property owned by the Arbour.
11. D20/536382	29/11/2020	<p>Objection – Arbour Resident</p> <ul style="list-style-type: none"> Unwelcome population, housing, traffic pressures impacting character of Berry. Must be limited to maximum of 10 dwellings. Proposed development is not integrated with the Arbour – Servicing will be difficult and stretched 	<ul style="list-style-type: none"> Only 11 dwellings and land identified as an LTIA in The Shoalhaven GMS 2012 endorsed by the State Government in 2014. Only 2.1 car movements/day for Seniors Land is in the same ownership. If Senior's housing is proposed, same level of existing servicing will apply (property maintenance, landscaping and social activities). Village services include only property maintenance, landscaping and organised social activities. External providers and National

Summary of Submissions – PP052

12. D20/536455	03/12/2020	Objection – Adjoining Resident <ul style="list-style-type: none"> Proposal is not integrated with the Arbour 500 metres distant, separate development. Scarcity of green space in the village. Aesthetic view of Berry will be adversely affected and Berry will not benefit from this development. 	Aged Care Program (NACAP). <ul style="list-style-type: none"> Land is in the same ownership. If Senior's housing is proposed same level of existing servicing will apply (property maintenance, landscaping and social activities). Photographic review confirms site is already well screened with new plantings already in place. Demand exists for both affordable and seniors housing in Berry.
13. D20/539179	04/12/2020	Objection – Berry Resident <ul style="list-style-type: none"> Lot size and subdivision pattern is inconsistent with historic character of Berry and should be consistent with subdivision pattern on cnr of Victoria and George Streets Development of this type should not be permitted east of the Highway which should be consistent with Village feel. Small blocks off a cul-de-sac inconsistent with character of the historic village Property devaluation Must be set back from Victoria Street which is a main entrance to the village They should extend within the property without impacting on Victoria Street Keeping village feel should be Council's priority for the sake of local and regional tourism 	<ul style="list-style-type: none"> Subdivision indicative only. Proponent has confirmed that Seniors housing scheme is proposed. Proposed lot size is consistent with adjoining and adjacent in Berry. Smaller lots are needed for affordable housing although 500m² is larger than 350m² proposed for Hitchcocks Lane. Only 11 dwellings and Land identified as an LTIA in The Shoalhaven GMS 2012 endorsed by the State Government in 2014. Can extend within the property (with SCC) but purpose is to utilise land identified as LTIA. DA assessment will address character, streetscape and setback issues.
14. D20/539207	07/12/2020	Comment – Berry Resident <ul style="list-style-type: none"> Public hearing request Arbour residents misled about future land use. Additional traffic impacts Loss of wildlife habitat, (water birds, etc) Bus-stop relocation 	<ul style="list-style-type: none"> No public hearing required and no public meetings due to Covid-19. Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping. Only 2.1 car movements/day for Seniors In recent discussions proponents confirm access from Pepper Farm Drive Southern boundary of PP area does not impact water feature.
15. D20/539345	04/12/2020	Comment – Berry Resident <ul style="list-style-type: none"> Overdevelopment of the area Land was meant to be retained as open space/landscaped area. Construction impacts – dust, etc. 	<ul style="list-style-type: none"> Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping. Only 11 dwellings and land identified as an LTIA in The

Summary of Submissions – PP052

			<p>Shoalhaven GMS 2012 endorsed by the State Government in 2014.</p> <ul style="list-style-type: none"> Construction impacts for 11 dwellings are relatively short term depending on contracting process. Proponent has advised 18-24 months to complete.
16. D20/539353	04/12/2020	<p>Objection – Berry Resident</p> <ul style="list-style-type: none"> SCC Application rejected Undesirable precedent, Contributing to ribbon development on PH. Unsuitable for seniors. Not within walking distance and inadequate parking in Berry for same Contrary to Strategy 23.1 in draft REP – cultural heritage values, ie not conserving the same for Berry Rural zone provides transition between Arbour/Grange & the village. 	<ul style="list-style-type: none"> Not inconsistent with 23.1. ACHA done. No aboriginal cultural values or sites. No existing heritage items impacted. PP56 proposes to expand the conservation area within the township but does not include the subject land. Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping.
17. D20/539363	04/12/2020	<p>Objection (in part) – Location unknown</p> <ul style="list-style-type: none"> No objection to rezoning per se Object 500m² min lot should larger Concern setback from Victoria Street Utility and Service impacts Flood/environment issues 	<ul style="list-style-type: none"> Proposed lot size is consistent with adjoining and adjacent in Berry. Smaller lots are needed for affordable housing although 500m² is larger than 350m² proposed for Hitchcocks Lane. Indications are the proposed development can be serviced. Augmentation/modifications may be required. No concerns from Flood Engineers, building line above PMF. DA assessment will address character, streetscape and setback issues.
18. D20/557729	16/12/2020	<p>Objection – Adjoining Resident</p> <ul style="list-style-type: none"> Public hearing request Proposal misleading - use is not confined to seniors housing – clarification required. Residential infill not needed Loss of amenity to residents, towns people and visitors alike Area is an important welcoming vista to SW Berry. Proposal should be rejected. 	<ul style="list-style-type: none"> No public hearing required and no public meetings due to Covid-19. Clarification included in Exhibition documents. Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping. Land identified as an LTIA in The Shoalhaven GMS 2012 endorsed by the State Government in 2014 Demonstrated need for both affordable and seniors housing in Berry. Site inspection confirms site is

Summary of Submissions – PP052

			already well screened with new plantings already in place and this will improve as plants grow.
19. D20/560165	15/12/2020	Objection – Adjoining Resident <ul style="list-style-type: none"> Loss of rural land/open space detrimental to character of Berry, Victoria Street and Grange residents Should not replicate development west of Highway. 	<ul style="list-style-type: none"> Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping. Site inspection confirms site is already well screened with new plantings already in place.
20. and 1. D20/560279 D20/530143	17/12/2020	Comment – Adjoining Resident Supplement to D20/530143 <ul style="list-style-type: none"> Reduce length of eastern boundary to 80 metres. (reduction of 12 metres). 	<ul style="list-style-type: none"> See above comments on Submission No. 1.
D20/562258	21/12/2020 Late (By Post) Undated	Objection – Adjoining Resident <ul style="list-style-type: none"> Public hearing request Unit 56 + 7 others most affected Loss of natural water feature/wildlife habitat, (water birds, etc) Access impact on Liquid amber trees on Council land Bus-stop relocation Flood issues Arbour residents misled about future land use Loss of rural land detrimental to character of Berry, Victoria Street and Arbour residents Should be rejected again 	<ul style="list-style-type: none"> Loss of internal open space is a private matter for the Arbour. Grange residents have benefitted from Arbour landscaping. Site inspection confirms site is already well screened with new plantings already in place.
Member for Kiama: 1 The Arbour: 2 The Grange: 10 (2 from 1 resident) Bryces Road, Far Meadow: 1 Albany Street: 1 Victoria Street: 2 (other than The Grange) Windsor Drive: 3 Unknown location: 1 TOTAL SUBMISSIONS: 21			

DE21.12 DA20/1966 - 29 Strongs Road, Jaspers Brush - Lot 215 DP 1210788 - Single A-Frame Advert Sign

DA. No: DA20/1966/4

HPERM Ref: D21/5069

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments: 1. Section 4.15 Assessment Report (under separate cover) [⇒](#)
2. Determination Document - Refusal (under separate cover) [⇒](#)

Description of Development: Temporary use of land for the placement of an A-frame advertising sign on a trailer

Owner: Robert Bruce Drewitt Smith

Applicant: Foundation Law Group

Notification Dates: 29 September 2020 – 15 October 2020

No. of Submissions: Nil (0)

Purpose / Reason for consideration by Council

Council Resolved on 7 April 2020 (MIN20.240) with respect to COVID- 19 Response, that:

7. To maintain, continue and encourage as much economic activity as possible Council adopt the following policies, to be followed by an implementation report from the CEO:

...

k. The delegation to the CEO be rescinded to determine a development application by refusal until the end of COVID 19 crisis

The refusal of a development application must only be by Council/Committee resolution

This Report recommends refusal of the above application and is therefore prepared for consideration by the Development & Environment Committee in accordance with the 7 April 2020 Resolution of Council.

Recommendation (Item to be determined under delegated authority)

That DA20/1966, for the temporary use of land for the placement of an A-frame advertising sign on a trailer, be determined by way of refusal for the reasons set out in the Notice of Determination, Attachment 1 to this report.

Options

1. Refuse the Modification Application in accordance with the recommendation.

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

DE21.12

2. Obtain legal advice regarding potential for the approval of the application.

Implications: Staff will pursue obtaining legal advice to explore mechanisms for the approval of such a development, noting that in the opinion of staff the development is not capable of a positive recommendation.

3. Alternative recommendation.

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

Location Map



Figure 1 - Aerial image of the subject site in the local context.

Background

Proposed Development

The applicant seeks development consent to erect a single, temporary, and mobile A-frame advertising sign with a combined signage area of 24m² (12m² front and back) and image of the relevant signage is provided in Figure 3 and 4 below. The signage is in relation to a business identified as “Hotondo Homes”.

The signage is proposed to be placed on the south-western corner of the land adjoining the Princes Highway (refer to Figure 2).

The signage is proposed to be placed on the land for no more than 52 days in a year in accordance with cl. 2.8 of Shoalhaven Local Environmental Plan 2014.

The applicant originally proposed that the sign be placed on the location identified on the Site Plan for the period specified below, which was designed to reflect school holiday season, during which vehicle traffic along the Princes Highway would be likely to be at its peak:

- Saturday 26 September – Sunday 11 October (18 days)
- Saturday 19 December – Saturday 22 Jan 2021 (34 days)

Following discussion with the applicant and delays in the provision of additional information, the applicant has proposed that the signage be limited to 52 days in a 12-month period and not limited to specific dates.

The applicant has been advised from the outset that Council staff would not be likely to support the proposal, with this advice being reiterated in telephone discussions and multiple emails between 1 December 2020 and 17 December 2020.

Through this correspondence, the applicant also suggested that as an alternative, the proposal relates to a business being conducted on the land (i.e. construction of a Hotondo development) and could thus be defined as 'business identification signage', having regard to the provisions of the State Environmental Planning Policy No 64 – Advertising and Signage. As detailed in this report, Council staff advised that this interpretation was flawed and would not be supported by Council.



Figure 2 - Extract of the proposed site plan with area for the erection of the proposed temporary signage nominated.

DE21.12



Figure 3 - Elevation of the proposed signage and relevant dimensions.



Figure 4 - Elevations of the proposed signage.

DE21.12

Subject Land and Context

The land is identified as No. 29 Strongs Road, Jaspers Brush and is legally described as Lot 215 DP1210788 (the Site). The land is an irregular-shaped allotment with dual frontages to Strongs Road in the north and the Princes Highway in the east. The land has a total area of 24.89ha.

The land is largely cleared of vegetation with stands of tree located along several drainage depressions and proximate to the dams located on the site. The site is not mapped as containing any endangered ecological communities (EEC) or critically endangered communities (CEEC). The land drains to the existing dams and drainage depressions located on the site.

The land is zoned RU1, Primary Production under the Shoalhaven Local Environmental Plan 2014..

The site has been developed for rural/residential land use with a dwelling, inground pool, detached garage and associated shed located toward the Strongs Road frontage. Council has approved (Development Consent No. DA16/1393) five (5) tourist cabins on the subject site.

The site is largely free of easements and restrictions that would otherwise impede the development of the site as proposed. It is however noted that an easement for transmission lines 30.48m wide is located along the length of the south-eastern boundary of the site. The signage is proposed within this easement.

The surrounding land is a mix of rural (extensive agriculture) and residential land uses. It is noted that the land to the south-west of the site (No. B510 Princes Highway) has been developed along its south-eastern boundary for an RMS site office and car park for workers associated with the construction of the Berry-Bomaderry Highway Upgrade.

History

The site has historically been used for rural/residential land uses with ancillary structures (pool and sheds) also constructed on the site. As noted previously Council has approved (Development Consent No. DA16/1393) five (5) tourist cabins on the subject site. The location of the signage would not impact on the existing approved development and uses on the site.

Issues

State Environmental Planning Policy No 64—Advertising and Signage

Clause 2.8 of SLEP 2014 gives Council the power to grant development consent (not unconditionally) for development on land in any zone for temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.

Notwithstanding the ability for Council to approve an otherwise prohibited development (subject to satisfaction of sub. Cl 2.8(3)(a)-(d)), Council must consider the effect of relevant state environmental planning policies which apply to the land and the form of development.

SEPP 64 applies to the land and the Development and in accordance with Clause 7, *In the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.*

Consideration of the Development against the provisions of Clause 13 of SEPP 64 is required.

Clause 13(1) states as follows:

“13 Matters for consideration

- (1) *A consent authority (other than in a case to which subclause (2) applies) must not grant consent to an application to display an advertisement to which this Policy applies unless the advertisement or the advertising structure, as the case requires:*
- (a) is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and*
 - (b) has been assessed by the consent authority in accordance with the assessment criteria in Schedule 1 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and*
 - (c) satisfies any other relevant requirements of this Policy.”*

The proposed development is not considered to satisfy subclauses 13(1)(a) & (b) for the following reasons:

3 Aims, objectives etc

- (1) *This Policy aims:*
- (a) to ensure that signage (including advertising):*
 - (i) is compatible with the desired amenity and visual character of an area, and*
 - (ii) provides effective communication in suitable locations, and*
 - (iii) is of high-quality design and finish, and*

The application is not *compatible with the desired amenity and visual character of an area* (cl. 3(1)(a)(i)). The signage is considered to be an ad-hoc sign, which is not typical to the rural character of the area.

The proposed advertising is not a suitable location for the proposed advertising signage in the rural setting (cl. 3(1)(a)(ii)). The area is rural in character and part of the scenic drive and landscape into the Shoalhaven. It is acknowledged that there are roadworks; however, these are temporary and will result in a highway creating for a pleasant and efficient trip / mode of transport into the Shoalhaven.

In accordance with cl. 3(1)(b) the development has been assessed by Council in accordance with the assessment criteria in Schedule 1 (refer to the table below) and the consent authority is not satisfied that the proposal is acceptable in terms of its impacts.

SEPP 64 – Schedule 1	Comment
1 Character of the Area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	No. The area is <u>likely</u> to remain predominately rural/residential and is unlikely (in the near term) to have any significant changes to land use patterns. The zone, land sizes and location will limit business opportunities and development. In this regard, it is important to protect the rural ambience of the landscape and ensure that the landscape does not fill with adhoc signage to the detriment of the quality and image of the Shoalhaven.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	No. The small number of signs that have been erected include tourist signage and a limited number of unregulated signage that Council is aware of and is (through Council's

SEPP 64 – Schedule 1		Comment
		<p>Compliance Section) looking to investigate and where appropriate, seek their removal or regularisation where signage is permissible with consent.</p> <p>Strategically, advertising signage is most appropriate in the business, industrial, private recreation and working waterway zones which is reflected in the SLEP 2014.</p>
2 Special areas		
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?		Yes. The signage is considered to detract from the amenity or visual quality of the rural landscape. Jaspers Brush is characterised by its rural landscape and extensive agricultural uses. The erection of signage is will detract from the visual quality of the rural landscape.
3 Views and vistas		
Does the proposal obscure or compromise important views?		No.
Does the proposal dominate the skyline and reduce the quality of vistas?		No.
Does the proposal respect the viewing rights of other advertisers?		No.
4 Streetscape, setting or landscape		
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?		No. As stated previously the signage is not considered to be appropriate for the rural landscape setting and detracts from the agricultural setting and is of a scale and form that is inconsistent with Council's development control plan for advertising.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?		No. The signage will diminish the visual interest of the streetscape and rural landscape setting.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?		No. There is no existing (legal) advertising signage on this stretch of the Princes Highway that the advertising would be seeking to simplify and consolidate on a single sign.
Does the proposal screen unsightliness?		No.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?		No.
Does the proposal require ongoing vegetation management?		No. Ongoing site maintenance through grass cutting may occur but would not be necessary.
5 Site and building		
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?		No. The 12m ² or 24m ² (total sign face area) is a large advertising structure that is not consistent with the low-scale rural/residential area where there is not existing (approved) signage in the locality.

SEPP 64 – Schedule 1	Comment
Does the proposal respect important features of the site or building, or both?	No special features of the site are identified.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	No. The sign is a simple A-frame on a trailer and does not show innovation and imagination in its relationship to the site. Furthermore, the advertising signage does not relate to the site which is being advertised.
6 Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	None proposed.
7 Illumination	
Would illumination result in unacceptable glare?	No illumination proposed.
Would illumination affect safety for pedestrians, vehicles or aircraft?	No illumination proposed.
Would illumination detract from the amenity of any residence or other form of accommodation?	No illumination proposed.
Can the intensity of the illumination be adjusted, if necessary?	No illumination proposed.
Is the illumination subject to a curfew?	No illumination proposed.
8 Safety	
Would the proposal reduce the safety for any public road?	No.
Would the proposal reduce the safety for pedestrians or bicyclists?	No.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.

