

## Development & Environment Committee

**Meeting Date:** Tuesday, 01 June, 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. **Call Over of the Business Paper**
5. **Mayoral Minute**
6. **Deputations and Presentations**
7. **Notices of Motion / Questions on Notice**

Nil
8. **Reports**
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    - DE21.56 Proposed Amendments to Chapter G21: Car Parking and Traffic of Shoalhaven DCP 2014..... 16
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  - City Services

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#### City Development

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DE21.61	Section 138 Application - SF10632 – Approved Subdivision, Moss Vale South URA – Lot 1 DP 949932 and Lot 3 DP 851823, Taylors Lane, Cambewarra.....	83

### **9. Confidential Reports**

Nil

## Development & Environment Committee

### Delegation:

Pursuant to s377(1) of the *Local Government Act 1993* (LG Act) the Committee is delegated the functions conferred on Council by the *Environmental Planning & Assessment Act 1979* (EPA Act), LG Act or any other Act or delegated to Council, as are specified in the attached Schedule, subject to the following limitations:

- i. The Committee cannot make a decision to make a local environmental plan to classify or reclassify public land under Division 1 of Part 2 of Chapter 6 of the LG Act;
- ii. The Committee cannot review a section 8.11 or section 8.9 EPA Act determination made by the Council or by the Committee itself;
- iii. The Committee cannot exercise any function delegated to the Council which by the terms of that delegation cannot be sub-delegated;
- iv. The Committee cannot exercise any function which s377(1) of the LG Act provides cannot be delegated by Council; and
- v. The Committee cannot exercise a function which is expressly required by the LG Act or any other Act to be exercised by resolution of the Council.

### Schedule

- a. All functions relating to the preparation, making, and review of local environmental plans (LEPs) and development control plans (DCPs) under Part 3 of the EPA Act.
- b. All functions relating to the preparation, making, and review of contributions plans and the preparation, entry into, and review of voluntary planning agreements under Part 7 of the EPA Act.
- c. The preparation, adoption, and review of policies and strategies of the Council in respect of town planning and environmental matters and the variation of such policies.
- d. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which seeks to vary a development standard by more than 10% and the application is accompanied by a request to vary the development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 or an objection to the application of the development standard under State Environmental Planning Policy No. 1 – Development Standards.
- e. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the Chief Executive Officer requires to be determined by the Committee
- f. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
- g. Review of determinations of development applications under sections 8.11 and 8.9 of the EP&A Act that the Chief Executive Officer requires to be determined by the Committee.
- h. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.
- i. The preparation, adoption and review of policies and strategies of the Council in respect to sustainability matters related to climate change, biodiversity, waste, water, energy, transport, and sustainable purchasing.
- j. The preparation, adoption and review of policies and strategies of the Council in respect to management of natural resources / assets, floodplain, estuary and coastal management.

## MINUTES OF THE DEVELOPMENT & ENVIRONMENT COMMITTEE

**Meeting Date:** Tuesday, 11 May 2021  
**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra  
**Time:** 5.02pm

The following members were present:

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

### Apologies / Leave of Absence

An apology was received from Clr Guile.

### Confirmation of the Minutes

**RESOLVED** (Clr Digiglio / Clr Levett) MIN21.240

That the Minutes of the Development & Environment Committee held on Tuesday 6 April 2021 be confirmed.

CARRIED

### Declarations of Interest

Clr Wells – Exhibition Outcomes and Finalisation - Planning Proposal - Hitchcocks Lane, Berry (PP029) – less than significant non pecuniary interest declaration – the church that he attends is on Schofields Lane, whose connection to the Planning Proposal is included in the reports – will remain in the room and will take part in discussion and vote on the matter.

Clr Pakes – DE21.45 Development Application – 39 The Lake Circuit, Culburra Beach – Lot 1553 DP 12278 – less than significant non pecuniary interest declaration – he lives in the street – will leave the room and will not take part in discussion or vote on the matter.

Stephen Dunshea, CEO - 21.40 - Report Back - Rezoning Options - Tomerong Quarry, Lot 4 DP775296, Parnell Road, Tomerong – less than significant non pecuniary interest declaration – resident of Tomerong – will leave the room and will not take part in discussion or vote on the matter.

## MAYORAL MINUTES

Nil.

## DEPUTATIONS AND PRESENTATIONS

### **DE21.42 Exhibition Outcomes and Finalisation - Planning Proposal - Hitchcocks Lane, Berry (PP029) (Page 42)**

Rick Gainford representing Huntingdale Park Resident Action Group addressed the meeting and spoke against the recommendation.

### **DE21.43 - Update - Planning Proposal PP050 - Former Anglican Church, Huskisson - Ground Penetrating Radar Survey**

Alfred Wellington addressed the meeting and spoke against the recommendation.

### **DE21.45 - Development Application – 39 The Lake Circuit, Culburra Beach – Lot 1553 DP 12278.**

Paul McGuire addressed the meeting and spoke for the recommendation.

### **DE21.47 - SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823**

James Robinson addressed the meeting and spoke for the recommendation.

### **DE21.48 - Modification Application No. DS20/1619 – 2 Lawrence Ave & 61 Kinghorne St Nowra – Lot 2 DP 1264717 (formerly known as Lot 2 DP 1243710) & Lot 1 DP 1243710**

Adrian Turnbull addressed the meeting and spoke for the recommendation.