In accordance with cl. 13(1)(c) Council must assess whether the advertising signage satisfies any other relevant requirements of this Policy.

Clause 15 applies to land that is within a rural or non-urban zone and on which an advertisement is permissible. The sign is prohibited in the RU1 zone but permissible only under cl. 2.8 of SLEP 2014.

Sub-clause (2) of cl. 15 states that Council as the consent authority must not grant consent to display an advertisement on land to which this clause applies:

“(a) unless a development control plan is in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct in consultation with:

(i) the advertising industry and any body that is representative of local businesses, such as a chamber of commerce, and

(ii) if the land to which the development control plan relates is within 250 metres of a classified road, the Roads and Traffic Authority,

and the display of the advertisement is consistent with the development control plan, or

*(b) if **no** such development control plan is in force, unless:*

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(i) *the advertisement relates to the land on which the advertisement is to be displayed, or to premises situated on that land or adjacent land, and*

(ii) *specifies one or more of the following particulars:*

(A) *the purpose for which the land or premises is or are used,*

(B) *the identification of a person residing or carrying on an occupation or business on the land or premises,*

(C) *a description of an occupation or business referred to in sub-subparagraph (B),*

(D) *particulars of the goods or services dealt with or provided on the land or premises, or*

(E) *(Repealed)*

(c) if no such development control plan is in force, unless the advertisement is a notice directing the travelling public to tourist facilities or activities or to places of scientific, historical or scenic interest.”

Chapter G22: Advertising Signs and Structures of SDCP 2014 provides controls and guidelines relating to advertising signs and structures. Chapter G22 has been made in accordance with Section 3.43 of the *Environmental Planning Assessment Act 1979* (EP&A Act), with appropriate consultation before adoption and coming into effect on 22 October 2014.

Chapter 22 is **not** a development control plan that has been *prepared on the basis of an advertising design analysis for the relevant area or precinct*. Chapter G22 provides controls with broad application across the whole of the Shoalhaven and does not provide area or precinct development controls (except for Signage at Ulladulla Harbour in the W3 Working Waterways zone).

There is no such development control plan in place and therefore Council must consider subclause (2)(b) of clause 15 and therefore consider whether: *the advertisement relates to the land on which the advertisement is to be displayed, or to premises situated on that land or adjacent land*.

The advertisement does not satisfy sub-clause (2)(b)(i) as it does not relate to the subject land or to premises situated on that land or adjacent land. Notwithstanding that the advertisement does not relate to the subject land or adjacent land, and the proposed advertising signage does not satisfy sub-clause (2)(b)(ii), in that the proposed advertising signage does not specify one or more of the following particulars:

(A) the purpose for which the land or premises is or are used,

(B) the identification of a person residing or carrying on an occupation or business on the land or premises,

(C) a description of an occupation or business referred to in sub-subparagraph (B),

(D) particulars of the goods or services dealt with or provided on the land or premises.

The land is used for rural/residential purposes. Council has approved (Development Consent No. DA16/1393) for five (5) tourist cabins, with a construction certificate (CC16/2003) issued by a private certifier.

The land is not approved for use as a Hotondo Homes sales office or business premises and therefore the purposes for which the land or premises on the land are used is not for Hotondo Homes.

Hotondo Homes is not a person residing or carrying on an occupation or business on the land or premises. The owner of the land is Robert Bruce Drewitt Smith and is not Hotondo Homes. Furthermore, it could not and should not be construed that the act of building a

structure or building on the land, i.e. the construction of the approved tourist cabins, amounts to the carrying on of an occupation or business on the land or premises. Such an interpretation is erroneous and would result in an interpretation that would have broader implications for the interpretation of the definition of a “*business premises*”, “*occupation*” and “*business identification sign*” under SLEP 2014. Such an interpretation would allow for the placement of a sign on any land where a service had been or is being provided by a business, not at the premises or place at which the sign is displayed. Thus, allowing business identification signage contrary to the definition of “*business identification signage*”.

Furthermore, the signage does not describe an occupation or business carrying on an occupation or business on the land or premises, or any particulars of the goods or services dealt with or provided on the land or premises.

Notwithstanding the foregoing, subclause 15(2)(c) enables Council to approve advertising signage in a rural or non-urban area despite not having such a development control in place, where the advertisement is a notice directing the travelling public to tourist facilities or activities or to places of scientific, historical or scenic interest. Council does not consider the proposed advertisement to be any of these specific places or things and does not satisfy subclause 15(2)(c).

Finally, the land does not meet the definition of “*transport corridor land*” under clause 4 of SEPP 64 and therefore it also appears that subclause (3) of Clause 15 does not apply.

The signage is not supportable and would be contrary to SEPP 64. Council does not have any authority to approve the advertisement on the land by virtue of Clause 15. Clause 2.8 of SLEP 2014 does not grant Council the power to approve the advertisement where there is an inconsistency with SEPP 64, which prevails over SLEP 2014.

Applicant's Submission

In an email from the applicant dated 4 December 2020 (D20/537632) the applicant has provided the following response to clause 15 of SEPP 64:

“It seems to me that if the applicant need only satisfy subclause 15(2)(b) of SEPP 64, compliance can be readily achieved and Council is not prevented from granting consent.

In order to satisfy subclause (2)(b), the applicant need only show at a minimum that:

- 1. The advertisement relates to the land or to premises situated on that land; and*
- 2. Identify a person (which includes a corporation) which carries on a business or occupation at the premises.*

On 24 June 2016, Council approved DA16/1393 for a staged tourist and visitor accommodation development - comprising five (5) one-bedroom tourist cabins, on the subject land.

Hotondo Homes (South Coast) Pty Limited is delivering this development. The work the subject of the development consent has been physically commenced with the construction of piers.

Construction is the business of Hotondo Homes and it is on this site that this occupation or business will be carried out until completion. Hotondo Homes does not carry out its business in a single office or site. The business is carried out over various sites as projects arise. This is one of those sites.

It follows that:

- 1. the sign relates to the land or premises on that land, being an Hotondo project; and*

2. the sign identifies the person (Hotondo) which is carrying on its business at the premises.

Clause 15 is satisfied. Council can approve the proposed development.

If Council is not minded to approve the development on the basis of the position outlined above, please let me know if there is a suitable date and time on which I and my client could meet with Council officers face to face to discuss further before Christmas."

Discussion

In relation to the request to meet with staff, Council has discussed the planning staff's interpretation of the legislation with the applicant at length. The applicant has been provided with the opportunity to withdraw the application and has been made aware that the application will be reported to the Development & Environment Committee for determination if the application is not withdrawn. The applicant has not elected to withdraw the application.

With regard to the permissibility of the development, as stated previously in the discussion of the application of cl. 15 of SEPP 64, it is not considered that the proposed advertising signage is consistent with the subclause 15(2)(a) or (b) despite the applicant's argument that the carrying out of construction works on the subject land by Hotondo Homes amounts to the carrying on of a business on the land or premises. SLEP 2014 does not define business, however, the Dictionary to SLEP 2014 defines a "business premises" as follows:

"business premises means a building or place at or on which—

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital."

The act of constructing a structure or building on the land is not a use of the land which would otherwise amount to the conducting of a business. Such an interpretation would result in a flawed interpretation and is incorrect.

Hotondo Homes does carry out a business of selling homes from their premises at Unit 5/176 Princes Hwy South, Nowra and Unit 1/6 Shaban Street, Albion Park Rail. 29 Strongs Road, Jaspers Brush is not a sales office of Hotondo Homes and therefore it should naturally follow that they are not carrying on their business from this premises and an advertising sign associated with the aforementioned business premises cannot under cl. 15 of SEPP 64 be erected on the subject land.

Based on the above assessment, Council must not grant consent to display of the advertisement on the subject land where cl. 15 is not satisfied.

Clause 2.8 of SLEP 2014

The applicant proposes to erect the advertising signage on the subject land for no more than 52 days in a 12-month period in accordance with cl. 2.8 of SLEP 2014.

The stated objective of cl. 2.8 is to provide for the temporary use of land if the use does not "compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land".

Clause 2.8(3) requires Council to be satisfied of each matter listed in cl. 2.8(3), i.e.:

- a) that the temporary use will not prejudice the future use of the land in accordance with SLEP 2014 or any other environmental planning instrument;

- b) that the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood;
- c) that the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land; and
- d) at the end of the temporary use period, the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

Applicant's Submission

The applicant has provided an assessment of the proposed development against the provisions of cl. 2.8 of SLEP, and sub-clause (3) as follows:

- | | |
|---|---|
| <p><i>(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument</i></p> | <p><i>The proposed sign is mobile and can be wheeled on and off the Site with very short notice. Its placement requires no permanent footings or other permanent impact of any kind.</i></p> |
| <p><i>(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood</i></p> | <p><i>The sign is proposed to be placed within a cluster of other existing and historic business signs. The land most affected by the sign is the Princes Highway, which is littered with other signs. The proposal is not out of place in any way.</i></p> |
| <p><i>(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land</i></p> | <p><i>The sign poses no impact on the environment. It is to be located in an open grass land, with no temporary footings. It obviously emits no odour, liquid or other offensive material. The impact on the environment is completely neutral.</i></p> |
| <p><i>(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use</i></p> | <p><i>At the end of the proposed use, the land will be restored exactly to the state that it was prior to the temporary use being carried out.</i></p> |

Discussion

The proposed temporary use does not satisfy sub-clause 2.8(3)(c). The location of the signage is planned in a prominent location adjoining the Princess Highway in a rural setting at the entry to the Shoalhaven and Nowra and will have a visual impact on the locality. The test imposed by Clause 2.8(3)(c) is in absolute terms and is different from the test that is conventionally applied to the assessment of an ordinary development application. The higher threshold reflects the fact that the development for which consent is sought is otherwise prohibited.

Relevantly, there must be no adverse impact on environmental attributes or features of the land by virtue of the visual impacts on the rural setting views to the sweeping grazing lands and Cambewarra Mountains.

Where there is any impact *on environmental attributes or features of the land* Council must not grant consent to the application.

Chapter G22: Advertising Signs and Structures – Shoalhaven Development Control Plan 2014 (SDCP 2014)

Notwithstanding that the application is non-compliant with SEPP 64 and cl. 2.8 of SLEP 2014 and the application cannot be approved, it is prudent to consider the proposed signage against the provisions of Chapter G22 of SDCP 2014. A consideration of the proposed signage against the relevant provisions Chapter G22 reveals that the signage is not consistent with a number of provisions for the following reasons:

1. The signage is inconsistent with the objectives set out under Section 4 of Chapter G22 in that the signage is not considered to:
 - a. Provide opportunities for business to advertise effectively in a manner that does not detract from the character of the area; and
 - b. Minimise visual clutter caused by the proliferation of signs and encourage the rationalisation of existing and proposed signage; and
 - c. Be well designed and consistent with this Chapter; and
 - d. Be consistent with the architectural character and heritage significance of heritage items or buildings, heritage conservation areas or pastoral landscapes.
2. The proposed signage is not consistent with the design guidelines under Section 5.1.1, for the following reasons:
 - a. The signage does not reinforce the architectural design of the building or its streetscape; or
 - b. The signage does not contribute to a new image for the building and its streetscape.
3. The form of signage that is proposed is discouraged by Council under section 5.3, being a motor vehicle sign (including signage on a trailer) that is not exempt, which is stopped on private property for the primary purpose of displaying such sign. While it is noted that Section 5.3 does stipulate that: *[a]pplications for some signs, however, may be considered on their merits provided Council is satisfied that the proposed sign is appropriate in the circumstances*, the signage proposed does not present any unique or persuasive arguments that would persuade Council in the consideration of the discouraged signage. While the COVID crisis resulted in temporary downward pressure on overall property prices, regional NSW's property prices rose amid the uptake of remote working conditions. Council also experienced a significant increase in s10.7 certificates (required for property exchanges). Development applications have continued to be lodged with significant applications in the mix. The Property Council has also released high level data stating that private sector house approvals rose for the *"sixth consecutive month in December"* 2020 and reached *"a record high"*. Accordingly, there appears to be confidence in the property market and development industry.
4. When considered against the Section 5.5 General, Performance Criteria P7 is relevant to the proposed development, being a form of other free-standing sign the signage is not consistent with the performance criteria as the signage has not been designed to:
 - a. be associated with a lawful use of the adjoining or adjacent land;
 - b. specify the purpose(s) for which the adjoining or adjacent land or premises is or are used;
 - c. are consistent with the design guidelines outlined in this Chapter;
 - d. be in scale with the development on the adjoining or adjacent land; or

- e. not adversely affect the amenity or character of the area.

Planning Assessment

The DA has been assessed under s. 4.15 of the *Environmental Planning and Assessment Act 1979*. Please refer to **Attachment 1** to this Report.

Policy Implications

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

Consultation and Community Engagement:

Due to the nature of the modification application, the application was not required to be notified in accordance with Council's Community Consultation Policy.

Financial Implications:

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

Legal Implications

According to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of approval or refusal. If such a review is ultimately pursued (if the recommendation is not adopted), the matter would be put (again) to Council for consideration.

Alternatively, an applicant may also appeal to the Court against the determination according to section 8.9 of the EP&A Act.

Summary and Conclusion

This Report and the attached s. 4.15 Assessment Report (**Attachment 1**) provides an assessment of a proposal to erect a single, temporary and mobile A-frame advertising sign with a combined signage area of 24m² (12m² front and back) for no more than 52 days in a 12-month in accordance with cl. 2.8 of *Shoalhaven Local Environmental Plan 2014*, on the land identified as No. 29 Strongs Road, Jaspers Brush and is legally described as Lot 215 DP1210788.

The signage has been assessed against all relevant environmental planning instruments and SDCP 2014.

The signage does not demonstrate compliance with SEPP 64, cl. 2.8(3)(c) of SLEP 2014 and the relevant provisions of the Chapter G22 of SDCP 2014.

The application is recommended for refusal in accordance with the attached determination document (**Attachment 2**).

DE21.13 DA20/1222 – 466 Kangaroo Valley Road, Berry Mountain – Lot 8 DP1037100

DA. No: DA20/1222/4

HPERM Ref: D21/29974

Department: Building & Compliance

Approver: Phil Costello, Director - City Development

Attachments:

1. Planning Report (under separate cover) ➡
2. DRAFT Determination - Approval (under separate cover) ➡
3. Plan Set (under separate cover) ➡

Description of Development: Alterations and additions to an existing aeroplane hangar and use as an artisan food and drink industry (brewery), construction of car park and other ancillary development.

Owner: Chinamansbeach Pty Ltd

Applicant: Chinamansbeach Pty Ltd

Notification Dates: 7 April 2020 – 22 April 2020

No. of Submissions: 38 in objection

Purpose / Reason for consideration by Council

Councillors called in DA20/1222 due to the significant public interest on 5 May 2020 (MIN20.313).

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/1222 for alterations and additions to an existing aeroplane hangar and use as an artisan food and drink industry (brewery), construction of car park and other ancillary development at Lot 8 DP 1037100, 466 Kangaroo Valley Road, Berry Mountain be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

Options

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

Implications: This would allow the applicant to pursue construction of the development.

2. Refuse the application.

Implications: Council would need to determine the grounds on which the application is refused, having regard to section 4.15(1) considerations. The applicant would be entitled to seek a review and / or pursue an appeal in the Land and Environment Court.

3. Alternative recommendation.

Location Map



Figure 1 - Location Map



Figure 2 - Aerial image showing location of proposed brewery on subject site.

Background

Proposed Development

The proposal includes:

- Alterations and additions to existing aeroplane hangar and use as artisan food and drink industry (brewery).
 - The artisan food and drink industry will comprise of the following elements:
 - Brewery (industry area) = 132m²
 - Bar/tasting area = 62.3m²

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- Restaurant/café (dining area) = 59.5m²
- Retail sales area = 4.94m²
- The remainder of the building will comprise of food preparation areas, kitchen, bathroom facilities, storage and cool room areas and an office.
- The brewery and associated bar/tasting area and restaurant/café will cater for up to 220 patrons (140 bar patrons and 80 restaurant patrons).
- Hours of operation as follows:
 - Brewery (industry component)
 - 8am – 6pm (Monday – Friday)
 - Bar and restaurant/café component:
 - 11am – 7pm (Friday – Sunday) outside of school holiday period
 - 11am – 7pm (Monday – Sunday) during school and public holidays
- The brewery output will be 3,000L per week.
- Construction of car park (39 car parking spaces, 1 accessible parking space and 1 coach parking space) and vehicle manoeuvring areas.
- Installation of solar panel array
- Installation of rainwater tanks
- Installation and operation of on-site effluent management system
- Installation of playground equipment
- Landscaping

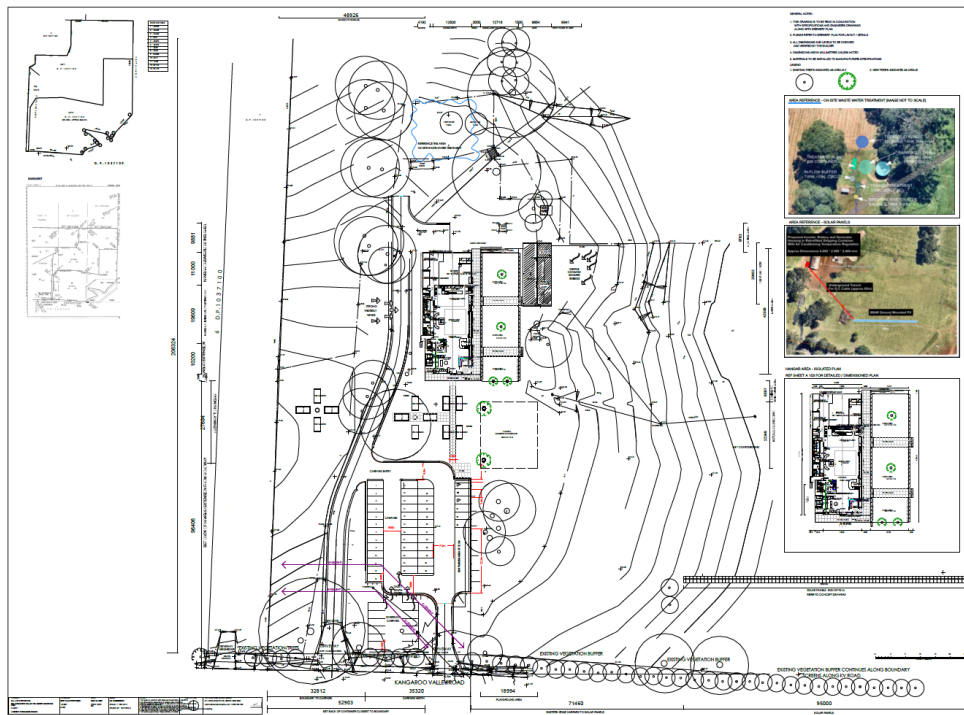
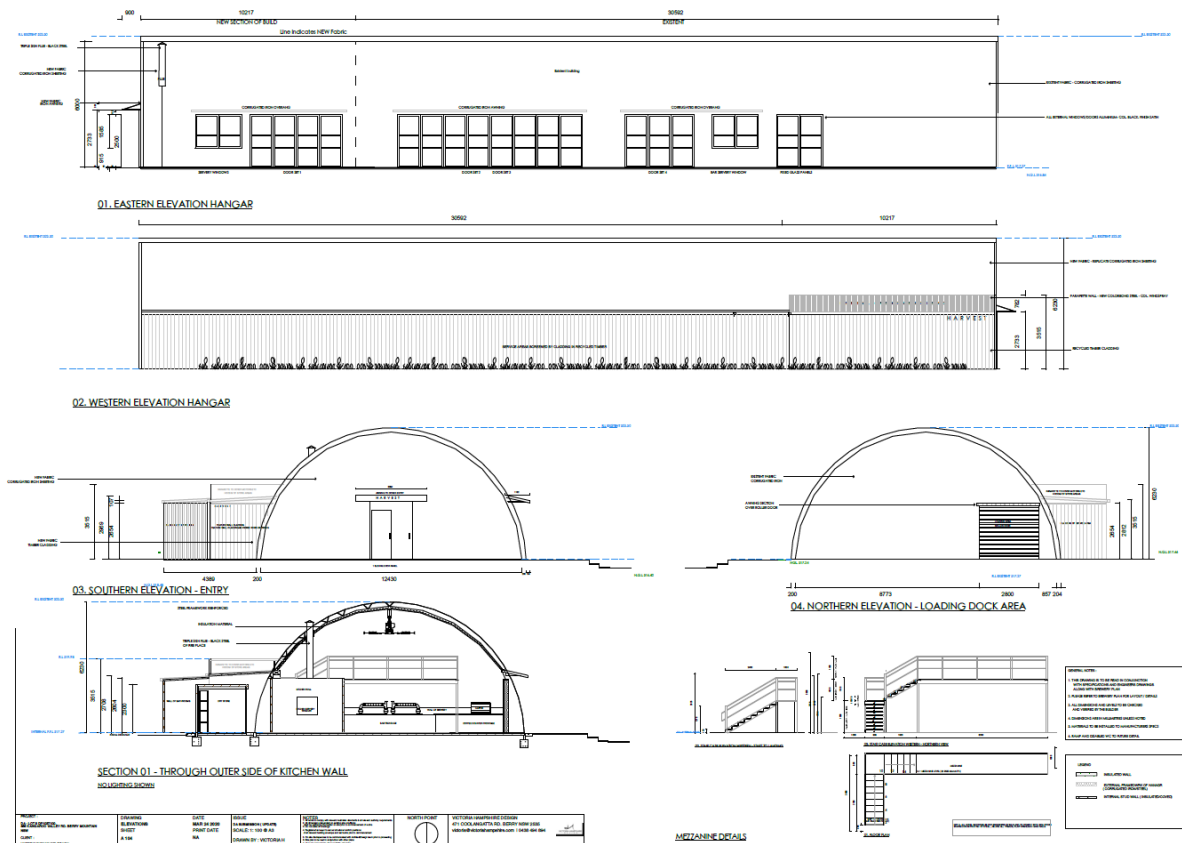
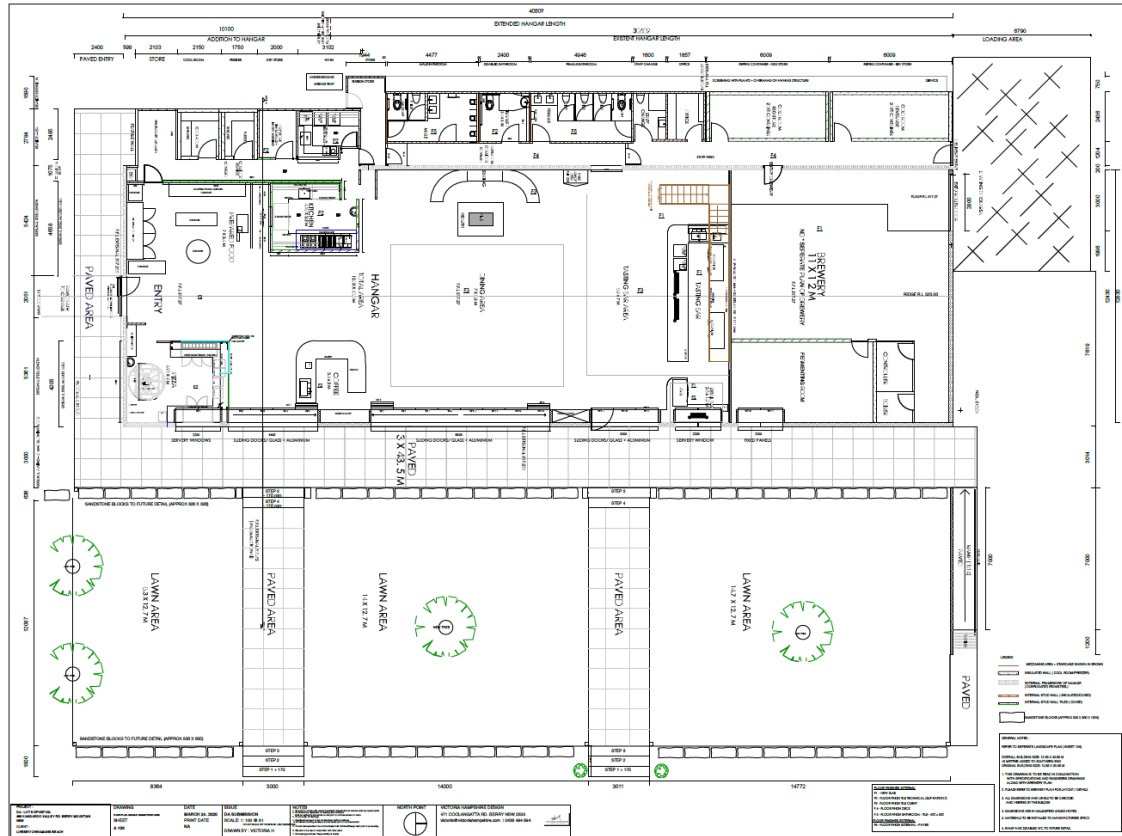


Figure 3 - Site Plan



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Subject Land

The development site comprises Lot 8 DP 1037100 (466 Kangaroo Valley Road, Berry Mountain); refer to Figure 1.

Site & Context

The development site:

- Is zoned RU1 Primary Production and E2 Environmental Conservation under the *Shoalhaven Local Environmental Plan 2014 (SLEP 2014)*. The artisan food and drink industry and associated infrastructure is all located on the RU1 zoned land.
- Is accessed from Kangaroo Valley Road.
- Contains an existing locally heritage listed dwelling and associated buildings (heritage item no. 114 – “Glenworth” two storey residence and grounds), a separate detached rural workers dwelling and various farm buildings and other structures (e.g. aeroplane hangar, farm buildings and sheds); refer Figure 2.
- Is partly mapped as bush fire prone land. The location of the proposed brewery is not mapped as bush fire prone land.
- Contains mapped category 2 watercourses.
- Contains areas mapped as “biodiversity - significant habitat” and “biodiversity – habitat corridor” under *SLEP 2014*.

The western part of the site is cleared and is used for grazing and other farm purposes. The eastern part of the site heavily vegetated and contains a category 2 watercourse.

The surrounding area is rural-residential in character and the site is adjoined by rural-residential development to the south and west, and bushland areas to the north and east. The property is situated at the top of Berry Mountain with the eastern part falling away into Chisolms Creek.



Figure 6 – Zoning Extract

History

The following provides details on pre-lodgement discussions, post-lodgement actions and general history for context:

- A pre-lodgement discussion for the proposed development was held between the applicant's consultants and Council staff on 5 February 2020.
- The application was lodged on 11 March 2020.
- As a result of detailed assessment of the application, additional information was requested from the applicant on two (2) occasions – 17 March 2020 and 26 May 2020. A series of discussions were held between the applicant and Council staff during the assessment. It is noted that as part of these discussions, the hours of operation were amended for the bar and restaurant/café component from the original proposal of 11am – 8pm, to 11am – 7pm.
- On 18, 23, 26 & 28 March 2020, 15 October 2020 and 5 January 2021, the applicant submitted additional information, which was subsequently referred to the relevant sections of Council for comment.

Issues

Community Consultation and The Public Interest

Thirty-eight (38) submissions were received in objection to the proposed development. As per MIN20.313 Councillors called in DA20/1222 due to the significant public interest on 5 May 2020.

Applicant's Submission

The applicant provided the following comments responding to traffic and safety concerns and objections. The following comments are direct quotations from the applicant's commentary.

"Resident and interested party objections and responses.

The following table represents a summary of local resident and interested party objections to the development and the actions Chinamansbeach Pty Ltd has / is taking to address them.

Summary of objections with over three respondents raising the issue.

Table 1 – summary of key objections & applicant's response

Issue raised	'Harvest' response (not assessment commentary)
1. Increased traffic will lead to more accidents and animal injuries / deaths. Intoxicated customers on Kangaroo Valley Road (KVR)	<ul style="list-style-type: none"> • Following feedback from the initial application of 11 March 2020, and discussion with council planning department, data was compiled that allowed a better understanding of traffic concerns. This allowed for the amendment of the application to significantly reduce the risk of a severe injury accident; • The supplementary submission resulted in statistically the anticipated additional vehicle movements would lead to one additional serious injury accident every 35.6 years. It should be noted a serious injury accident is an accident when a crash in which at least one person, identified in the Police crash report data is matched to a hospital admission record on the same day or the day after a crash. It does not necessarily mean a serious injury has occurred. This also assumes no road improvement activities on the road which would further reduce the risk. The following amendments support the reduction in vehicle movements over the initial submission by 52-82 per day: <ul style="list-style-type: none"> ○ Reduction of hangar floorspace to be used by customers by 20%; ○ Commitment by Chinamansbeach that a return mini-bus will be run

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	<p>from Berry each hour of operation to reduce traffic on the tourist drive.</p> <ul style="list-style-type: none"> • The business strategy is to capture existing traffic on the tourist route 7 of which KVR forms the major part vs generate new traffic. This is advertised by 24 signs on linking highways and council website advertising. No assessment has been made for the proportion of vehicles visiting the development that are already en-route on the tourist road as it is difficult to quantify. This would have a material reduction on additional vehicle numbers and the subsequent risk if included; • Additional amendments have been proposed that will further reduce the risks but are not included in the reduction in numbers: <ul style="list-style-type: none"> ○ Reduction in operating hours to 11am – 7pm daily. ○ Advertising on Chinamansbeach and Harvest Brewing Company websites that preferred route to access and leave the brewery by is Tourist Road; ○ Investment by Chinaman's Beach in the acquisition of 85 Queen Street, Berry to operate as a restaurant and bar to reduce visits to the brewery and allow for customers enjoy the product in the town without having to drive up KVR; ○ Stringent operating practices to be implemented at the development; • Additional detailed analysis of the past six years crash data has shown that the traffic issues raised by respondents are not supported by the data: <ul style="list-style-type: none"> ○ The level of accidents on KVR has fallen by 280% in the past four years, over the previous two, due to road improvements. Only 1.25 accidents per annum have occurred on KVR between 2016 and 2019 (4 years); ○ The statements of respondents in relation to KVR and facts from the accident data provided by the council do not correlate: <ul style="list-style-type: none"> ▪ "The road is dangerous, particularly with adverse weather conditions" - 75% (9) accidents were due to single vehicles losing control on corners due to speed. Where cars drive to the limits imposed the accident incidence is low. Only 25% (3) accidents occurred in wet conditions; ▪ "There are significant multi-vehicle accidents" – Only 8% (1) accident involved more than one vehicle in six years. 50% (6) of the 12 accidents were single motorcycles; ▪ "Animals are a significant risk on the road" - 17% (2) accidents involved 'avoiding animals'. No accidents involved animals during the proposed hours of operation as they were late at night or early in the morning; ▪ "Cyclists are a danger on KVR" – 0%, no cyclists were involved in any of the accidents; ▪ "Increased traffic on school and public holidays creates more risk and more accidents" - While 27% of the year is defined as school and public holidays, only 8% of the accidents have occurred in this period, suggesting a reduced risk with higher traffic volumes, possibly due to lower vehicle speeds due to increased traffic loads;
2. Water will be removed from area, will be tapped from local creeks and effluent disposal is a	<ul style="list-style-type: none"> • Chinamansbeach Pty Ltd has purchased a controlled allocation of 10ML per annum; • Chinamansbeach Pty Ltd has a Water Access Licence to extract a 10ML per annum for the development; • Chinaman's Beach has / is investing in separate rainwater capture for Glenworth House, The Managers cottage, brewery and restaurant to reduce the requirements from the bore – additional 260,000 litres of water storage already installed;

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risk	<ul style="list-style-type: none"> • Water extraction is directly from the bore and not the intermittent creeks on the site; • Majority of water extracted will be returned to the ground via a water treatment plant and underground dispersion beds at significant incremental costs over above ground; • Council assessment supports our approach to water capture, treatment and dispersion.
3. Noise / Impact on residents quiet enjoyment of properties	<ul style="list-style-type: none"> • Two rows of mature trees between brewery and closest neighbour >400m away; • Chinaman's beach to install noise measurement equipment and comply with required noise limits as deemed satisfactory by council planning department; • The micro-brewery is located approx. 200m from the closest neighbours boundary; • Proposed reduction in operating hours to 11am – 7pm daily.
4. Not permissible due to LEP	<ul style="list-style-type: none"> • Individuals who raised issue referred to unamended LEP, prior to addition of Artisan legislation in 2019; • Application designed to align specifically with the LEP for artisan food and drink and Shoalhaven tourism strategy. Council planning department confirms compliant.
5. It's another Rockfield Park	<ul style="list-style-type: none"> • Application developed to ensure the issues raised re Rockfield Park were addressed prior to submission: <ul style="list-style-type: none"> ○ Aligns with LEP whereas Rockfield Park was a non-compliant development; ○ Significantly less additional vehicle movements generated - seeks to take advantage of existing traffic on the tourist drive v's customers being new vehicles on the road; ○ Significant investment and engagement with council prior to submission re water, traffic, effluent to ensure potential issues carefully considered and addressed. • The council and RMS did not object on traffic and transport grounds to the proposal prior to the Rockfield Park Land and Environment review. The Land and Environment review did not perform a detailed analysis of the crash data but placed 'significant weight on the subjective fears of local residents'. As shown in item 1, these subjective views are not supported by detailed analysis of the data; • Since the review there has been a material decrease in accident incidence on KVR. At the time of the review 18 accidents were recorded in six year period (3 per annum), in the past four years only 1.25 accidents per annum have been recorded; • The council was not satisfied that the development had provided sufficient information on power generation and waste management which has not been raised as an issue for the Chinamansbeach submission; • Rockfield Park had 176 parties object including the Berry Forum. Despite a concerted campaign to encourage objections to our development 37 people have objected. Notably the Berry Forum did not object. • There is very strong community support for the proposal which Rockfield Park did not enjoy.

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2.2 Summary of objections with less than three respondents raising the issue.