## **Procedural Motion - Bring Item Forward**

**RESOLVED** (Clr Gash / Clr Gartner)

MIN21.241

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

- DE21.42 - Exhibition Outcomes and Finalisation - Planning Proposal - Hitchcocks Lane, Berry (PP029)
- DE21.43 - Update - Planning Proposal PP050 - Former Anglican Church, Huskisson - Ground Penetrating Radar Survey
- DE21.45 - Development Application – 39 The Lake Circuit, Culburra Beach – Lot 1553 DP 12278
- DE21.47 - SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823
- DE21.48 - Modification Application No. DS20/1619 – 2 Lawrence Ave & 61 Kinghorne St Nowra – Lot 2 DP 1264717 (formerly known as Lot 2 DP 1243710) & Lot 1 DP 1243710

CARRIED

**DE21.42 Exhibition Outcomes and Finalisation - Planning Proposal - Hitchcocks Lane, Berry (PP029)**

**HPERM Ref: D21/135895**

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

That Council:

1. Adopt Planning Proposal (PP029) as exhibited with the minor changes outlined in this report.
2. Prepare and exhibit a draft Planning Agreement for a Landscape Screen (to mitigate visual impacts of development) based on the draft Planning Agreement Terms (negotiated terms of agreement between Council and the proponents) for a minimum of 28 days.
3. Liaise with the NSW Parliamentary Counsel's Office (PCO) to amend the Shoalhaven Local Environmental Plan (LEP) 2014 under Council's delegation, with finalisation of the LEP amendment to occur only when the Planning Agreement for the Landscape Screen is signed and registered.
4. Adopt and finalise Chapter N3 of Shoalhaven Development Control Plan (DCP) 2014 as exhibited, except for the changes outlined in this Report.
5. Prepare and progress an amendment to the Shoalhaven Contributions Plan (CP) 2019 Project 01OREC0009 (Land acquisition for passive open space – Princes Highway, Berry) to provide embellishments to the passive open space area between Hitchcocks Lane and Huntingdale Park Road, in response to increased demand due to population growth.
6. Advise key stakeholders of this decision and when the LEP and DCP amendments are finalised.

**RESOLVED** (Clr White / Clr Findley)

MIN21.242

That Council:

1. Adopt Planning Proposal (PP029) as exhibited with the minor changes outlined in this report and noting the following:
  - a. The use of Schofields Lane be considered and continue to be investigated as part of the Development Application (DA) process for this PP area and that Council engage with Transport NSW and the State Member for Kiama the Hon Gareth Ward MP with the aim of allowing access to Schofields Lane.
  - b. That the Unnamed Link Road:
    - i. Be considered as the Primary Access Road in the DA application for the PP area and the construction of this road be required as the first stage of any DA approval.
    - ii. The flood construction requirements/standards be considered as part of the DA for the subdivision.
  - c. That the proposed deletion of the connection to Hitchcocks Lane and the nature of use be reconsidered during the DA process for the PP due to community interest.
2. Prepare and exhibit a draft Planning Agreement for a Landscape Screen (to mitigate visual impacts of development) based on the draft Planning Agreement Terms (negotiated terms of agreement between Council and the proponents) for a minimum of 28 days.
3. Liaise with the NSW Parliamentary Counsel's Office (PCO) to amend the Shoalhaven Local Environmental Plan (LEP) 2014 under Council's delegation, with finalisation of the LEP amendment to occur only when the Planning Agreement for the Landscape Screen is signed and registered.
4. Adopt and finalise Chapter N3 of Shoalhaven Development Control Plan (DCP) 2014 as exhibited, except for the changes outlined in this Report.

5. Prepare and progress an amendment to the Shoalhaven Contributions Plan (CP) 2019 Project 01OREC0009 (Land acquisition for passive open space – Princes Highway, Berry) to provide embellishments to the passive open space area between Hitchcocks Lane and Huntingdale Park Road, in response to increased demand due to population growth.
6. Advise key stakeholders of this decision and when the LEP and DCP amendments are finalised.
7. Conduct investigations into the potential Schofields Lane link as close to Princes Highway as possible to maintain the agricultural integrity of the block that the road will traverse.

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

AGAINST: Nil

CARRIED

**DE21.43 Update - Planning Proposal PP050 - Former Anglican Church, Huskisson - Ground Penetrating Radar Survey**

**HPERM Ref: D21/171031**

**Recommendation**

That Council:

1. Receive the Planning Proposal PP050 - Former Anglican Church, Huskisson - Ground Penetrating Radar Survey update for information.
2. Proceed with the verification work (shallow scrapes to identify grave cuts) as recommended by Navin Officer Heritage Consultants on Lots 7 and 8 to verify the GPR survey results, to be funded by the proponent.
3. Consistent with Council's previous decision to fund the GPR work on the adjoining Lot 9, allocate \$6,220 (excl GST) to fund the verification work on Jerrinja LALCs land (Lot 9) subject to their agreement.
4. Continue to liaise with key stakeholders including the Jerrinja LALC, Council's Aboriginal Advisory Committee, and the Huskisson Heritage Association (HHA).

MOTION (Clr Findley / Clr Digiglio)

That:

1. Council not proceed with any further destructive attempts to validate the existence of graves on the sites as found by the ground penetrating radar, given that any further desecration is discriminatory in respect to the burial rights of Indigenous people who have occupied Australia in excess of 60,000 years.
2. Council accept the analysis that has been undertaken by Hunter Geophysics recording a high confidence of over 50 graves across the sites at Huskisson.
3. Precautionary Principles be applied to the application.

FOR: Clr Findley, Clr Wells, Clr Gartner, Clr Digiglio, Clr Aldrick and Clr Levett

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

LOST

## RECOMMENDATION (Clr Gash / Clr White)

That Council:

1. Receive the Planning Proposal PP050 - Former Anglican Church, Huskisson - Ground Penetrating Radar Survey update for information.
2. Proceed with the verification work (shallow scrapes to identify grave cuts) as recommended by Navin Officer Heritage Consultants on Lots 7 and 8 to verify the GPR survey results, to be funded by the proponent.
3. Consult with Jerrinja Local Aboriginal Land Council (LALC) on work on the adjoining Lot 9, and subject to their agreement allocate \$6,220 (excl GST) to fund the verification work on Jerrinja LALCs land (Lot 9).
4. Continue to liaise with key stakeholders including the Jerrinja LALC, Council's Aboriginal Advisory Committee, and the Huskisson Heritage Association (HHA).

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

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

CARRIED

## Procedural Motion - Matters of Urgency

### MOTION (Clr Watson)

That an additional item be introduced to recognise the passing of Uncle Doug Longbottom as a matter of urgency.

The Chairperson ruled the matter as urgent as being in the public interest.