Issue raised	Harvest response
6. Glenworth House will be opened as a tourist attraction	<ul style="list-style-type: none"> • Intent to open / share Glenworth (Lord Mayors House) 2 times a year: <ul style="list-style-type: none"> ○ Garden festival; ○ One other occasion as Charity fundraiser; ○ Otherwise access limited to a defined area for the brewery and restaurant; • Glenworth House is our home so no intent to open to the public beyond this; • This is not part of the development application.
7. Customers will be able to wander uncontrolled across the farm	<ul style="list-style-type: none"> • Customers will only be able to picnic and walk on designated paddock in front of brewery, and not be allowed to wander around the farm; • Chinamansbeach Pty Ltd is upgrading fencing to designated paddock to prevent pedestrian access beyond and install signage to prevent pedestrian incursion into other areas of the farm.
8. Solar panels will be unsightly, require tree removal and reflect on the road	<ul style="list-style-type: none"> • No trees to be removed as panels north facing and no trees obstructing; • Panel installation will not be visible from the road have no reflective impact on the road; • The use of sustainable energy is critical to the philosophy of the business.
9. The buildings are inappropriate for a rural setting	<ul style="list-style-type: none"> • The buildings are the existing buildings (have been on site for approx 60 years). They will either be refurbished or essentially replaced 'like for like' so no additional 'inappropriate' buildings, hence there will be no impact.
10. Applicant undergoing ASIC de-registration	<ul style="list-style-type: none"> • Chinamansbeach Pty Ltd fully ASIC registered and paid up to date.
11. Economic downturn will make business unviable	<ul style="list-style-type: none"> • Chinamansbeach has a long term view and funding for the business. The issue raised has no relevance to the planning decision.
12. Farm will not produce inputs to the products being supplied	<ul style="list-style-type: none"> • Produce from the farm will be used in the restaurants and brewing process. 500 sq mtrs of vegetable beds have already been planted with plans to expand to 8,000 sq m. • 200 tree orchard has been planted with fruit that will be used in the beer and ciders. • Beef from the farm will be used in the restaurant.
13. Odours will occur	<ul style="list-style-type: none"> • Closest neighbour is 400m min so the limited odour from the brewing process will dissipate long before it reaches that point.
14. The property only has a stock water licence	<ul style="list-style-type: none"> • Chinamansbeach Pty Ltd has purchased a Controlled Allocation of 10ML per annum; • Chinamansbeach has a Water Access Licence to extract a 10ML per annum.
15. Brewery located in fire zone	<ul style="list-style-type: none"> • The brewery is not located in a fire zone. • A fire tender is located on site. • Appropriate fire safety equipment, as required by planning legislation, will be employed;

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	<ul style="list-style-type: none"> • <i>Brewery will not open to customers at times RFS/police advise unsafe due to fire risk.</i>
16. Berry town business will be detrimentally affected	<ul style="list-style-type: none"> • <i>Local businesses and charities have been engaged and are very supportive;</i> • <i>Very significant support from the local community;</i> • <i>The business has also purchased and is opening a restaurant in Berry that will bring new business to the region and benefit the towns businesses.</i>

Discussion

The objections are discussed in further detail in the Consultation and Community Engagement section of this Report.

NSW Police Referral Comments

The development application was referred to NSW Police for comment. Objection was raised by NSW Police. The following is an extract from the NSW Police comments:

Police have the same concerns in relation to this DA as they did with a similar application in the same area in 2014/15.

The increase of vehicular traffic within the area with the current road conditions on the section of Kangaroo Valley Road will lead to an increase in traffic related incidents. Considering the terrain, limited roadside barriers, the road edge proximity to extreme road side drops, wildlife, the road width, an increase in inexperienced drivers driving on this type of roadway, weight and vehicle restrictions and weather conditions, it is very likely with the increase in traffic that there will be an increase in serious motor vehicle collisions and road trauma. With this a further increase in the demand for emergency services. Consideration must also to be given to the impact on the community during road closures and diversions that will occur during a traffic incident and possible investigation.

The area is within a designated bushfire prone area (Information supplied by RFS Website). The movement and management of a large number of people and vehicles in this area will have to be the subject of a considerable fire management plan to move or protect the considerable numbers of people and vehicles during a fire emergency.

The road conditions will play a significant role in the incident free movement of these people from the area. In order to protect other road users and those attending the complex, significant road works along Kangaroo Valley Road in both directions including Tourist Road and including the entrance to the development will be required to cater for the significant increase in traffic.

If the application is to be supported, NSW Police have provided recommendations and advice to minimise risks.

Applicant's Submission

The applicant provided comments responding to traffic and safety concerns and objections. These were detailed earlier – refer to Table 1 in this report, point 1 in that Table.

Discussion

The NSW Police objection is noted, and the following comments are made in response:

Although an increase in vehicular traffic may lead to an increase in traffic related incidents (as does any increase in traffic), It is Council's opinion the proposed development will not pose a significant risk in relation to traffic or bush fire evacuation concerns. The application

has been supported by commentary and a traffic impact assessment which concludes that the proposed development would result in a low traffic impact increasing traffic along Kangaroo Valley Road from approximately 1 vehicle per 42 seconds to 1 vehicle per 36 seconds during peak time. The traffic assessment also suggests that the development would not have a significant increase on the potential risks of 'serious' crashes and that the proposed development would not generate a level of traffic that would adversely impact the local road network.

Access to the development site is appropriate and as noted in the application the following measures to minimise risks have been incorporated into the proposed business operation:

- Use of mini-bus services to deliver/return patrons.
- Promotional material for the development will recommend Tourist Road as the best access for the development.

The traffic assessment and proposed development has been reviewed by Council's Traffic & Transport Unit and no objection was raised, subject to recommended conditions of consent.

Further, the site of the proposed brewery is not mapped as bush fire prone land. Although access along Kangaroo Valley Road is mapped as bush fire prone, access to the development site is not considered unsuitable.

Recommended conditions of consent incorporating NSW Police's recommendations and advice will be imposed.

Planning Assessment

The DA has been assessed under s4.15(1) of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 1.

Consultation and Community Engagement:

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 250m buffer of the site, during the period 7 to 22 April 2020.

38 objections were received in relation to the development.

Key issues raised in objections are as follows and are discussed below.

Objection Raised	Assessing Officer Comments
Traffic, traffic risks and road safety	<p>The application has been supported by commentary and a traffic impact assessment. The traffic assessment concludes that the development would not have a significant increase on the potential risks of 'serious' crashes and that the proposed development would not generate a level of traffic that would adversely impact the local road network.</p> <p>The traffic assessment and proposed development has been reviewed by Council's Traffic & Transport Unit and no objection was raised, subject to recommended conditions of consent.</p> <p>Furthermore, the tasting bar and restaurant component of the development propose opening hours between 11am - 7pm Friday to Sunday outside of school holiday period and 11am – 7pm Monday to Sunday during school holiday period and public holidays. These opening hours avoid late night driving.</p> <p>It is considered that the proposed development would not have a significant adverse impact on the local road network. The proposal is considered suitable with regard to traffic and vehicle access.</p>

Objection Raised	Assessing Officer Comments
Noise impacts on adjoining residential properties.	<p>The development site will be located approximately 250m from the nearest dwelling on an adjoining property.</p> <p>The application has been supported by an Environmental Noise Impact Assessment which identifies that the operation of the proposed development can meet the Liquor and Gaming NSW and NSW Environmental Protection Agency (EPA) guidelines and design noise goals subject to compliance with the recommendations of the report.</p> <p>As noted in the report to minimise noise impacts, amplified music should only be played in the brewery building and should not exceed an energy-average sound pressure level (Leq, 15 minute) of 79 dBA when measured over a 15-minute period at 3 metres from the speakers within the building. Further, there should be no activity at the site after 10pm on any day.</p> <p>The proposed development and the Environmental Noise Impact Assessment has been reviewed by Council's Environmental Health Officer and no objection was raised subject to recommended conditions of consent. Recommended conditions of consent will be applied accordingly to ensure noise generate from the development complies with Liquor and Gaming NSW and NSW Environmental Protection Agency (EPA) guidelines and the submitted Environmental Noise Impact Assessment report.</p>
Water usage	<p>Water will be collected on site in the existing and proposed water tanks for use with additional bore/aquifer water usage. The applicant has supplied water usage information and a copy of the Notice of Determination of Water Access Licence (Ref No. 10AL123944) for access to and use of aquifer water within the Sydney Basin South Groundwater Source issued by WaterNSW on 23 June 2020. Bore water usage must be in accordance with the Water Access Licence. It is considered that there is adequate supply of water to be used in the brewing process available on site and any groundwater usage will be regulated through WaterNSW under a Water Access Licence.</p>
Wastewater and effluent disposal	<p>Effluent and wastewater will be treated and disposed on site. The application has been supported by details of on-site effluent/wastewater management and a Soil and Site Assessment for Onsite Wastewater disposal. The proposed development and wastewater details have been reviewed by Council's Environmental Health Officer and no objection was raised subject to recommended conditions of consent. It is considered that wastewater and effluent can be appropriately managed on site and will not deteriorate water quality.</p>
Loss of amenity	<p>The brewery building is setback approximately 100m from Kangaroo Valley Road. Although parts of the development (e.g. car park and solar array) may be visible from the road they would be screened by existing vegetation and by the existing road bank, and would not detract from the amenity or rural character of the area.</p> <p>The brewery is located >250m from the nearest residential receptor on adjoining property. The application has been supported by an Environmental Noise Impact Assessment which concludes that the proposed development can comply with Liquor and Gaming NSW and NSW Environmental Protection Agency (EPA) guidelines subject to recommendations. Recommended conditions of consent for example requiring that no amplified music to be played external to the building and hours of operation to be imposed accordingly.</p>

Objection Raised	Assessing Officer Comments
Visual impact of development (existing building and solar panel array)	Although the proposed solar array may be partially visible from the road, it will be screened by existing vegetation and the road bank and will not detract from the rural character of the area. The proposed development will not be visible from any adjoining dwelling. The proposed development will not have a significant negative impact on visual amenity.
Impacts on native wildlife.	It is not considered that the proposed development would have a significant adverse impact on native wildlife. Limited opening hours avoid late night and night time driving which will reduce the potential road risks with native wildlife.
Heritage impacts	The application has been supported by a Heritage Impact Assessment which identifies that the heritage listing relates to the Glenworth Residence and other ancillary outbuildings. As noted in the Heritage Impact Assessment, the development site is located approximately 200m from Glenworth Residence, Workshop and Store, Stables and Garage and screened from view by a mature conifer windbreak, and the proposed development would not compromise the heritage significance of these items. The development site is within the curtilage of the C1950's Dairy which forms part of the heritage listing. The proposed development and proposed works are considered to have negligible impact on the heritage significance of the dairy building. The proposed development would not compromise the heritage significance of the heritage items present on site.
Insufficient parking provision	The proposal includes the construction of an onsite car park with 42 parking spaces, including 2 accessible spaces, and a bus parking area. The plans also note an additional overflow car park area with 12 parking spaces. As noted in the application, measures such as a mini-bus service would contribute to minimising the number individual private vehicle access to the site. It is considered that parking provided on site is sufficient to cater for the proposed development. The parking area would be partly screened from view by existing and proposed landscaping and also the bank of the road reserve. The location of proposed parking area is appropriate and would not have an unreasonable impact on the rural amenity.
Vegetation clearing and impact on natural environment.	The proposal does not involve clearing of any significant areas of native vegetation and the of the proposed car park and vehicle manoeuvring areas are within heavily modified paddocks. It is considered that the proposed development would not have a significant adverse impact on native vegetation and the natural environment.
Odour	The brewery is located >250m from the nearest residential receptor on adjoining property. It is not considered that the proposed development would significantly impact on the amenity of neighbouring residences and would not have significant adverse odour impacts.
Privacy	The brewery is located >250m from the nearest residential receptor on adjoining property and the development site would not be visible from any adjoining dwelling. It is considered that the proposed development would not have an unreasonable impact on the privacy of nearby and adjoining residences.

Objection Raised	Assessing Officer Comments
Development not compatible with surrounding area	<p>The proposal is for an artisan food and drink industry which is a permissible use within the RU1 – Primary Production zone. The proposed development is consistent with the objectives of the zone.</p> <p>The proposed brewery is located >250m from the nearest dwelling on an adjoining property and would not have a significant adverse impact on the amenity of the area. The proposed development involves the adaptive reuse of an old rural building and it is considered that the use of the land for an artisan food and drink industry is appropriate and compatible with adjoining land uses and the surrounding area.</p>
Large vehicle access	<p>As noted in the application, the development will likely see use by B85 vehicles and minibus vehicles, however delivery vehicle movements would be expected as the largest vehicles to access the site.</p> <p>The proposed development was reviewed by Council's Traffic & Transport Unit and Council's Development Engineers and it is considered the driveway access is sufficient to cater for larger vehicle movements and access to the site is adequate for the largest vehicles anticipated to access the site.</p>
Bush fire	<p>The proposed location of the brewery is not mapped as bush fire prone land. Although Kangaroo Valley Road is mapped as bush fire prone land, this is a public road and access to the site is considered appropriate. The development is considered suitable with regard to <i>Planning for Bush Fire Protection 2019</i>.</p>
Financial impact on other businesses	<p>Financial impacts on other businesses are not a matter for consideration under s4.15 of the <i>Environmental Planning and Assessment Act 1979</i> in so far as competition considerations are concerned. It is not considered that this proposal will adversely impact on the financial viability of Berry township. Conversely, this may contribute to the tourism economy and vitality of area.</p>
Behaviour of patrons (e.g. drink driving)	<p>As noted in the application responsible service of alcohol will be practiced and also a mini-bus service will be available to patrons.</p> <p>Additionally, as noted in the application, low and no alcohol drink options, and food will be made available to patrons and signage relating to alcohol consumption limits and standard drink sizes will be installed within the bar/restaurant area.</p>
Use of site for weddings and functions	<p>The application is seeking approval for an artisan food and drink industry (brewery), which by nature must include either an area for retail sale of products, a restaurant or café, or facilities for holding tastings, tours, or workshops. As noted in the application, venue will have a maximum capacity of 220 patrons, and this is considered appropriate.</p> <p>The application does not seek approval for establishment of a "function centre" which is defined as a building or a place used for the holding of events, functions, conferences, and the like.</p> <p>Council can only consider what is put before it. In the event that there are potential breaches or activities which do not have approval, there are separate compliance provisions available.</p>

Financial Implications:

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

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Legal Implications

A section 8.2 review and / or an appeal with the Land and Environment Court are possible if the application is refused.

Summary and Conclusion

The proposed development is compliant with the provisions of SLEP 2014 and the SDCP 2014.

This application has been assessed having regard for section 4.15 (Matters for consideration) under the EP&A Act and has been subjected to detailed analysis of the main issues identified in this report, being the likely impact of the development on the natural and built environment and also the social and economic impacts. These issues have also been investigated and addressed by the applicant.

Having regard to the assessment, the proposal is considered capable of support as there are no substantive planning reasons to warrant refusal. Accordingly, it is recommended it is approved subject to the recommended conditions of consent as per Attachment 2.

DE21.14 Development Application DA20/2110 - 1666 Kangaroo Valley Rd Kangaroo Valley – Lot 2 DP 593972

DA. No: DA20/2110/4

HPERM Ref: D21/40595

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments: 1. Planning Report (under separate cover) [⇒](#)
2. Draft - Determination - Refusal (under separate cover) [⇒](#)

Description of Development: Construction of One (1) Tourist Cabin

Owner: Bruno and Elizabeth Henke

Applicant: Allen Price & Scarratts Pty Ltd

Notification Dates: 8 January 2021 to 8 February 2021

No. of Submissions: Nil

Purpose / Reason for consideration by Council Council resolved on 7 April 2020 (MIN20.240) with respect to COVID-19 response, that:

7. To maintain, continue and encourage as much economic activity as possible Council adopt the following policies, to be followed by an implementation report from the CEO:

...

k. The delegation to the CEO be rescinded to determine a development application by refusal until the end of COVID 19 crisis.

The refusal of a development application must only be by Council/Committee resolution

This report recommends refusal of the above application and is therefore prepared for consideration by the Development & Environment Committee in accordance with the 7 April 2020 resolution of Council.

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/2110 to construct one (1) tourist cabin at Lot 2 DP 593972, 1666 Kangaroo Valley Road, Kangaroo Valley be refused subject to the reasons contained in Attachment 2 of this report.

Options

1. Refuse the development application (DA) in accordance with the recommendations of this report.

Implications: The DA is unable to proceed as applied for and a section 8.2A review may be sought by the applicant or an appeal with the Land and Environment Court (LEC) is possible in the event of a refusal of the application.

DE21.14

2. Approve the DA, pending the submission of additional information by the applicant and positive concurrence from WaterNSW.

Implications: Council would need to allow additional time for the applicant to submit the required information. It is noted that to date, the applicant has resisted providing this information to Council and WaterNSW.

3. Alternative recommendation.

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

Location Map



Figure 1 – Aerial image of the subject site in the local context noting approximate location of tourist cabin in red.

Background

Proposed Development

The DA seeks approval for the construction of one (1) tourist cabin. The single-storey cabin is to contain two (2) bedrooms, a bathroom, separate water closet, kitchen, clothes washing facilities and a living and dining area. The cabin is to also include a covered deck area and attached covered carport.

Vehicular access is proposed via the existing access point to Kangaroo Valley Road.

DE21.14



Figure 2 – Site Plan

Subject Land

The development site comprises Lot 2 DP 593972 (1666 Kangaroo Valley Road, Kangaroo Valley). Refer to Figure 1.

Site & Context

The development site:

- Is irregular in shape and currently contains a single dwelling (as approved by BA79/0079) and tourist cabins (as approved by DA98-1646) with associated outbuildings and a swimming pool.
- Is zoned RU1 Primary Production and is approximately 9.81ha in area.
- Has existing access from Kangaroo Valley Road and is bounded by Moss Vale Road to the south.
- Adjoins land zoned RU1 Primary Production.
- Is identified as being part bush fire prone land.
- Is located within the Sydney Drinking Water Catchment.

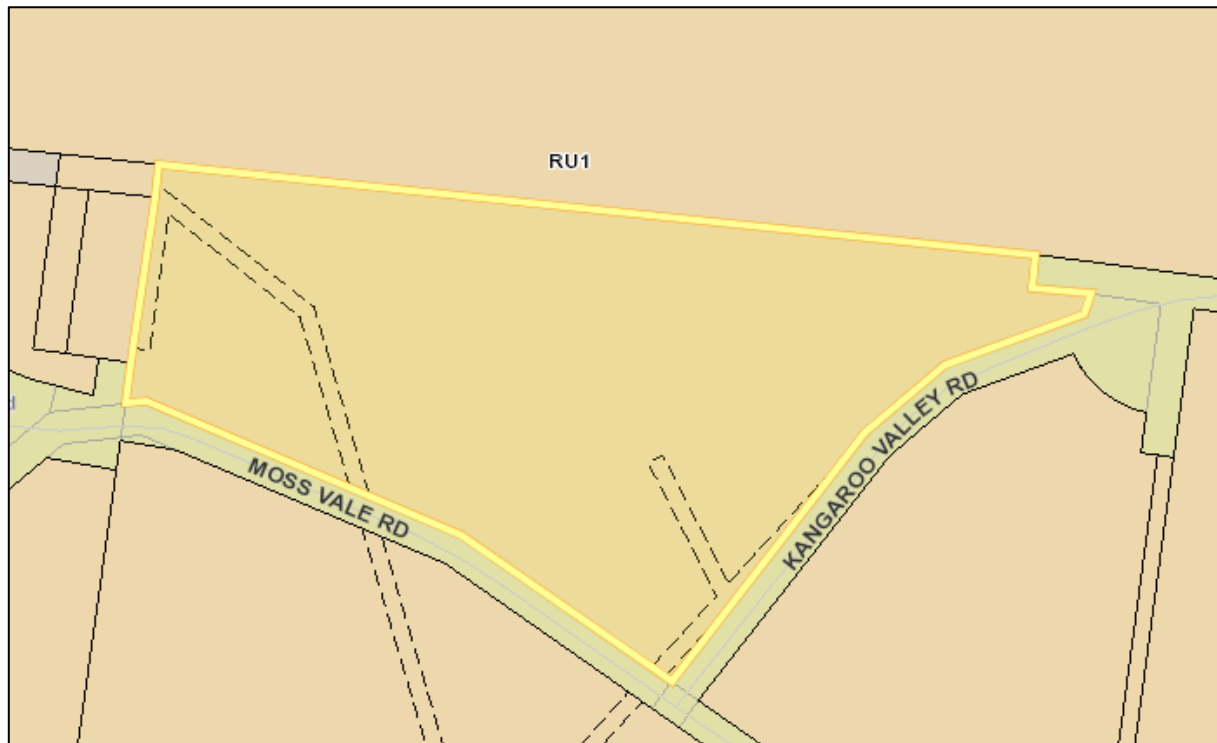


Figure 3 – Zoning Extract

DE21.14

History

The following provides details on post-lodgement actions and general site history for context:

- The application was lodged on 22 October 2020.
- As a result of detailed assessment of the application, on 2 November 2020 additional information was requested including various amended plans, a BASIX Certificate, and on-site wastewater management report. This information was requested to be provided with 21 days.
- The requested information was not received within the timeframe, and reminders were sent to the applicant 19 November, 30 November, and 4 December 2020.
- On 15 and 22 December 2020 the requested documents from Council's 2 November 2020 letter were submitted by the applicant, including amended plans and a BASIX Certificate. This information was referred to the relevant sections of Council and external agencies for comment. The requested on-site wastewater management report however was not submitted.
- Following the WaterNSW Referral response, a second additional information request was sent to the applicant on 8 January 2021 also requesting a 'site and development-specific contemporary wastewater report'.
- The applicant provided an objection to this request on 12 January 2021 and consequently the owner contacted the WaterNSW assessing officer directly.
- Subsequently, a partial response was provided by the applicant to WaterNSW on 15 January 2021.
- WaterNSW issued a second request for additional information on 18 January 2021, stating that the provided information was insufficient. This request remains outstanding.

Issues

Insufficient Information for Assessment – Wastewater Report

The development proposes to utilise an existing on-site sewerage system to service the additional development. Additional information was requested from the applicant 2 November 2020 for an on-site wastewater management report to satisfy the requirements of WaterNSW and Chapter G8 of the Shoalhaven Development Control Plan 2014 (SDCP).

WaterNSW requested the following additional information regarding wastewater on 11 January 2021:

“WaterNSW requests that Council obtain a site and development-specific contemporary wastewater report that:

- *Identifies site constraints, buffer distances, relevant soils, and climate information.*
- *Provides effluent load calculations.*
- *Specifies the type of system (including specifications) installed and*
- *Shows the size and location of the existing and proposed effluent management area.”*

The Wastewater report is necessary to assess the capability of the existing system to absorb the additional loads and its subsequent potential environmental impacts. Given the site is identified as being within the Sydney Drinking Water Catchment area, an assessment of the potential environmental impacts is also required to be undertaken by WaterNSW. Without the assessment report, WaterNSW is unable to complete an assessment and provide concurrence for the application.

As per clause 11 of the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, a consent authority, being Council, must not grant consent to the carrying out of development under Part 4 of the Act on land in the Sydney drinking water catchment except with concurrence of the Regulatory Authority, being Water NSW.

As a wastewater report has not been provided, the application currently does not have sufficient information for the Regulatory Authority to grant concurrence.

The wastewater report is also required to satisfy the requirements of Chapter G8: Onsite Sewage Management of the Shoalhaven Development Control Plan 2014.

Applicant's Submission

The applicant contends in an email response dated 4 December 2020, that the request for a wastewater report as being unnecessary as other documents such as a letter detailing the capacity of the system dated 12 January 1999 and a Wastewater Report prepared by Allen Price and Associates dated December 1998 were adequate for the assessment of the application. Their response states the requested report is unnecessary as, “in total when the development is completed it will comprise of 6 bedrooms. The installed system is capable of catering for a population of 15 people which is adequate for this level of development”. Despite this response, Council staff and WaterNSW are unable to undertake the necessary assessment of the proposal against the provisions of the SEPP and Council DCP without a development-specific contemporary wastewater report.

No response has been provided to the most recent 18 January 2021 request for this report.

Discussion

Council is not in a position to support the application in its current format as the application does not demonstrate compliance with the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 or Chapter G8: Onsite Sewage Management of the Shoalhaven Development Control Plan 2014.

Council cannot approve the application without the concurrence of WaterNSW. This agency advised it cannot undertake assessment of the proposal without the requested information, which the applicant has continuously resisted to provide.

Planning Assessment

The DA has been assessed under s4.15 of the Environmental Planning and Assessment Act 1979. Please refer to **Attachment 1** to this Report.

Consultation and Community Engagement:

No public submissions were received in relation to Council's notification of the development.

The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 200m buffer of the site. The notification was for a 31-day period.

Financial Implications:

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

Legal Implications

According to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of approval or refusal. If such a review is ultimately pursued (if the recommendation is not adopted), the matter would be put (again) to Council for consideration.

Alternatively, an applicant may also appeal to the LEC against the determination according to section 8.9 of the EP&A Act.

Summary and Conclusion

This report and the attached s.4.15 Assessment Report (**Attachment 1**) provides an assessment of a proposal for the construction of one (1) tourist cabin. The proposed development satisfies the provisions of SLEP 2014 and SDCP2 2014; however, insufficient information has been provided to address the requirements of Clause 11 of the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 and Chapter G8: Onsite Sewage Management of the Shoalhaven Development Control Plan 2014 and complete assessment of the application.

This application has been subjected to detailed analysis of the main issues identified in this report, being the lack of information regarding wastewater management. These issues have also been investigated by Council but have not been addressed in full by the applicant.

The application is not currently capable of support, based on the inadequacy of information. Council cannot approve the development without the concurrence of WaterNSW under the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

Accordingly, a negative conclusion has been reached and recommendation made. **Attachment 2** contains the draft determination notice and the reasons for the refusal.

DE21.15 Response to Question on Notice - Edendale St, Woollamia

HPERM Ref: D21/3289

Department: Development Services

Approver: Phil Costello, Director - City Development

Reason for Report

This report is in response to a serious of Questions on Notice pertaining to land in Edendale St, Woollamia.

Recommendation (Item to be determined under delegated authority)

That the Response to Question on Notice - Edendale St, Woollamia report be received for information.

Options

1. Receive the report for information as recommended.

Implications: Nil.

2. Recommend otherwise.

Implications: this would depend on the recommendation adopted.

Background

At the Development and Environment Committee of 1 December 2020 a “*Question on Notice – Subdivision – Edendale St Woollamia – Lot 71 DP 9289 – Report request*” was put forward. There were 13 questions in that Notice. This report includes responses to the questions.

The location of the land is show in Figure 1 below.

Figure 1 – Location



Land subject of SF7946

DE21.15

Questions

- 1. In January 1995 when the application was lodged how may nearby property owners were notified or are likely to have been notified and does Council have evidence of this notification. On 25 January 1996, a 13-lot subdivision SF7946 was approved in Edendale St.**

Response

- Council's records show that notification of the above was sent to adjoining property owners on 12 January 1995.
- Based on the hard copy, a minimum of forty (40) adjoining property owners were notified. (Reference cw.mlb SF007946.)

- 2. This DA should have expired on 25 January, 2001...why is it still active?...in what way was a substantial start made?**

Response

- SF7946 is related to SF7945. SF7945 was the subject of a hearing in the Land and Environment Court on 7 November 2001 before Justice Talbot. Documents submitted (including sworn affidavits) to the Court referenced both SF7945 and SF7946.

- His Honour ruled that he was satisfied that the work undertaken to date (land surveying) was sufficient to secure the consent. As this land was also the subject of survey work associated with SF7946 and adopting the same principle, it follows that both consents were 'secured'.
- The residents were specifically notified of the Class 4 proceedings at the time and were subsequently advised of the decision of the Court via letter (undated hard copies on file).
- Legislation has changed in recent times with regard to physical commencement, however that legislation only applies to consents issued after 15 May 2020.
- See:
<https://www.planning.nsw.gov.au/Policy-and-Legislation/COVID19-response/COVID19-changes-explained/Clarifying-the-meaning-of-physically-commenced-works>

3. What planning law permits a DA approval to be acted upon 24 years after the original assessment and does that law permit reassessment by Council to bring the consent conditions up to contemporary standards?

In August 1997 Council apparently approved a "borrow pit" to excavate 6,500 cubic metres of soil to use on SF7945 to build 2-metre-high mounds so that future structures might be out of flood reach. The clearing of bush and the excavation of the "borrow pit" began in May 2000. Local residents estimate that more than 100 trips were made per day for almost three weeks by 10 tonne dump trucks travelling to and from along Edendale St and Woollamia Rd, creating a dangerous situation for residents. Residents questioned the validity of the development as they were not aware of any substantial start occurring and they conveyed their concerns to Shoalhaven City Council, Department of Land & Water Conservation, NPWS and the Departments of Planning and Health.

Response

- There is no limitation on a consent if the consent has been secured by way of physical commencement.
- Council has no legal ability to revisit historic approvals unless an application is made to modify a consent.
- If a modification is lodged, only the modification can be considered.
- A modification application does not enable the whole application to be revisited and new conditions (unrelated to the modification) to be imposed. (This point is also relevant to a later question.)
- The original development consent did not lapse. See response to Question 2.
- With historic approvals, given that a significant period may have elapsed, residents may forget about an approval or make assumptions that the development may not proceed. Additionally, properties may change hands with owners not being aware of an approval nearby.
- This situation has been acknowledged by the recent changes in legislation regarding physical commencement (see earlier information in this report) with the Department of Planning, Industry and Environment acknowledging that *"Developments that had technically been physically commenced, but remain unconstructed for extended periods of time can create uncertainty for the community and local planning authorities about the future...."*

4. Was the work on the “borrow pit” approved under SF7945 on 19 April 1995 and what community consultation took place in relation to the approval and the truck movements that would be involved?

If, as residents claim, work on the “Pit” began in May 2000 would not such work be illegal due to the expiration of SF 7945 a month before?

Response

- Condition 3 (g) of Development Consent SF7946 allowed for the removal of approximately 6,500 cubic metres specifically for the purposes of fill from a site within lot 3 shown on a plan accompanying the application. Approved “engineering plans” reference the “borrow pit”.
- The consent was considered to be valid for the reasons mentioned earlier in this report under Question 2. The file shows that residents were concerned at the time that the works associated with the pit were outside the consent period.
- Residents are not typically notified when works commence for developments. The consultation for a development is undertaken with a development application or any modification application.
- This development was notified with the original application and modification application. Minor modifications for fencing around the pit and inclusion of dish drain were not notified.
- The modification application for the removal of building pads and landscape plan was first proposed in 2000. It was notified in 2007 to some 49 parties following a protracted period of assessment, deliberations concerning flooding issues including reports, flood investigations (Flood Study for Moona Moona and Currumbene Creeks) and legal advice. The modification was approved on 17 September 2007.

5. Were permits required from the Dept. of Land & Water Conservation before these earthworks could take place and if so, why were they not applied for?

The attached letter from the DL&WC and signed by Noel Kesby, Manager Resource Assessment & Planning, states that: “The Department has no record of any previous referral from Council in relation to seeking DL&WC comment on natural resource management issues for the subject lands at the subdivision application stage...and how Council addressed relevant State policies on natural resource management”.

The DL&WC letter went on to say that Council would be aware that the proposed development; “is likely to be impacted on and impact flood behaviour...and should be considered in accordance with the NSW Government’s Flood Prone Land Policy...to reduce the impact of flooding and flood liability on individual owners and occupiers, and to reduce the private and public losses resulting from flooding”

Response

- There were two substantial letters from the Department of Land and Water Conservation. One dated 11 October 2000 and the other 18 December 2000. Both raised concerns with the development and assessment undertaken. In short:
 - There is evidence that the required statutory heads of consideration were considered during the assessment of the application, as was the practice of the day via a check sheet and relevant referrals. Whilst a referral was not made with the original application to the Department, it was with the modification application. Further, the Applicant was advised that application would be required pursuant to the then Rivers and Foreshores Improvements Act of the day (Permit under Part

3A). This correspondence is dated 6 June 2000. There is also evidence on the file of the Applicant engaging with the Department about the 3A Permit.

- It is noted however that a Controlled Activity Approval has been issued, dated 16 July 2020 to Allen Price and Scarratts Pty Limited, Reference 10CX123977 / A023727.
- With regard to flooding, the modification application relating to the mound structures enabled the flooding issue to be revisited. After a lengthy period, including the completion and adoption of a Flood Study, the modification application was approved, which notably reduced the amount of fill required for the subdivision. These actions indicate consideration of relevant requirements and referrals at that time.
- With regard to liability, the Council took legal advice. This is discussed further under Question 7.

6. What flood plain management plans existed when this development was approved and what plan now exists to mitigate against the potential impacts of flooding in the area as a result of the development proceeding? Is there such a thing as a Currumbene Creek Floodplain Management Plan (the creation of which was suggested by DL&WC back in 2000 before Council made any further development decisions in the area) and if so, does it address the issue of flood free access and evacuation requirements, including hazards on access routes in the event of a major flood?

Response

- The original application was assessed under the framework at the time and this included an 'Interim Flood Policy' which set floor levels for development. The Policy has no reference to access provisions. This Interim Flood Policy applied to the whole city and specific areas and was repealed at a meeting of Council in 2011 along with other policies given that they were incorporated into DCP 106.
- The Moona Moona and Currumbene Creek Flood Study was finalised in March 2007 and adopted by Council on 25 June 2007.
- The above Study was considered as part of the assessment and adequate to enable determination of the modification application concerning the removal of some mounds and adjustment to others (lowering).
- The modification application was held in abeyance for a significant period of time to ensure that a final decision was made having regard to up-to-date information and studies in response to advice from the Department which advised in the letter of 18 December 2000 that "*if Council choses to amend the existing consents to allow for a lower, 5% AEP flood level mound elevation, Council is advised to also: Ensure that the levels are supported by an appropriately prepared Flood Study...*"
- The access arrangements have been approved and are via Edendale St as is the case with properties on the opposite site of the road and the existing road network.
- The above Study was reviewed in another Study subject of a report titled "Currumbene and Moona Moona Creeks Floodplain Risk Management Study and Plan – Final Report, March 2016.