## DE21.53 Recognition of the Late Uncle Doug Longbottom

**RESOLVED** (Clr Watson / Clr Proudfoot)

MIN21.243

That Council:

1. Fly the Aboriginal flag at half mast for the next three days and observe one minutes silence at tonight's meeting in recognition of the passing of Uncle Doug Longbottom.
2. Send a letter of condolence on behalf of Council to the family of Uncle Doug Longbottom.

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

AGAINST: Nil

CARRIED

## DE21.45 Development Application – 39 The Lake Circuit, Culburra Beach – Lot 1553 DP 12278

**HPERM Ref:**  
**D21/102976**

Clr Pakes – DE21.45 Development Application – 39 The Lake Circuit, Culburra Beach – Lot 1553 DP 12278 – less than significant non pecuniary interest declaration – he lives in the street – left the room and did not take part in discussion.

Note: Clr Pakes left the meeting at 6:45pm.

Note: Clr Proudfoot took the Chair.



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

That Development Application DA20/2120 for construction of a detached garage ancillary to an existing dwelling house at Lot 1553 DP 12278, 39 The Lake Circuit, Culburra Beach be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

**RESOLVED** (Clr Watson / Clr Gash)

MIN21.244

That Development Application DA20/2120 for construction of a detached garage ancillary to an existing dwelling house at Lot 1553 DP 12278, 39 The Lake Circuit, Culburra Beach be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

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

AGAINST: Nil

CARRIED

Note: Clr Pakes returned to the meeting and resumed the Chair at 6:46pm.

**DE21.47 SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823**

**HPERM Ref: D21/148654**

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

That:

1. Development Application SF10804 for staged residential subdivision to create 217 Torrens Title allotments, including 213 residential allotments, three (3) open space allotments, one (1) residue lot, and demolition of existing structures, earthworks, and provision of roads, drainage and utility infrastructure along with associated landscaping works at Lot 3 DP 851823, 104 Taylors Lane, Cambewarra be approved subject to the recommended conditions of consent contained in Attachment 2 of this report, and receipt of written certification that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.
2. No access is to be permitted to Taylors Lane at this time and that a suitable turning head is to be submitted to and approved by Council prior to the issue of a Subdivision Works Certificate for all road termination points.

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

MIN21.245

That:

1. Development Application SF10804 for staged residential subdivision to create 217 Torrens Title allotments, including 213 residential allotments, three (3) open space allotments, one (1) residue lot, and demolition of existing structures, earthworks, and provision of roads, drainage and utility infrastructure along with associated landscaping works at Lot 3 DP 851823, 104 Taylors Lane, Cambewarra be approved subject to the recommended conditions of consent contained in Attachment 2 of this report, and receipt of written certification that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.
2. No access is to be permitted to Taylors Lane at this time and that a suitable turning head is to be submitted to and approved by Council prior to the issue of a Subdivision Works Certificate for all road termination points.

3. Defer approval of the proposed large lots within Stage 4B to allow the applicant to pursue construction of the development in part and resolve the design of the currently proposed large lots to potentially include additional small lot production if Council saw merit in this.

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

AGAINST: Nil

CARRIED

**DE21.48 Modification Application No. DS20/1619 – 2 Lawrence Ave & 61 Kinghorne St Nowra – Lot 2 DP 1264717 (formally known as Lot 2 DP 1243710) & Lot 1 DP 1243710**

**HPERM Ref: D21/142797**

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

That:

1. The proposed modifications to Condition 33(a) and 33(c) be determined by means of approval according to the draft determination at Attachment 1.
2. The proposed modifications to Conditions 17 and 33(b) of Development Consent No. DA18/2326 lodged as part of Modification Application No. DS20/1619 be determined by way of refusal.
3. Council issue a part approval which incorporates modifications to the conditions of consent which were approved at the Development & Environment Committee Meeting (MIN21.171) on 6 April 2021.

MOTION (Clr Findley / Clr Levett)

That:

1. The proposed modifications to Condition 33(a) and 33(c) be determined by means of approval according to the draft determination at Attachment 1.
2. The proposed modifications to Conditions 17 and 33(b) of Development Consent No. DA18/2326 lodged as part of Modification Application No. DS20/1619 be determined by way of refusal.
3. Council issue a part approval which incorporates modifications to the conditions of consent which were approved at the Development & Environment Committee Meeting (MIN21.171) on 6 April 2021.

AMENDMENT (Clr Wells / Clr Proudfoot)

That:

1. The proposed modifications to Condition 33(a) and 33(c) be determined by means of approval according to the draft determination at Attachment 1 amended to include further concession of the reduction in required carparking spaces by 5 carparking spaces.
2. Condition 17 of the Development Consent be adjusted to include a further concession of 5 carparking spaces.
3. The proposed modifications to 33(b) of Development Consent No. DA18/2326 lodged as part of Modification Application No. DS20/1619 be determined by way of refusal.
4. Council issue a part approval which incorporates modifications to the conditions of consent which were approved at the Development & Environment Committee Meeting (MIN21.171) on 6 April 2021.

Clr Watson raised a Point of Order against Clr Digiglio for her comment referring to averting planning controls. The Chair ruled this as a Point of Order and asked Clr Digiglio to withdraw her comment and apologise. Clr Digiglio withdrew her comment and apologised.

**PROCEDURAL MOTION (Clr Gartner / Clr Wells)**

That the AMENDMENT be PUT.

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

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

CARRIED

The AMENDMENT was PUT to the meeting and declared CARRIED.

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

AGAINST: Clr Findley, Clr Gartner, Clr Digiglio, Clr Levett and Stephen Dunshea.

The AMENDMENT became the MOTION and was PUT to the meeting and was declared CARRIED.

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

MIN21.246

That:

1. The proposed modifications to Condition 33(a) and 33(c) be determined by means of approval according to the draft determination at Attachment 1 amended to include further concession of the reduction in required carparking spaces by 5 carparking spaces.
2. Condition 17 of the Development Consent be adjusted to include a further concession of 5 carparking spaces.
3. The proposed modifications to 33(b) of Development Consent No. DA18/2326 lodged as part of Modification Application No. DS20/1619 be determined by way of refusal.
4. Council issue a part approval which incorporates modifications to the conditions of consent which were approved at the Development & Environment Committee Meeting (MIN21.171) on 6 April 2021.

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

AGAINST: Clr Gartner, Clr Digiglio and Clr Levett

CARRIED

Note: Clr Gartner left the meeting at 7:43pm.

Note: The meeting adjourned, the time being 7:43pm.

Note: The meeting reconvened, the time being 8:03pm.

The following members were present:

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

## NOTICES OF MOTION / QUESTIONS ON NOTICE

**DE21.36 Notice of Motion - Call in DA20/1762 - 127 Princes Highway, Ulladulla**

**HPERM Ref:  
D21/148291**

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

That Council call in for determination by the full Council DA20/1762 127 Princes Highway, Ulladulla, due to public interest.

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

MIN21.247

That Council call in for determination by the full Council DA20/1762 127 Princes Highway, Ulladulla, due to public interest.

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

AGAINST: Nil

CARRIED

## REPORTS

**DE21.37 Proposed 2020/2021 Housekeeping Amendment to Shoalhaven Local Environmental Plan 2014 (PP044)**

**HPERM Ref:  
D20/537903**

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

That Council:

1. Submit Planning Proposal PP044 to the NSW Department of Planning, Industry and Environment for an initial Gateway determination, and if favourable:
  - a. Proceed to formal exhibition in accordance with the terms of the determination/legislative requirements; and
  - b. Receive a further report following the conclusion of the public exhibition to enable its finalisation.
2. Advise key stakeholders, including relevant Community Consultative Bodies and any directly affected landowners, of the public exhibition agreements.

**RESOLVED** (Clr Wells / Clr Digiglio)

MIN21.248

That Council:

1. Submit Planning Proposal PP044 to the NSW Department of Planning, Industry and Environment for an initial Gateway determination, and if favourable:
  - a. Proceed to formal exhibition in accordance with the terms of the determination/legislative requirements; and
  - b. Receive a further report following the conclusion of the public exhibition to enable its finalisation.
2. Advise key stakeholders, including relevant Community Consultative Bodies and any directly affected landowners, of the public exhibition agreements.

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

AGAINST: Nil

CARRIED

**DE21.38 Proposed Review - Planning Controls - Nowra CBD****HPERM Ref:  
D21/155943****Recommendation (Item to be determined under delegated authority)**

That Council:

1. Commence a review of relevant planning controls in the Nowra CBD / commercial core area, including the relevant technical studies (urban design / visual impact assessment, economic feasibility analysis and infrastructure/servicing assessment) and community consultation to identify potential key locations where controls should be revised to encourage positive opportunities that contribute to the revitalisation of the centre.
2. Receive a further report on the outcomes of the review, to consider the detail, prior to proceeding with any Planning Proposal to amend relevant controls in Shoalhaven Local Environmental Plan 2014.

**RESOLVED** (Clr Proudfoot / Clr Findley)

MIN21.249

That Council:

1. Commence a review of relevant planning controls in the Nowra CBD / commercial core area, including the relevant technical studies (urban design / visual impact assessment, economic feasibility analysis and infrastructure/servicing assessment) and community consultation to identify potential key locations where controls should be revised to encourage positive opportunities that contribute to the revitalisation of the centre.
2. Receive a further report on the outcomes of the review, to consider the detail, prior to proceeding with any Planning Proposal to amend relevant controls in Shoalhaven Local Environmental Plan 2014.

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

AGAINST: Nil

CARRIED

## DE21.39 Shoalhaven Population Forecasts

HPERM Ref:  
D21/155520

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

That Council:

1. Use the updated population forecasts to inform service planning and delivery across Council.
2. Promote the updated population projections/forecasts to external stakeholders as a resource for their planning and investment decisions, including industry representatives from the Property Council and Urban Development Institute of Australia and local developers.
3. Consider the impact of the updated population projections/forecasts when reviewing the Strategic Planning Work Program, noting that the Program is due to next be considered and confirmed by Council in June 2021.

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

MIN21.250

That Council:

1. Use the updated population forecasts to inform service planning and delivery across Council.
2. Promote the updated population projections/forecasts to external stakeholders as a resource for their planning and investment decisions, including industry representatives from the Property Council and Urban Development Institute of Australia and local developers.
3. Consider the impact of the updated population projections/forecasts when reviewing the Strategic Planning Work Program, noting that the Program is due to next be considered and confirmed by Council in June 2021.

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

AGAINST: Nil

CARRIED

## DE21.40 Report Back - Rezoning Options - Tomerong Quarry, Lot 4 DP775296, Parnell Road, Tomerong

HPERM Ref:  
D21/101234

Stephen Dunshea, CEO - 21.40 - Report Back - Rezoning Options - Tomerong Quarry, Lot 4 DP775296, Parnell Road, Tomerong - significant non pecuniary interest declaration – resident of Tomerong – left the room and did not take part in discussion or vote on the matter.

Note: Stephen Dunshea, CEO left the meeting at 8:20pm.

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

That Council receive the report back on the rezoning options for Tomerong Quarry, Lot 4 DP775296, Parnell Road, Tomerong for information.

**RESOLVED** (Clr Watson / Clr Levett)

MIN21.251

That Council receive the report back on the rezoning options for Tomerong Quarry, Lot 4 DP775296, Parnell Road, Tomerong for information.

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

AGAINST: Clr Digiglio

CARRIED

Note: Stephen Dunshea, CEO returned to the meeting at 8:21pm.

<b>DE21.41 Proposed Submission - NSW Planning Reforms - Agritourism and Small-scale Agriculture Development</b>	<b>HPERM Ref: D21/128569</b>
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**Recommendation (Item to be determined under delegated authority)**

That Council:

1. Endorse the draft submission on the proposed planning reforms related to agritourism and small-scale agriculture development (Attachment 1) so it can be finalised and sent to the NSW Department of Planning, Industry & Environment for consideration.
2. Request further consultation and dialogue on the proposed reforms before they are finalised.
3. Receive future reports, if required, to enable further comment on the detail of the proposed planning reforms.