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7. Is Council satisfied that it is protected under Section 733 of the Local Government Act 1993 in the event that litigation arises as a result of flooding at this site?

Response

- The question was put during the assessment of the applications and advice provided at that moment in time. A detailed Councillor Briefing was held on 1 August 2000.
- Advice of 10 January 2001 from Council's legal advisors was that if Councillors and staff act in *good faith* there is no issue with personal liability. However, this advice went to several other matters including having sufficient information at hand to inform a decision e.g., a Flood Study. A Flood Study was completed.
- Having regard to the above, s733 was considered as part of the assessment and a decision made accordingly.

8. When this development was approved, did Council give appropriate consideration to relevant State Natural Resource Policies, can Council give evidence of doing so, and what conditions of consent were applied as a result of these considerations?

The issues that should have been addressed are detailed in the October 2000 DL&WC letter under the broad headings of; management of water quality, vegetation management, the existence of acid sulphate soils, and effluent disposal.

Response

- The application was assessed in accordance with practices of the time. A section 90 check sheet is on file. A number of conditions were imposed consistent with the procedures of the day including but not limited to service provision, road construction, soil and water management, engineering standards, contributions.
- With regard to the letter of 2000 from the then Department of Land and Water Conservation (DL&WC), that letter is in response to a consultation referral for the modification application for the mounds and the landscape plan.
- The letter acknowledges that it was not previously consulted concerning the application; however, it also indicates that Council and the Department met and there was agreement that future rezoning and development applications that affect (or are likely to affect) the functions and processes of environmental sensitive lands will be referred.
- The file assessment, documents and original consent contain the following information:
 - The proposal (modification application) deleted the requirements for mounds for certain lots and reduces the mound height to the 1:20 year flood level of 1.8m AHD for lots 1, 4 and 5. (The original approval required mounds for ALL lots to be constructed to "RL 3.3 AHD" (condition 3 (c) of the consent.)
 - The 1:20 year flood level of 1.8m AHD was established via an adopted Flood Study.
 - The flood engineer supported the deletion of the fill for the majority of the lots and this was in accordance with the current floodplain management principles as outlined in the then DCP (106) of the time.
 - The land was not (and remains) unsewered. Effluent disposal systems need to be considered at the DA stage. Enquiries have been made with Shoalhaven Water for pump out for lots 2 and 3.
 - Lots 2 and 3 were considered to be in the most sensitive location and it was commented that by removing the fill requirements there would be a reduced

environmental impact. This is also consistent with a recommendation made by the National Parks and Wildlife Service.

- Council did not support the deletion of the landscape plan requirement as requested. Council imposed two new conditions in response to the change to the building pads / mounds requiring a minimum floor level of buildings and that a restriction be emplaced on title addressing bushfire requirements and threatened species.
- A report dated 1 July 2000 by Council's Threatened Species Officer assessed the subdivision impacts on flora and fauna. The report concluded that the site contains an area of intact forest in good condition and acknowledged the development would result in some loss of forest which would provide suitable habitats for Threatened Species. However, the small area of habitat to be removed and the small size of the hollows observed suggest that the site is unlikely to support populations of these species and that the loss of this vegetation would be very unlikely to place local populations under excessive pressure. The report also foreshadows that future assessments *may* be required when the lots are developed.
- A condition of consent requires soil and water to be managed in accordance with the guidelines that were applicable at the time. Council has opportunity to check such plans with any construction certificate application.

9. The riparian land on the site is defined in Council documentation as "drainage reserve". Is Council satisfied that this description is accurate and in the words of DL&WC, "appropriately reflects the total function as a riparian corridor and its connection to a State significant wetland system." What riparian protection or enhancement, including buffer zones, has Council built into approvals at this site by way of consent conditions?

DL&WC offered the view at the time of approval that the so-called drainage reserve; "would in fact contain inherent conservation values and provide a significant environmental function that would warrant consideration of its definition (and zoning) that affords greater protection".

The Statement of Environmental Effects that accompanied the application offered the opinion that; "no protected or endangered fauna would visit the area". On 15th June, 2000 after the excavation of the "borrow pit" began and in response to representations from the public, two officers of the NSW National Parks & Wildlife Service inspected the Edendale site and in a letter to Development Manager, Tim Fletcher on 13th July, 2000, Michael Hood (Manager, Conservation Planning, NPWS south) described the property differently, as "a mature coastal forest" and added that; "such a community provides habitat for a number of fauna species which at the time were listed on the Endangered Fauna (Interim Protection) Act."

Response

- The development is approved and has been for approximately 24 years (26 January 1996). The consent conditions do not reference riparian enhancements or the like. There is no scope to revisit the approved development. Refer to comments under Questions 3 and 8.
- In a response to Mr Hood (NPWS) dated 14 August 2000, Council advised that:
"Council's ecological requirements were only in the early stages of preparation for the rural environmental plan, such investigations being to identify land to be zoned Environmental Protection or with an Ecological hatching to indicate sensitivity of the location. The draft plan at that time had been through consultation with National

Parks and Wildlife Services and there was no indication of an environmental or archaeological problem in this specific location. The assessing officer believes that the level of assessment undertaken in 1995 was appropriate for the time, given the level of information available for this location."

The letter goes on to point out that as a result of the modification application Council undertook a detailed environmental analysis of the location. It is noted that the land is not mapped as a biodiversity conservation area, however the land is now *partly* mapped with a Biodiversity Layer (Shoalhaven Local Environmental Plan 2014).

- Council will seek to ensure that any handover of public assets is in suitable condition at the time.

10. Did Council at any stage consider having the original Statement of Environmental Effects peer reviewed?

Of additional concern to Michael Hood was that there was no evidence of consideration of Aboriginal Heritage as part of the development application, notwithstanding the fact that the location of the site, adjacent to Currumbene Creek should have triggered an archaeological assessment.

Response

- The development application assessment process is a peer review of those documents and assessment against the legislation and requirements at that moment in time. It is very uncommon for development applications to be externally peer reviewed as the assessment is a statutory function of Council as a 'consent authority'. No external peer review was carried out.
- Separate to the Development Application process, even if Aboriginal archaeology was not allegedly assessed, it is an offence to cause harm to an object.
- The National Parks and Wildlife Act 1974 provides blanket protection to all Aboriginal objects and places. It is an offence to harm and object or place without an Aboriginal Heritage Impact Permit. Such Permits are issued after a consideration of a range of factors including the likely harm to the object and feedback from consultation with Aboriginal communities.

11. Has an archaeological assessment of the site been requested by Council and has any consultation with the Jerrinja Local Aboriginal Land Council taken place?

The NPWS letter also drew attention to the impact of the "pit" excavation and the building of pads to elevate future dwellings, citing concerns about destruction of habitat and the impact on possible aboriginal sites.

Response

- No assessment has been requested by Council. The file does not show any evidence of consultations.
- The letter from the National Parks and Wildlife Service recommended that the need for building pads be reviewed. The Service indicated that the outcome would be an increased opportunity to vegetation and habitat conservation and also reduce the need for excavation. The letter also indicated that as a consequence of not undertaking detailed consideration of Aboriginal archaeology, that could be an issue with future applications.
- The modification application removed the requirement for the dwelling pads excepting for lots 1, 4 and 5. The extent of fill was also reduced for these pads, by reducing their heights.

- Whilst the consent is silent on Aboriginal archaeology, this does not negate any responsibility by the Applicant. If any material / objects are discovered, there is a reporting requirement to NSW Heritage.

12. Will Council allow more mining for fill at the “borrow pit” and permit further house construction on “pads” given the warnings from NPWS about the environmental sensitivity of the site.

Response

- The developer will need to comply with the consent.
- Any changes (other than very minor having regard to the terminology of the condition of consent) to the quantity mentioned in the consent would need to be discussed with Council and would require the consent to be modified.

13. Since the sale of the site some 12 months ago, has Council received an application to modify the DA in any way or a request for a “Certificate of Construction” to clear bushland on the site?

Response

- No modification application has been received to date.
- A construction certification application has been lodged. A tree clearing plan has been submitted.

Conclusion

- The consent has been secured. There is no doubt concerning physical commencement in this case having regard to the decision by the NSW Land and Environment Court.
- Third party appeal rights can apply in certain circumstances – if there is concern about the validity of a consent. However, there are strict timelines with respect to such appeals. Given the passage of time that has transpired with this matter, the opportunity to challenge this approval would appear to have been long gone.
- Any party seeking to challenge the validity of a consent via a Judicial Review should obtain their own independent legal advice.
- With regard to historic ‘inactive’ consents, it is unknown how many may be pursued in the future. Legislation has however been changed in recent times with regard to physical commencement. That legislation however only applies to consents issued after 15 May 2020.

DE21.16 Legal Proceedings - Short Summary of Matters before Courts

HPERM Ref: D20/518188

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments: 1. List of Legal Matters [↓](#)

Reason for Report

This report is to inform Council of current matters before the Courts including costs where known and estimates of costs to date.

Recommendation (Item to be determined under delegated authority)

That the content of the report on Legal Proceedings - Short Summary of Matters before Courts be considered and received for information.

Options

1. Consider and receive the report for information as recommended.

Implications: Nil.

2. Resolve alternatively and provide detail to staff to enable appropriation actions to be taken.

Implications: Contingent on what is resolved.

Background

This report is submitted to inform Councillors of current legal proceedings that are active or have recently been completed.

Financial Implications

The total estimated expenditure is \$1,290,230. This is contingent on matters potentially being resolved at conciliation where a conciliation is listed and/or no unexpected complications. This figure includes costs already spent. If matters do not resolve at conciliation, then these figures will increase. For the list of court matters and estimates, please refer to Attachment 1.

Current annual budget for legal expenditures in the Development Assessment Unit is \$112,000 and depending on the progress of legal cases, additional budget will be required in 2021/22 financial year. Management will continue monitoring the budget and will propose adjustments to the Council when required.

Risk Implications

The risks associated with litigation go to costs. The cost of litigation can be high, and in some instances, there can be costs pursued by the applicant or respondent. Generally, in classes 1 and 2 of the Court's jurisdiction, (mainly merit appeals) no order as to costs are made unless the Court considers a cost order is, in the circumstance of the case, fair and reasonable.

Council has no option but to respond to any appeal that is lodged. Council however does take the path of least resistance by actively participating in conciliation conferences with a view to reaching an agreement, where it is reasonably possible, or at least narrowing the issues of dispute.

About the Court

The Land and Environment Court and Court proceedings are governed by legislation, Court policies, practice notes and the Uniform Civil Procedure Rules 2005.

For more information about the Court: <https://www.lec.justice.nsw.gov.au/>

DA Reference	Council LS #	Applicant Name	Description of Development	Address	Council recommendation if relevant	Legal Representative	Expertise	Experts	Estimate	Status of matter as at Dec 2020	Upcoming Key Dates
SF10570	LS660	Allen Price Scarratts	Subdivision of Land	368 Worrigee Rd & 23A Aldous Place Worrigee	N/A Deemed Refusal	Marsdens	Town Planning Ecology Engineering Traffic GGB Frog Water	Council staff Abel Ecology Council staff Council staff Garry Daley Council staff	\$410,364.00	Awaiting Judgment	Judgment date TBA
RA17/1000	LS641	David DeBattista	Masterplan – concept application – Residential Flat Buildings	Island Point Rd St Georges Bason Lot 1 & Lot 6 (Anson St)	Deemed refusal (Council resolution to support a refusal)	BAL	Town Planning Urban Design Traffic Social Planning	Council staff Michael Zanardo Council staff Judith Stubbs	\$278,882.00	Preparing FASOFAC* and expert evidence for hearing SOFAC** filed 24/12/2020; preparation for s34 conference SOFAC** filed; preparation for s34	12-14/05/2021 Hearing
DA19/1857	LS845	TWA Developments	Construction of Multi Dwelling Housing – Five (5) Dwellings and Strata Title Subdivision	52 Parker Crescent Berry - Lot 710 DP 1247531	Refusal	BAL	Town Planning	Andrew Darroch	\$101,778.00	preparation for s34 conference SOFAC** filed; preparation for s34	08/03/2021 s34 Conciliation Conference
DA20/1676	LS842	Adam Sturt	Construction of access driveway for maintenance purposes (Engineering works, road and bridge)	23 Coorang Rd, North Nowra - Lot 2 Dp 1056165	Refusal	BAL	Town Planning Flood Engineer Ecology	Council staff	\$104,206.00	preparation for s34	18/02/2021 s34 Conciliation Conference
DA20/1579	LS852	Michael Mascaro	Demolition of Existing Structures and Construction of Shop Top Housing Comprising Two (2) Commercial Premises and 17 Dwellings	45 Naval Pde Errowal Bay - Lot 45 DP 1052512	N/A however a report is likely to be prepared	Marsdens	Town Planning Urban Design	Council staff Michael Zanardo	\$200,000.00	SOFAC** filed; preparation for s34	18/01/2021 SOFAC** filed; 05/05/2021 s34 Conciliation Conference
DA18/1318	LS829	Clarke	Two lot Torrens Title Subdivision, animal boarding or training establishment and construction of an office	19 Bong Bong Rd, Berry Lot 6 DP 815023	Refusal, 8.2 Review - Refusal, LEC refused.	BAL	N/A	N/A	\$80,000.00	Matter heard. Decision handed down 12/02/2021.	Appeal dismissed with costs. (Council was successful.) Objectors to be notified of conciliation conference; 31/03/21 s34 Conciliation Conference
DA19/2160	LS858	Chris Beasley	Demolish existing Motel and Construct 3 Level Tourist Development	1 Princess ave South Burrill Lake - Lot 47 DP 1051945	Deemed refusal	Marsdens	Town Planning Traffic	Council Staff	\$35,000.00	03/02/2021 SOFAC Filed	s34 Conciliation Conference

DA Reference	Council LS #	Applicant Name	Description of Development	Address	Council recommendation if relevant	Legal Representative	Expertise	Experts	Estimate	Status of matter as at Dec 2020	Upcoming Key Dates
DA18/2276	LS862	Addison Puch Properties Pty Ltd	Temporary use of land as function centre.	179 Cedar Springs Rd, KANGAROO VALLEY - Lot 1 DP 791256	s8.7 appeal against Refusal of a Development Application	BAL	Town Planning Acoustic engineer	Mr Lovell Stephen Gauld	\$80,000.00	Application and documents served on 23/12/2020	26/04/2021 s34 Conciliation Conference
TOTAL ESTIMATE									\$1,290,230.00		
		* FASOFAC - Further Amended Statement of Facts and Contentions									
		** SOFAC - Statement of Facts and Contentions									
		*** Please note that this spreadsheet is continually being updated. It contains the most updated information as at the last									

DE21.17 Quarterly Review for Compliance Matters

HPERM Ref: D21/9039

Department: Building & Compliance

Approver: Phil Costello, Director - City Development

Attachments: 1. Penalty Notices & Warnings Issued - Quarterly Review - City Development - October to December 2021 [↓](#)

Reason for Report

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

This report provides information on the period from 1 October 2020 to 31 December 2020 (second quarter 2020/2021).

Recommendation (Item to be determined under delegated authority)

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

Options

1. Council receive the report for information.

Implications: Nil

2. Council receives the report and provides additional direction for future reports.

Implications: Any changes or additional matters can be added to future reports.

Report

Compliance activities are completed by the following Teams within City Development:

- (a) Compliance Team: Development compliance matters including unauthorised development, development not in accordance with development consent, minor land and water pollution incidents (including building sites), land use management issues, fire safety and swimming pool safety issues.
- (b) Environmental Health: Pollution incidents (noise and water), environmental incidents, food shops and the operation of on-site sewage waste management facilities.
- (c) Parking: All parking offences.
- (d) Rangers: Animal control, littering, unauthorised camping, rubbish dumping and other environmental offences.

This report provides Councillors with an update on the penalties issued (number, type, and ticket value), penalty reviews dealt with by the Review Panel and any Local or Land and Environment Court matters determined or progressing.

This report relates to October-December 2020 (second quarter).

Penalties issued during the period.

A combined total of 1,892 penalty notices were issued by the Teams during the period. These penalties have a face value of \$381,382. Historically Council stands to receive approximately 70% of this ticketed figure.

A total of 239 warnings were issued during the period.

Attachment 1 to this report provides a breakdown of the penalties and cautions issued.

The following is a summary of the penalties issued for each team:

Team	Number Issued	Total Amount	% of total amount	Warnings issued
Compliance	12	\$31,600	8%	73
Compliance – Fire Safety	1	\$200	0.5%	0
Compliance – Pools	2	\$1,100	0.25%	31
Environmental Health	0	0	0	0
Rangers – Animal issues	166	\$66,645	17.25%	28
Rangers – Environmental issues	93	\$21,646	6%	13
Parking	1,618	\$260,191	68%	94
Sewer Management Facility	0	0	0	0
Total	1,892	\$381,382	100%	239

DE21.17

Penalties related to Compliance issues

The following details are provided in relation to compliance penalty notices issued this period:

- a) Nowra Hill (\$3,000): One penalty notice issued to the owner of the premises. The penalty notice relates to prohibited development – any other case – Individual (\$3,000). A further seven (7) warning notices were issued and these would have amounted to \$12,000.

The matter was brought to Council's attention following an inspection by Council Sewage Management Facility Team identifying an unauthorised dwelling on the site.

The Compliance investigation revealed an unauthorised cottage and an unauthorised shed which had been converted to a dwelling and it was being rented. Several shipping containers were also located on site.

- b) Bawley Point (\$6,000): Three penalty notices issued to the owner of the premises. The penalty notice relates to two breaches of development without development consent (Class 1a or 10 building) – Individual (\$1,500) and one breach of development without development consent – any other case (\$3,000). A further ten (10) warning notices were issued and these would have amounted to \$14,490.

This matter relates to the use of the premises as an unauthorised wedding function centre. The Compliance investigation also revealed a number of unauthorised structures.

- c) Bomaderry (\$12,000): Two penalty notices were issued to the owner of the premises. The penalty notices relates to development not in accordance with development consent – any other case – Corporation (\$6,000). A further two (2) warning notices were issued and these would have amounted to \$12,000.

The matter was brought to Council's attention following a report of ineffective stormwater management and sediment run-off from the developed site at Princes Highway Bomaderry.

The Compliance investigation confirmed failed sediment and erosion controls causing pollution of nearby stormwater drains.

- d) Sanctuary Point (\$1,500): One penalty notice issued to the owner of the premises. The penalty notice relates to development without development consent (Class 1a or 10 building – Individual (\$1,500)). A further six (6) warning notices were issued and these would have amounted to \$9,000.

The matter was brought to Council's attention following a report from a member of the public. The Compliance investigation revealed the existing cottage had been extended without approval by an increase of approximately 65m²; including the addition of a full kitchen and living area.

- e) Nowra Hill (\$1,500): One penalty notice issued to the owner of the premises. The penalty notice relates to development without development consent (Class 1a or 10 building – \$1,500). A further one (1) warning notice was issued and this would have amounted to \$1,500.

The matter was brought to Council's attention following a report from a member of the public relating to unauthorised earthworks. The Compliance investigation revealed the unauthorised construction of a dam and use of a shed as a dwelling.

- f) Ulladulla (\$1,500): One penalty notice issued to the owner of the premises. The penalty notice relates to development without development consent (Class 1a or 10 building – \$1,500). A further seven (7) warning notices were issued and these would have amounted to \$10,500.

The matter was brought to Council's attention by a member of the public regarding the unauthorised conversion of approved garages to a secondary dwelling.

The Compliance investigation also revealed a shipping container had been installed on the lot without approval and was being used as a storage shed.

- g) Ulladulla (\$2,050): One penalty notice issued to the owner of the premises. The penalty notice relates to development without development consent – Class 1a or 10 building – Individual (\$1,500) and one penalty notice for fail to maintain child-resistant barrier effective and safe manner (\$550). A further six (6) warning notices were issued and these would have amounted to \$6,220.

The matter was brought to Council's attention by a member of the public regarding an unauthorised privacy screen.

- h) Bomaderry (\$1,700): Two penalty notices issued to the owner of the premises. The penalty notices relate to development without development consent (Class 1a or 10 building – \$1500) and owner Class 1a building not ensure smoke alarms in any storey with/without bedrooms -Individual (\$200). A further twelve (12) warning notices were issued and these would have amounted to \$14,900.

The matter was brought to Council's attention by a member of the public reporting unauthorised extensions to the dwelling and garage. The Compliance investigation revealed significant unauthorised renovations, increasing the gross floor area and change of use of the garage to a habitable room, including plumbing and drainage works.

Warnings related to Compliance issues

A total of 47 warning notices were issued for compliance matters in the period and these equate to \$80,610.00 in ticket face value. Potentially the Compliance Team could have issued \$112,210 in penalties for the period. The caution rate is approximately 70%.

Penalty infringement panel reviews

During the period, the review panel was not required to review any penalty infringement notices issued by the Compliance Team.

Local Court matters

A case was heard on 9 October 2020 in Nowra Local Court in relation to election of a penalty notice for Pollute Lands under the Protection of the Environment Operations Act 1997. The accused entered into plea of guilty and the magistrate ordered a penalty of \$2,000 plus \$500 for legal costs.

A case was heard on 2 December 2020 in Nowra Local Court in relation to election of a penalty notice for Fail to Comply with Development Control Order under the Environmental Planning and Assessment Act 1979. The accused was found guilty and the magistrate ordered a penalty of \$3,000 plus \$3,000 for legal costs.

Land and Environment Court matters

Nil

Compliance merits received this quarter.

During the period, the Compliance Team received a total of 181 Merits and these are detailed in the following table.

Type of Merits Received	Number Received	Percentage of total
Asbestos issues	4	2.2%
Building Works - Not in Accordance Consent	36	19.9%
Building Works - Without Consent	57	31.6%
Defective Building Works	7	3.9%
Earthworks - Without Consent	5	2.9%
Erosion Control - Building Sites	1	0.6%
Erosion Control - Subdivision sites	2	1.2%
Land Use - Without Consent	22	12.2%
Sewerage Management Facility	0	0%
Stormwater Runoff - Building Site	30	16.6%
Swimming Pool Fencing Inspection	15	8.3%
Vegetation Clearing - Without Consent	1	0.6%
TOTALS	181	100%

Development without consent remains the highest percentage of all complaints received (31.6%).

Development not in accordance with consent (19.9%) is also high and this reflects the expectation of the community to keep developments true to the approval.

Stormwater runoff – building sites (16.6%) is higher than normal for the period. This increase is most likely attributed to the two significant weather events that occurred during the quarter and the higher than average rainfall.

Ranger activities.

- (a) Dog Attacks: Rangers received and attended 56 reports of dogs attacking during the period. Of these reports, 26 investigations have been completed with 12 penalty notices issued (i.e. 12 x \$1,320 = \$15,840). A further 30 matters remain under investigation.
- (b) Beach Patrols: Rangers completed 1,672 beach patrols during this quarter. A total of 178 dog owners have been spoken to with 510 dogs sighted. A total of 49 penalty notices have been issued with 7 official warnings and 28 verbal cautions given.
- (c) Illegal Dumping: Rangers have documented 313 new illegal dumping incidents within the Shoalhaven. Council's Assets & Maintenance Division and Parks & Operations Division have collectively removed 202 tonnes of illegally dumped waste to the value of \$18,155.

Statistics show Shoalhaven Council is one of the leading Council's in this region in the fight against illegal dumping. It is important the community continue to be our eyes and ears and report incidents to Rangers. A description of the vehicle together with its registration is vital evidence and can lead to identifying the perpetrator.

- (d) Animal Shelter: Shoalhaven Animal Shelter's Facebook page now has more than 13,814 followers. The page has a weekly "Did you know" post which shares information about responsible pet ownership in the Shoalhaven with 7 posts during the period. This has included pet registration requirements, desexing assistance, researching breeds before buying and education about health and welfare.

List of penalties issued from 1 October 2020 to 31 December 2020 via offence Code

Team	Offence Code	Number issued	Offence penalty	Total amount
Compliance	Carry out development forbidden on land - any other case - Individual	1	3000	3000
Compliance	Development not accord consent - class 1a or 10 building - Individual	1	1500	1500
Compliance	Development without development consent - any other case - Individual	1	3000	3000
Compliance	Development without development consent - class 1a or 10 building - Individual	6	1500	9000
Compliance	Do plumbing and drainage work when not authorised	1	1100	1100
Compliance	Development not accord consent - any other case - Corporation	1	6000	6000
Compliance	Pollute waters - class 1 officer - Corporation	1	8000	8000
Compliance Fire Safety	Owner class 1a building not ensure smoke alarms in any storey with/without bedrooms - Individual	1	200	200
Compliance Pools	Residential pool not have complying barrier - Owner	2	550	1100
Parking	Disobey motor bike parking sign	6	116	696
Parking	Disobey no parking sign	10	116	1160
Parking	Disobey no stopping sign	50	272	13600
Parking	Disobey no stopping sign (in school zone)	11	349	3839
Parking	Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	2	110	220
Parking	Not angle park as on parking control sign or road marking	5	83	415
Parking	Not parallel park in direction of travel	8	272	2176
Parking	Not park wholly within parking bay	41	83	3403
Parking	Not position front/rear of vehicle correctly - 90 degree angle parking	17	83	1411
Parking	Not position rear of vehicle correctly - 45 degree angle parking	50	83	4150
Parking	Not stand vehicle in marked parking space	23	83	1909
Parking	Obstruct access to ramp/path/passageway	1	272	272

Parking	Park continuously for longer than indicated	42	83	3486
Parking	Park vehicle for longer than maximum period allowed	360	83	29880
Parking	Park vehicle not wholly in marked parking space	1	83	83
Parking	Stop at side of road with continuous yellow edge line	14	272	3808
Parking	Stop in bus zone (clearway or transit/bus lane)	2	272	544
Parking	Stop in bus zone (in school zone)	5	349	1745
Parking	Stop in bus zone (not clearway or transit/bus lane)	3	272	816
Parking	Stop in disabled parking area without current permit displayed	26	581	15106
Parking	Stop in loading zone	2	194	388
Parking	Stop in taxi zone	9	194	1746
Parking	Stop on path/strip in built-up area	8	272	2176
Parking	Stop on/across driveway/other access to/from land	14	272	3808
Parking	Stop within 10 metres of an intersection (no traffic lights)	2	349	698
Parking	Stop in loading zone longer than 30 minutes	1	194	194
Parking	Not parallel park in direction of travel in school zone	1	349	349
Parking	Stop on path/strip in built-up area (in school zone)	1	349	349
Parking	Stop in mail zone	1	116	116
Ranger Parking	Disobey motor bike parking sign	13	116	1508
Ranger Parking	Disobey no parking sign	8	116	928
Ranger Parking	Disobey no stopping sign	110	272	29920
Ranger Parking	Disobey no stopping sign (in school zone)	4	349	1396
Ranger Parking	Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	8	110	880
Ranger Parking	Not angle park as on parking control sign or road marking	8	83	664
Ranger Parking	Not parallel park in direction of travel	41	272	11152

Ranger Parking	Not park at 45 degree angle	1	83	83
Ranger Parking	Not park wholly within parking bay	12	83	996
Ranger Parking	Not position front/rear of vehicle correctly - 90 degree angle parking	51	83	4233
Ranger Parking	Not position rear of vehicle correctly - 45 degree angle parking	137	83	11371
Ranger Parking	Not stand vehicle in marked parking space	89	83	7387
Ranger Parking	Obstruct access to ramp/path/passageway	1	272	272
Ranger Parking	Park continuously for longer than indicated	56	83	4648
Ranger Parking	Park vehicle for longer than maximum period allowed	96	83	7968
Ranger Parking	Stop at side of road with continuous yellow edge line	167	272	45424
Ranger Parking	Stop in bus zone (in school zone)	7	349	2443
Ranger Parking	Stop in bus zone (not clearway or transit/bus lane)	5	272	1360
Ranger Parking	Stop in disabled parking area without current permit displayed	19	581	11039
Ranger Parking	Stop in loading zone	7	194	1358
Ranger Parking	Stop in taxi zone	10	194	1940
Ranger Parking	Stop on path/strip in built-up area	26	272	7072
Ranger Parking	Stop on/across driveway/other access to/from land	9	272	2448
Ranger Parking	Stop within 10 metres of an intersection (no traffic lights)	6	349	2094
Ranger Parking	Stop in loading zone longer than 30 minutes	3	194	582
Ranger Parking	Stop at/near bus stop	3	272	816
Ranger Parking	Disobey no parking sign (in school zone)	2	194	388
Ranger Parking	Park so as to obstruct vehicles/pedestrians	1	116	116
Ranger Parking	Park vehicle designated disability parking space	2	581	1162
Ranger Animal	Companion animal (other) not registered as prescribed - first offence	20	330	6600
Ranger Animal	Fail to comply with dangerous dog control requirements	2	1760	3520

Ranger Animal	Fail to comply with nuisance dog order - 1st offence	1	275	275
Ranger Animal	Fail to comply with nuisance dog order - 2nd plus offence	2	275	550
Ranger Animal	Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	44	220	9680
Ranger Animal	Fail to state full name/residential address	1	330	330
Ranger Animal	In charge of dog in prohibited public place	4	330	1320
Ranger Animal	In charge of dog not under control in public place	9	330	2970
Ranger Animal	In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	1	1320	1320
Ranger Animal	Not comply notice re registration (other) - first offence	5	305	1525
Ranger Animal	Not identify companion animal as prescribed - not dangerous/menacing/restricted dog	1	180	180
Ranger Animal	Owner of dog in prohibited public place	5	330	1650
Ranger Animal	Owner of dog not under control in public place	33	330	10890
Ranger Animal	Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	11	1320	14520
Ranger Animal	Fail to comply with menacing dog control requirements	1	1760	1760
Ranger Animal	Companion animal (other) not registered if required by regulations - first offence	3	305	915
Ranger Animal	Not notify change in registration/identification information - not dangerous/menacing/restricted dog	13	180	2340
Ranger Animal	Dog not wear collar and name tag - not dangerous/menacing/restricted dog	3	180	540
Ranger Animal	Fail to prevent dog from escaping - menacing dog	3	220	660
Ranger Animal	Owner not comply with restricted dog control requirements	1	1760	1760
Ranger Animal	Companion animal (dangerous dog) not registered as prescribed - first offence	1	1320	1320
Ranger Animal	Fail to notify death of identified companion animal - restricted dog	1	1320	1320
Ranger Animal	Owner dangerous dog not have permit in force as required	1	700	700
Ranger Environment	Abandon a motor vehicle in a public place	5	550	2750
Ranger Environment	Aggravated deposit litter from vehicle no exclusions - Individual	1	450	450
Ranger Environment	Deposit litter from vehicle no exclusions - Individual	3	250	750

Ranger Environment	Fail to comply with terms of notice erected by council	75	110	8250
Ranger Environment	Owner transport etc waste to unlawful facility - class 1 officer - Individual	1	2000	2000
Ranger Environment	Transport etc waste to unlawful waste facility - class 1 officer - Individual	3	2000	6000
Ranger Environment	Wilfully contravene/disregard notice/barrier	1	116	116
Ranger Environment	Not comply with approval dispose of waste in council sewer - Item 4 of Part C	2	330	660
Ranger Environment	Contravene direction concerning entry/use/parking etc of vehicles	1	220	220
Ranger Environment	Aggravated deposit litter (lit cigarette) excluding from vehicle - Individual	1	450	450
Grand Total		1892	83	381382

Warnings issued from 1 October 2020 to 31 December 2020 via offence Code

Compliance	73
Carry out development forbidden on land - any other case - Individual	1
Commence building no principal certifying authority - class 1a/10 building - Individual	1
Commence building not appoint licensed principal contractor - class 1a/10 building - Individual	1
Commence building not give 2 days notice - class 1a/10 building - Individual	3
Commence building not notify inspections required - class 1a/10 building - Individual	3
Commence building without appointed principal certifying authority - any other case - Individual	1
Commence building without construction certificate - class 1a/10 building - Individual	3
Development not accord consent - any other case - Corporation	1
Development not accord consent - class 1a or 10 building - Individual	6
Development without development consent - any other case - Individual	8
Development without development consent - class 1a or 10 building - Corporation	1
Development without development consent - class 1a or 10 building - Individual	30
Fail to provide certificate of compliance within required period	1

Fail to provide sanitary drainage system plan to plumbing regulator - Individual	1
Not notify plumbing regulator when work ready for inspection	1
Not provide notice of work to plumbing regulator	1
Occupy or use building without occupation certificate - class 1a/10 building - Individual	3
Operate sewage management system otherwise than as approved	6
Pollute waters - class 1 officer - Corporation	1
Compliance Pools	31
Fail to ensure registration information entered on Register	10
Fail to erect prescribed warning notice - Occupier	10
Fail to maintain child-resistant barrier effective and safe	8
Residential pool not have complying barrier - Owner	2
Swimming pool construction no sign as prescribed	1
Parking	39
Disobey no parking sign	2
Disobey no stopping sign	9
Not parallel park in direction of travel	1
Not park wholly within parking bay	4
Not position rear of vehicle correctly - 45 degree angle parking	2
Park so as to obstruct vehicles/pedestrians	2
Park vehicle for longer than maximum period allowed	2
Stop at/near bus stop	1
Stop in disabled parking area without current permit displayed	2
Stop in intersection	1
Stop in loading zone	1

Stop in taxi zone	2
Stop on path/strip in built-up area	7
Stop on/across driveway/other access to/from land	2
Stop within 10 metres of an intersection (no traffic lights)	1
Ranger Parking	55
Disobey motor bike parking sign	1
Disobey no stopping sign	4
Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	3
Not parallel park in direction of travel	1
Not park wholly within parking bay	1
Not position rear of vehicle correctly - 45 degree angle parking	2
Not stand vehicle in marked parking space	1
Parallel park close to dividing line/strip	1
Park continuously for longer than indicated	2
Stop at side of road with continuous yellow edge line	1
Stop in bus zone (in school zone)	1
Stop in bus zone (not clearway or transit/bus lane)	2
Stop in disabled parking area without current permit displayed	8
Stop in loading zone	1
Stop in taxi zone	3
Stop on path/strip in built-up area	14
Stop on/across driveway/other access to/from land	1
Stop within 10 metres of an intersection (no traffic lights)	8

Ranger Animal	28
Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	16
In charge of dog in prohibited public place	1
In charge of dog not under control in public place	1
Not comply notice re registration (other) - first offence	2
Owner of dog not under control in public place	7
Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	1
Ranger Environment	13
Enter dedicated etc Crown land etc contrary to notice	4
Fail to comply with terms of notice erected by council	7
Owner transport excess waste to unlawful facility - class 1 officer - Individual	1
Transport etc waste to unlawful waste facility - class 1 officer - Individual	1
Grand Total	239

DE21.18 Response from the EPA & Forestry Corporation to Notice of Motion (MIN20.771) - South Brooman Forestry

HPERM Ref: D21/45793

Department: Environmental Services

Approver: Stephen Dunshea, Chief Executive Officer

Attachments: 1. NSW Environment Protection Authority Response [↓](#)
2. NSW Environment Protection Authority Detailed Response [↓](#)
3. Forestry Corporation of NSW Response [↓](#)

Reason for Report

At the Ordinary Meeting on the 27 October (MIN20.771) it was resolved:

That Council writes to the Minister for the Department of the Environment and the EPA, the Forestry Corporation, and the Minister for Local Government, requesting a comprehensive report on:

1. The impacts of the bushfire in the South Brooman State Forest
2. The future of further logging in the South Brooman State Forest
3. The impact of logging on the neighbouring residents regarding their road network.