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

MIN21.252

That Council:

1. Endorse the draft submission on the proposed planning reforms related to agritourism and small-scale agriculture development (Attachment 1) so it can be finalised and sent to the NSW Department of Planning, Industry & Environment for consideration.
2. Request further consultation and dialogue on the proposed reforms before they are finalised.
3. Receive future reports, if required, to enable further comment on the detail of the proposed planning reforms.

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

AGAINST: Nil

CARRIED

<b>DE21.42 Exhibition Outcomes and Finalisation - Planning Proposal - Hitchcocks Lane, Berry (PP029)</b>	<b>HPERM REF: D21/135895</b>
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Item dealt with earlier in the meeting see MIN21.242.

<b>DE21.43 Update - Planning Proposal PP050 - Former Anglican Church, Huskisson - Ground Penetrating Radar Survey</b>	<b>HPERM REF: D21/171031</b>
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Item dealt with earlier in the meeting.

<b>DE21.44 Parkcare Action Plans - Bishop Reserve / Callala Beach / Clifton Park / Mount Vista Close / Nulla Place Reserve</b>	<b>HPERM Ref: D21/33071</b>
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**Recommendation (Item to be determined under delegated authority)**

That Council

1. Endorse the updated and new Parkcare Plans for
  - a. Bishop Reserve – Mollymook (UPDATED)



- b. Callala Beach Entries – Callala Beach (NEW)
  - c. Clifton Park – Sanctuary Point (UPDATED)
  - d. Mount Vista Close – Berry (NEW)
  - e. Nulla Place Reserve – St Georges Basin (NEW)
2. Continue to allocate ongoing annual operating funding of \$400 (GST exclusive and CPI adjusted) for each Parkcare Group, totalling \$2,000, to cover safety PPE, miscellaneous materials, waste disposal and purchase minor tools. This has been provided for in the Draft 2021/2022 Operating Budget.

**RESOLVED** (Clr Wells / Clr Gash)

MIN21.253

That Council

- 1. Endorse the updated and new Parkcare Plans for
  - a. Bishop Reserve – Mollymook (UPDATED)
  - b. Callala Beach Entries – Callala Beach (NEW)
  - c. Clifton Park – Sanctuary Point (UPDATED)
  - d. Mount Vista Close – Berry (NEW)
  - e. Nulla Place Reserve – St Georges Basin (NEW)
- 2. Continue to allocate ongoing annual operating funding of \$400 (GST exclusive and CPI adjusted) for each Parkcare Group, totalling \$2,000, to cover safety PPE, miscellaneous materials, waste disposal and purchase minor tools. This has been provided for in the Draft 2021/2022 Operating Budget.

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

AGAINST: Nil

CARRIED

**DE21.45 Development Application – 39 The Lake Circuit, Culburra Beach – Lot 1553 DP 12278**

**HPERM REF: D21/102976**

Item dealt with earlier in the meeting see MIN21.244.

**DE21.46 DA20/1970 – 1178 Comerong Island Road, Numbaa – Lot 2 DP 1077521**

**HPERM Ref: D21/100273**

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

That Development Application DA20/1970 for construction of an industrial building for use as a boat building and repair facility at Lot 2 DP 1077521, 1178 Comerong Island Road, Numbaa be approved subject to the recommended conditions of consent contained in Attachment 3 of this report.

**RESOLVED** (Clr Gash / Clr Alldrick)

MIN21.254

That Development Application DA20/1970 for construction of an industrial building for use as a boat building and repair facility at Lot 2 DP 1077521, 1178 Comerong Island Road, Numbaa be approved subject to the recommended conditions of consent contained in Attachment 3 of this report.



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

AGAINST: Nil

CARRIED

<b>DE21.47 SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823</b>	<b>HPERM REF: D21/148654</b>
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Item dealt with earlier in the meeting see MIN21.245.

<b>DE21.48 Modification Application No. DS20/1619 – 2 Lawrence Ave &amp; 61 Kinghorne St Nowra – Lot 2 DP 1264717 (Formally Known As Lot 2 DP 1243710) &amp; Lot 1 DP 1243710</b>	<b>HPERM REF: D21/142797</b>
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Item dealt with earlier in the meeting see MIN21.246.

<b>DE21.49 DA20/1966 - 29 Strongs Road, Jaspers Brush - Lot 215 DP 1210788 - Single A-Frame Advert Sign</b>	<b>HPERM Ref: D21/142175</b>
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**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 2 to this report.

**RESOLVED** (Clr Findley / Clr Digiglio) MIN21.255

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 2 to this report.

FOR: Clr Findley, Clr Gash, Clr Wells, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Watson, Clr Kitchener and Stephen Dunshea

AGAINST: Clr Pakes, Clr White and Clr Proudfoot

CARRIED

<b>DE21.50 DA16/1465 - 173 Kinghorne St and 2 &amp; 4 Albatross Rd Nowra - Lot 1, 29 and 30 DP 25114</b>	<b>HPERM Ref: D21/144532</b>
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**Recommendation (Item to be determined under delegated authority)**

That Development Application DA16/1465 – Mixed Use development consisting of 55 residential units and commercial space on the land known as 173 Kinghorne Street and 2 & 4 Albatross Road, Nowra (Lot 1, 29 and 30 DP 25114) be determined by way of refusal for the reasons set out in the section 4.15 Assessment Report (Attachment 1) and in the Notice of Determination (Attachment 2) to this report.

**RESOLVED** (Clr Watson / Clr Proudfoot) MIN21.256

That the Item be deferred to the June Development and Environment Committee meeting for further consideration.

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

**DE21.51 Northern Coastal Management Program Advisory Committee - Amendment to Terms of Reference**

**HPERM Ref: D21/149763**

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

That the amended Terms of Reference – North / Central / Southern Coastal Management Program Advisory Committees be adopted by Council.

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

MIN21.257

That the amended Terms of Reference – North / Central / Southern Coastal Management Program Advisory Committees be adopted by Council.

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

AGAINST: Nil

CARRIED

**DE21.52 Quarterly Review for Compliance Matters**

**HPERM Ref: D21/154126**

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

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

**RESOLVED** (Clr Proudfoot / Clr Alldrick)

MIN21.258

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

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Digiglio, Clr Alldrick, 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 8:58pm.

Clr Pakes  
CHAIRPERSON

## DE21.56 Proposed Amendments to Chapter G21: Car Parking and Traffic of Shoalhaven DCP 2014

HPERM Ref: D21/179024

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Draft Chapter G21: Car Parking and Traffic [↓](#)

### Reason for Report

- Present proposed amendments to Chapter G21: Car Parking and Traffic (Chapter G21) of the Shoalhaven Development Control Plan 2014 (the DCP) relating to:
  - Notice of Motion regarding medium density development visitor parking requirements.
  - Inclusion of provisions to proactively plan for the anticipated demand for electric vehicle charging facilities in the future.
- Obtain required endorsement to proceed to exhibition.

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

That Council:

1. Endorse and proceed to publicly exhibit the proposed amendments to Chapter 21: Car Parking and Traffic of Shoalhaven Development Control Plan 2014 as outlined in Attachment 1, for a period of at least 28 days as per legislative requirements.
2. Receive a further report following the conclusion of the public exhibition period to consider feedback received and enable finalisation of the amendment.
3. Notify key stakeholders (including CCBs and Development Industry Representatives) of the exhibition arrangements, in due course.

### Options

1. As recommended.

Implications: This option is consistent with the 23 March 2021 resolution that resulted from a Notice of Motion (MIN21.137) regarding medium density residential / visitor parking and also proactively responds to the anticipated future demand for electric vehicle charging facilities.

#### Medium density residential/visitor parking

The proposed medium density residential/visitor parking changes are however not favoured for a number of reasons outlined in this report, including:

- There is already often a parking shortfall in medium density development which results in congestion in the road network.
- In certain locations, congestion within the road network may result in pressure for Council to provide and maintain additional public parking facilities.
- Potential safety concerns and neighbourhood amenity concerns.

- Responsive and well-designed proposals can accommodate adequate parking without affecting yield and amenity.
- Variations can still be considered on a case by case basis, as such a broad change across the whole City may not be warranted / desirable.
- The requirement for parking based on the number of bedrooms, including rooms capable of being used as a bedroom, has been removed, potentially resulting in additional parking shortfalls.

#### Electric vehicle charging facilities

This option will allow the proactive consideration of electric vehicle charging facilities for all future dwellings in a response to the continued increase in popularity of vehicle requiring plug in charging facilities. This will help avoid the future costs to owners associated with retrofitting and installing charging ports in established dwellings.

2. Amend Chapter G21 to proactively respond to the anticipated future demand for electric vehicle charging facilities, but not make the significant changes to medium density residential / visitor parking as resolved.

Implications: This option is more preferable as it allows proactive consideration of electric vehicle charging facilities in all future residential development. This will help avoid the costs to owners associated with retrofitting and installing charging ports in established dwellings in the future.

This option retains the current resident and visitor parking rates associated with medium density development that meet the realistic demand for parking spaces (regional industry standard) and assist in managing on street parking impacts within Shoalhaven's road network. This option would also allow an opportunity to refine the wording relating to location of resident spaces to reinforce that the intent is for the parking for each dwelling to be collocated with each dwelling, not enclosed in a garage.

3. Not proceed with an amendment to Chapter G21.

Implications: This is not the preferred option as Chapter G21 could not be amended (at this point in time) to require consideration of electric vehicle charging facilities for residential development. Further, medium density resident / visitor parking would not be resolved in any form.

## Background

Following a Notice of Motion, on 23 March 2021 Council resolved (MIN21.137) to:

1. *Prepare a draft amendment to Section 5.1 (medium density land use typologies in row one of the car parking schedule) of Chapter G21: Car Parking and Traffic of Shoalhaven Development Control Plan 2014 to remove the existing standard and:*
  - a. *Require:*
    - i. *1 space per one bedroom dwelling.*
    - ii. *1.5 spaces per 2 bedroom dwelling.*
    - iii. *2 spaces per dwelling containing three or more bedrooms.*
  - b. *Clarify that development referred to in 1(i) above, that the parking rates specified includes visitor spaces. At least one space per units should be provided for the sole benefit of each unit. Any parking on site exceeding the minimum requirements are to be provided as visitor spaces.*

- c. Delete the following note “Spaces for each dwelling are to be enclosed within the dwelling footprint. Visitor car parking is in addition to resident parking, must be unencumbered / open and cannot be stacked / tandem” and in its place insert the following note in relation to 1(ii) above “The arrangement and layout of the above parking will be assessed on merit and on a case by case basis. Visitor parking within new developments may be catered for within driveways of individual dwellings where it can be demonstrated that other dwellings within the complex are not impacted upon. Alternatively, visitor parking may be provided on a communal basis and upon common property”.
2. Receive a further report seeking endorsement to publicly notify and exhibit the draft amendment in accordance with Part 3 of the Environmental Planning and Assessment Regulation.

#### Amendment 4 to Chapter G21 – Why the current provisions were introduced

On 6 October 2020, Council resolved (MIN20.716) to finalise an amendment to Chapter G21 to improve its function, address gaps in policy and address operational issues or matters that needed clarification that had been identified since the Shoalhaven DCP 2014 originally commenced.

With regards to parking requirements for medium density development, the amendment sought to amend the parking provisions to refine the parking rates for residents and introduce specific visitor space requirements to reflect the changes in parking rates.

An excerpt of the adopted/current provision is provided below (**Figure 1**).