Recommendation (Item to be determined under delegated authority)

That this report be received for information.

Options

1. That this report be received for information.

Implications: The request for information on South Brooman State Forest (MIN20.771) is completed.

2. Alternative recommendation as council may decide.

Implications: Unknown.

Background

The Forestry Corporation of NSW has approval to undertake logging in South Brooman State Forest, licenced by the NSW Environment Protection Authority (EPA). In September 2020 residents in the area received correspondence from the Forestry Corporation advising timber harvesting was due to resume after the devastating impact of the 2019/2020 bushfires.

Following a Notice of Motion, Council resolved to contact the EPA, the Forestry Corporation, the Minister for the Department of the Environment, and the Minister for Local Government regarding the activities.

Council contacted these agencies on the 24 November 2020. Two responses from the EPA and one response from the Forestry Corporation were received.

The EPA outlined they are currently developing site-specific operating conditions for logging in fire-affected forests to continue to meet the principles of Environmentally Sustainable

DE21.18

Forest Management. These conditions will be based on the recommendations of an independent ecologist.

The Forestry Corporation responded with a background of the harvesting that occurs in the region and the methodology they use to ensure harvesting is sustainable. They specify following the bushfires, timber production on the South Coast has been reduced by a third of the previous rate of clearing. The Forestry Corporation also welcome the opportunity to address the Councillors in person to discuss their work across the region in more detail.

The responses from the EPA and the response from the Forestry Corporation are attached.



DOC20/980226-2
Council Reference: 2876E (D20/520307)

General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

council@shoalhaven.nsw.gov.au

Attention: Phil Costello, Director – City Development

Dear Mr Costello,

I refer to your letter regarding the impact of the 2019/20 bushfires in South Brooman State Forest, raising Shoalhaven City Council's concerns about post-fire timber harvesting.

The bushfires of 2019/20 were unprecedented and the impacts on the environment are substantial. The Environment Protection Authority (EPA) has been working with NSW Government agencies, scientific experts and Forestry Corporation of New South Wales (FCNSW) to understand the impact of the fires on local communities, socio-economic factors, the environment and important wildlife, and also timber supply and jobs. This collaboration has informed the EPA's regulatory decision-making regarding logging of burnt timber.

Since February 2020, the EPA has applied additional site-specific operating conditions (SSOCs) for logging in fire-affected forests. Consideration of SSOCs is triggered at the request of FCNSW under the Coastal Integrated Forestry Operations Approval (Coastal IFOA). To date, the EPA has issued SSOCs to apply to harvest operations in 66 compartments across 12 state forests. The SSOC's aim to mitigate the specific environmental risk caused by the bushfires at each site. They maximise the protection of unburnt or lightly burnt forest and limit harvesting intensity to assist with wildlife and biodiversity recovery efforts.

In September 2020, FCNSW advised that they intend to return to harvesting under the standard conditions of the Coastal IFOA and would no longer seek site-specific conditions. The EPA notified FCNSW that due to the scale and severity of wildfire impact, that this was not tenable. This exchange has been published on the EPA website at:

<https://www.epa.nsw.gov.au/your-environment/native-forestry/bushfire-affected-forestry-operations/update-september-2020>

The EPA commissioned a report to further understand the current conditions and any adaptations needed to the regulations. The report by independent ecologist Dr Andrew Smith considered the Coastal IFOA and SSOCs in the context of the environment risks of harvesting timber in burnt landscapes. The findings of Dr Smith's report informed the EPA's position regarding a return to operating under the Coastal IFOA alone. A link to Dr Smith's report is also available on the EPA website.

The EPA continues to work with FCNSW to develop a new suite of SSOCs based on the recommendations of Dr Smith. This process is underway.

The NSW Government remains committed to ensuring forestry activities in the South Brooman State Forest comply with the Coastal IFOA and SSOCs and continue to meet the principles of Environmentally Sustainable Forest Management.

Phone 131 555	TTY 133 677	Locked Bag 5022	4 Parramatta Square	info@epa.nsw.gov.au
Phone +61 2 9995 5555	ABN 43 692 285 758	Parramatta	12 Darcy St, Parramatta	www.epa.nsw.gov.au
(from outside NSW)		NSW 2124 Australia	NSW 2150 Australia	



If you need further information about this matter, please contact me on (02) 6229 7184.

Sincerely

A handwritten signature in blue ink, appearing to read 'MH', written over a horizontal line.

MICHAEL HOOD
Director Environmental Solutions (AWNFG)
Regulatory Practice and Environmental Solutions

22 December 2020



DOC20/980226-2
Council Reference: 2876E (D20/520307)

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

council@shoalhaven.nsw.gov.au

Attention: Phil Costello; Director – City Development

Dear Phil Costello,

I refer to your recent letter regarding post-fire harvesting in state forests. Following is a more detailed response to supplement the initial response (DOC20/980226-1).

The bushfires of 2019/20 were unprecedented and the impacts on the environment are substantial. The EPA has been working with NSW Government agencies, scientific experts and Forestry Corporation of New South Wales (FCNSW) to understand the impact of the fires on local communities, socio-economic factors, the environment and important wildlife, and also timber supply and jobs. This collaboration has informed the EPA's regulatory decision-making regarding logging of burnt timber.

Since February 2020, the EPA has been able to impose additional site-specific operating conditions (SSOCs) for logging in fire-affected forests, that only FCNSW can trigger under the Coastal Integrated Forestry Operations Approval (Coastal IFOA). To date, the EPA has issued FCNSW with a set of SSOCs to be applied to harvest operations in 66 compartments across 12 state forests. The SSOC's aim to mitigate the specific environmental risk caused by the bushfires at each site. They maximise the protection of unburnt or lightly burnt forest and limit harvesting intensity to assist with wildlife and biodiversity recovery efforts.

In September 2020, FCNSW indicated its intention to return to operating under the Coastal IFOA and avoid triggering the SSOCs. The EPA notified FCNSW that due to the scale and severity of wildfire impact, that this was not tenable. This exchange has been published on the EPA website, with a link provided below.

<https://www.epa.nsw.gov.au/your-environment/native-forestry/bushfire-affected-forestry-operations/update-september-2020>

The EPA commissioned a report to further understand the current conditions and any adaptations needed to the regulations. The report by independent ecologist Dr Andrew Smith considered the Coastal IFOA and SSOCs in the context of the environment risks of harvesting timber in burnt landscapes. The findings of Dr Smith's report informed the EPA's position that a return to operating under the Coastal IFOA alone is not tenable at this time. A link to Dr Smith's report is available on the EPA website, as provided above.

Since this time, the EPA has been working with FCNSW to develop a new suite of SSOCs based on the recommendations of Dr Smith. This process is underway.

The NSW Government remains committed to ensuring forestry activities in the South Broomman State Forest comply with the Coastal IFOA and SSOCs and continue to meet the principles of Environmentally Sustainable Forest Management.

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If you need further information about this matter, please contact me on (02) 6229 7184.

Sincerely

A handwritten signature in black ink, appearing to read 'Chris Fraser'. The signature is fluid and cursive, written in a professional style.

Chris Fraser
Unit Head – Forestry Technical
NSW Environment Protection Authority
D 02 6229 7184

22 December 2020



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F20/680
Your reference: 2876E (D20/520453)

Mr Phil Costello
Director – Planning Environment & Development
Shoalhaven City Council
Via email: council@shoalhaven.nsw.gov.au

Dear Mr Costello

Thank you for your letter of 24 November 2020 seeking information from Forestry Corporation in response to a council resolution. I am responding to you in my capacity as A/Senior Manager – Production South with Forestry Corporation of NSW.

In this letter, I have sought to provide background information on ongoing sustainable forest management as well as some detail in relation to the specific questions you have asked. I would also welcome the opportunity to address council in person to discuss our work across the region in more detail.

Background – sustainable forest management and existing protection measures

The areas of public native forest that are set aside for conservation and those that are managed for multiple uses including renewable timber production have been identified through the Regional Forest Agreement (RFA) process, which is managed by the State and Commonwealth Governments and reviewed every five years. Under the RFAs, approximately 83 per cent of public forests in NSW are permanently set aside for conservation, largely in the formal national park estate. An additional 43 per cent of the State forest estate is protected via permanent retention of areas such as rainforest and old growth forests, wetlands and riparian zones, threatened ecological communities, ridge and headwater habitat and rocky outcrops.

Harvesting operations within the areas available for timber production take place in line with the Coastal Integrated Forestry Operations Approval (CIFOA), which also requires that further areas are identified and permanently retained in habitat clumps containing trees with valuable habitat features.

In every area where timber harvesting takes place, the identification and protection of habitat for threatened and endangered species is a priority. Surveys and broad area habitat searches are carried out prior to every forestry operation to identify individual plants and animals that require protection and ensure suitable habitat is set aside. Within the harvest area, protection is afforded to mature trees via identification and retention of hollow-bearing trees, giant-trees and various nest, den, roost trees and nectar or feed trees.

As a result of all these protection measures, less than one per cent of the public forest is harvested for renewable timber products in any one year, and forest values and habitat are maintained throughout each harvest area as well as across the landscape. Importantly, every harvest area is

.../3

regrown to ensure the same forests continue to provide habitat, protect waterways and produce renewable timber for future generations.

Forestry Corporation's operations are independently regulated, regularly audited and certified as Responsible Wood under the Australian Standard for Sustainable Forest Management. The strict environmental framework regulating forestry operations in NSW is also underpinned by monitoring and adaptive management and to this end a detailed long-term monitoring program is currently being developed by the Natural Resources Committee (NRC). The NRC is working to develop monitoring programs that specifically address the post-fire recovery and, in line with adaptive management principles, data from these monitoring programs will be used to continually assess the effectiveness of conditions and inform future management.

Timber is the most renewable building product available and is an important raw material for communities rebuilding from fires and timber from local State forests is harvested and processed by a range of local businesses, creating ongoing employment in the region. The recovery and health of our forests and wildlife following these fires is also paramount, which is why renewable timber production is so carefully managed, particularly in this post-fire landscape.

Impact of fires on local State forests

There is detailed information on [Forestry Corporation's website](#) about the impact of the 2019-20 fires on the State forest estate, including a [post-fire assessment report](#) that considers impacts on the local environment and implications for future timber harvesting. A comprehensive review of the sustainable timber yield from State forests is also being carried out and will be published on our website when it is complete.

Operations in local State forests following fires

Following the 2019-20 fires, timber production on the south coast has reduced to less than a third of the normal rate due to significantly fewer operations taking place at a much lower intensity in recognition of the post-fire landscape.

The CIFOA sets out strict regulations developed by expert scientific panels to ensure wildlife and biodiversity are protected throughout the forest during each and every forestry operation. These conditions are specifically designed to ensure plants and animals remain in the harvested areas of forest following timber harvesting as well as ensuring their habitat is protected in formal and informal reserves across the landscape.

Before any timber harvesting operation, professional ecologists and forest technicians ensure habitat features are identified and protected. Parts of each harvest area are also permanently set aside for wildlife habitat. Once harvesting is completed, retained trees and soil seed reserves enable harvested areas to regenerate, providing long-term wildlife habitat and timber resources for the future.

In addition, in recognition of the widespread impact of the 2019-20 fires, Forestry Corporation has also worked closely with the Environment Protection Authority (EPA) to develop additional site-specific operating conditions to provide further habitat protection during operations in areas impacted by fire.

Future operations in South Brooman State Forest

South Brooman State Forest has been a managed forest for more than 100 years, which means that for more than a century renewable timber has been continually harvested from parts of this same forest and each time the forest has been regrown. Forestry Corporation's [Plan Portal](#) identifies the areas where planning is anticipated to take place for future operations over the coming 12 months.

Forestry Corporation employs a local team of professional ecologists, planners and forest technicians as well as an Aboriginal partnerships team that undertakes surveys and prepares comprehensive plans in line with the robust requirements of the CIFOA prior to any timber harvesting operations.

Forestry Corporation will engage with local communities and provide more information as we work through the environmental assessments and develop detailed plans for each proposed operation. Forestry Corporation is also continuing to work with the EPA to ensure that any timber harvesting considers impacts on flora and fauna after the fires and regarding suitable conditions for future operations.

Impact of operations on the road network

At the outset, it is important to acknowledge that Forestry Corporation maintains a network of approximately 60,000 kilometres of forest roads that complement the formal road network and are available for free community use. This network was severely damaged during the 2019-20 fires, with repairs estimated at around \$100-200 million. Forestry Corporation has been working across the state to carry out repairs, and invested around \$18 million in repairing more than 2,000 kilometres of roads and 44 bridges during the 2020 calendar year, supported by a NSW Government stimulus injection.

Forestry Corporation always engages with direct neighbours during the planning process for every operation so issues like road access can be considered. Forestry Corporation may from time to time implement traffic control and stop/slow conditions around its operations, similar to any other road work site, resulting in short delays on some forest roads. Members of the community are welcome to contact Forestry Corporation if they have any concerns about road access.

While the 2019-20 fires did impact large areas, the clear and comprehensive regulatory framework in place ensures State forests are managed sustainably and wildlife habitat is maintained throughout operations. Forestry Corporation is continuing to work with the EPA and NRC to ensure the ongoing sustainable management of State forests post-fires while continuing to supply essential renewable timber products to local industry and communities.

I welcome the opportunity to provide you and any interested councillors or staff with more detail about Forestry Corporation and our operations in person. Please don't hesitate to contact me on 0427 224 613 if you would like to arrange a meeting.

Yours sincerely

Lee Blessington
A/Senior Manager – Production South
Hardwood Forests Division

DE21.19 Chair for the Central Coastal Management Program Advisory Committee

HPERM Ref: D21/60210

Department: Environmental Services

Approver: Phil Costello, Director - City Development

Reason for Report

To determine which Councillor(s) will Chair the Central Coastal Management Advisory Committees.

Recommendation (Item to be determined under delegated authority)

That either of the existing North and Southern Coastal Management Advisory Committee Chairs, Councillor Wells or Councillor White, Chair the Central Coastal Management Advisory Committee until after the September 2021 Council Elections when all committee Chairs are re-appointed by Council.

Options

1. As recommended;

Implications: Allow the Central Coastal Management Program Advisory Committee to continue with either Councillor Wells or Councillor White Chairing meetings.

2. Council resolves to nominate and appoint another Councillor to Chair the Central Coastal Management Program Advisory Committee.

Implications: All Committee chairs for existing Council Committees will be resolved at the Ordinary meeting of Council following the election in September 2021. A new Chair appointed in the interim would only be required to Chair two to three meetings for the Central Coastal Management Program Advisory Committee.

Background

Council resolved to appoint the North, Central, and Southern Coastal Management Program Advisory Committees at the Development & Environment Committee of 6 October 2020. The Central Committee was to have been chaired by Councillor Proudfoot, who advised in advance of the first committee meetings that unfortunately he would not be able to Chair the Committee.

Risk Implications

There is a schedule risk associated with either Councillor Wells or Councillor White needing to be available for both their own Committees, as well as the Central Committee.

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.