Land Use Type	Standard	Notes
<b>Residential</b>		
Attached dwellings	1 space per dwelling containing no more than 2 bedrooms or rooms capable of use as a bedroom.	Spaces for each dwelling are to be enclosed within the dwelling footprint.
Dual occupancy		Visitor car parking is in addition to resident parking, must be unencumbered/open and cannot be stacked/tandem.
Group homes	2 spaces per:	
Integrated housing development	<ul style="list-style-type: none"> <li>Dwelling containing 3 or more bedrooms or rooms capable of use as a bedroom; or</li> </ul>	
Multi dwelling housing	<ul style="list-style-type: none"> <li>Dual occupancy dwelling where the lot is located in a cul-de-sac, regardless of lot size or number of bedrooms. At least one on-site car space shall be provided behind the building line.</li> </ul>	
Multi dwelling housing (terraces)		
Manor houses		
Residential flat buildings	For developments with 3 or more dwellings, 0.5 car parking spaces per dwelling for visitors.	
Semi-detached dwelling		
Shop top housing		

**Figure 1: Current Medium Density Parking Provisions (Chapter G21, Shoalhaven DCP 2014, Version 4)**

The changes sought to ensure that appropriate and realistic provisions for parking (resident and visitor) were provided based on the number of bedrooms or rooms that could be used as a bedroom. Realistically in Shoalhaven, car ownership is high and is likely to remain high, with limited public transport opportunities, and therefore, there is a high demand for resident and visitor spaces associated with development (proportionate to size).

The current approach is considered generally consistent with DCP provisions for councils surrounding Shoalhaven and those in the Illawarra-Shoalhaven Region. This demonstrates a consistent regional approach acknowledging similar markets and regional characteristics. **Table 1** provides a summary and relevant commentary.

**Table 1: Comparison of surrounding/ISJO council provisions**

Relevant Council	Medium Density DCP Parking Provision	Comparison to Shoalhaven's Current Provisions
Wollongong	<u>Residents:</u> <ul style="list-style-type: none"> <li>1 space per dwelling (&lt;70m<sup>2</sup>).</li> <li>1.5 spaces per dwelling (70-110m<sup>2</sup>).</li> <li>2 spaces per dwelling (&gt;100m<sup>2</sup>).</li> </ul> <u>Visitors, an additional:</u> <ul style="list-style-type: none"> <li>0.2 car parking spaces per dwelling for visitors.</li> </ul>	Similar resident parking rates. Visitor rate per space is less acknowledging the 'Green Bus', good walkability and strong public transport network.
Shellharbour	<u>Residents:</u> <ul style="list-style-type: none"> <li>1 space per one bedroom dwelling.</li> <li>1.5 spaces per two + bedroom dwellings.</li> </ul> <u>Visitors, an additional:</u> <ul style="list-style-type: none"> <li>0.25 car parking spaces per one bedroom dwelling.</li> <li>0.5 car parking spaces per two + bedroom dwellings.</li> </ul>	Less onerous resident parking rates. Requirement for separate visitor spaces with differentiation between provision based on size.
Kiama	<u>Residents:</u> <ul style="list-style-type: none"> <li>1 space per one-two bedroom dwelling.</li> <li>2 spaces per three + bedroom dwellings.</li> </ul> <u>Visitors, an additional:</u> <ul style="list-style-type: none"> <li>1 space per 2 dwellings.</li> </ul>	Same resident parking rates. Same visitor space rates (0.5 per dwelling).
Eurobodalla	<u>Residents:</u> <ul style="list-style-type: none"> <li>2 spaces per dwelling.</li> </ul>	More onerous resident parking rates. No visitor rates.
Queanbeyan-Palerang (Queanbeyan DCP)	<u>Residents:</u> <ul style="list-style-type: none"> <li>1 space per dwelling &lt;60m<sup>2</sup>.</li> <li>2 spaces for all other dwellings.</li> </ul> <u>Visitors, an additional:</u> <ul style="list-style-type: none"> <li>2 spaces.</li> <li>Plus 1 space per 4 dwellings (in excess of 4 dwellings).</li> </ul>	More onerous resident and visitor parking rates.

DE21.56

### Policy Implications – Medium Density Resident/Visitor Parking

In a general sense, enough usable parking needs to be provided on site to accommodate both resident and reasonable visitor demand, without the need to utilise on street parking on a regular basis.

Often medium density development in Shoalhaven does not provide an adequate amount of usable parking, which results in congestion in the road network and neighbourhood issues. Depending on the location and road network characteristics, this can result in safety and congestion implications.

Figure 2 shows an example of parking that should be provided on a development site that has been transferred to the public road on a regular basis, and an example of a visitor/resident conflict, where the formal visitor space is blocked by the resident (or additional visitor).



**Figure 2: Examples road congestion (left) and visitor/resident parking space conflict (right)**

It was never the intention of the DCP controls that all resident spaces to be provided in garage form. Carports and unencumbered/open parking spaces are acceptable, as long as they are within the title/land area of each dwelling. The wording of the relevant DCP note would benefit from clarification; however, the intent was to ensure that parking for each dwelling is collocated with each dwelling.

The change outlined in the Notice of Motion also excludes the commentary relating to the requirement for parking based on the number of bedrooms, which also includes rooms capable of being used as a bedroom. This is an important distinction that attempts to ensure that adequate parking is provided, not less if the changes proposed by the Notice of Motion are followed through with. This is particularly relevant if the resident spaces will include the visitor parking requirements as well.

Experience demonstrates that responsive and well-designed proposals usually can maximise landscaping opportunities, minimise garage dominance, ensure efficient manoeuvring and provide hardstand alternatives. As such, it may be more appropriate to consider variations on a case by case basis rather than making the change holistically across the whole City.

### Electric Vehicle Charging Opportunities

Shoalhaven currently has a mix of vehicle technologies and fuel typologies, including conventional petrol, diesel and electric/hybrid. Considering new technology advancements and the influence of overseas vehicle manufacturers, electric vehicles will further increase in popularity and become more widely available in Australia and locally in Shoalhaven. The Federal Government's [Future Fuels Strategy Discussion Paper](#) notes that in December 2020, there were 50 different battery electric, plug in hybrid and hybrid models available to the market, with electric vehicles expected to exceed a quarter of all vehicle sales by 2030.



On 23 October 2020, Chapter G21 was amended to require adequate charging facilities for electric vehicles to be provided in the Nowra CBD, relating to residential flat buildings, mixed use development, commercial/retail development and tourist and visitor accommodation. Where 10 or more parking spaces are required, 10% of the spaces are to be designed and constructed so that electric vehicle charging points / stations can be installed now, or at a later time.

As the majority of electric vehicle charging will happen in homes, it would also be appropriate for this to be considered at the dwelling design stage, either at the time of dwelling construction or installation in the future, as desired. This is a cost effective way to manage future demand for charging facilities and avoids landowners needing to undertake costly installation and retrofitting in the future.

It is recommended that the current provisions in Chapter G21 be expanded to require the provision of one electric vehicle charging point / station per future dwelling (not one per parking space) in a residential development (including a standard dwelling house) across Shoalhaven. The charging point / station could be installed at the point of construction, or at a later time, as desired. The proposed provision is outlined at **Attachment 1**.

### Community Engagement

Any DCP amendment would be publicly exhibited for at least 28 days in accordance with legislative requirements on Council's website.

Development Industry Representatives and all CCBs would be directly notified of the exhibition arrangements.

Through a number of strategic planning exhibitions and development application notifications, the community has raised concern about parking and congestion in relation to medium density housing.

There has also been community interest in the wider consideration of electric vehicle charging facility both on private and public land.

### Financial and Risk Implications

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

A reduction in the number of parking spaces provided on site for residents and visitors may result in on-street congestion and the need for Council to consider alternative public parking solutions in certain locations, at a potentially significant cost to Council and ratepayers. It is noted that the NSW Government Planning Reforms appear to be indicating that soon Council will no longer be able to fund public parking through a contributions plan mechanism.

Whilst there are no direct financial implications for Council relating to the proposed requirement for electric vehicle charging facilities for new dwellings, the proposal allow charging facilities to be planned and provided for in a cost effective way that avoids landowners needing to undertake costly installation and retrofitting in the future.

In certain locations, congestion within the road network associated with unplanned on street parking may result in increased safety issues.



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Land Use Type	Standard	Notes
<b>Residential</b>		
Attached dwellings	1 space per dwelling containing no more than 2 bedrooms or rooms capable of use as a bedroom.	Spaces for each dwelling are to be enclosed within the dwelling footprint.
Dual occupancy	2 spaces per:	Visitor car parking is in addition to resident parking, must be unencumbered/open and cannot be stacked/tandem.
Group homes	<ul style="list-style-type: none"> <li>Dwelling containing 3 or more bedrooms or rooms capable of use as a bedroom; or</li> </ul>	
Integrated housing development	<ul style="list-style-type: none"> <li>Dual occupancy dwelling where the lot is located in a cul-de-sac, regardless of lot size or number of bedrooms. At least one on-site car space shall be provided behind the building line.</li> </ul>	
Multi dwelling housing		
Multi dwelling housing (terraces)		
Manor houses		
Residential flat buildings	For developments with 3 or more dwellings, 0.5 car parking spaces per dwelling for visitors.	
Semi-detached dwelling	1 space per one bedroom dwelling. 1.5 spaces per two bedroom dwelling. 2 spaces per dwelling containing three or more dwellings. The parking rates specified above includes visitor spaces. At least one space per dwelling should be provided for the sole benefit of each dwelling. Any parking on site exceeding the minimum requirements is to be provided as visitor spaces.	A bedroom includes a room or rooms capable of use as a bedroom. The arrangement and layout of the required parking will be assessed on merit and on a case-by-case basis. Visitor parking within new developments may be catered for within driveways of individual dwellings where it can be demonstrated that other dwellings within the complex are not impacted upon. Alternatively, visitor parking may be provided on a communal basis and upon common property.
Shop top housing		
Boarding house	As per the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009.	
Dwelling house	2 spaces.	One of these spaces may be considered forward of the building line, in a tandem arrangement with the other space, where the setback is at least 5.5m to promote accessibility and to accommodate the vehicle wholly within the site.
Hostel	1 space for: <ul style="list-style-type: none"> <li>Each room (with up to 4 beds per room) in the hostel; and</li> <li>Every 5 beds in a dormitory.</li> </ul> 1 parking space for every 2 people employed in connection with the development and on duty at any one	

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the requirements of Part D3 of the [Building Code of Australia](#).

- A2.2 Where access for people with a disability is expected, a minimum of 1 accessible space is required and thereafter one additional space per 100 spaces or part thereof.

**Note:** Council encourages the provision of parking for people with a disability in excess of the minimum standards wherever practical.

- A2.3 For Class 6 and 9b [buildings](#):

- Up to 1000 car [parking spaces](#) - 1 accessible space is required for every 50 car [parking spaces](#) or part thereof.
- In excess of 1000 car [parking spaces](#) - 1 accessible space is required for each additional 100 car [parking spaces](#) or part thereof.

- A2.4 Accessible parking shall be:

- Compliant with AS2890. Associated kerb ramps and path access must also be provided and need to comply with AS2890 and AS1428.
- Located close to the entry of the [building](#) to minimise travel distances and maximise accessibility.
- Located at ground level.
- Identified through the use of signs, logos and colouring.

**Note:** It is the responsibility of the applicant/[owner](#) to ensure that the [development](#) complies with relevant antidiscrimination legislation, in particular the *Disability Discrimination Act 1992*. This Act covers disabilities not catered for in the minimum standards in the [Building Code of Australia](#).

P3 Adequate charging facilities are provided for electric vehicles.

- A3.1 A minimum of one electrical vehicle charging point/station is to be designed and constructed for each dwelling in a [residential development](#), so that charging facilities can be installed now, or at a later time. The charging point/station is for the sole use of each dwelling.

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	<p>A3.2 Where 10 or more parking spaces are required for non-residential development residential flat buildings, mixed use development, commercial/retail development and tourist and visitor accommodation within the B3 Commercial Core and B4 Mixed Use zones in the Nowra CBD, a minimum of 10% of spaces are to be designed and constructed so that electrical vehicle charging points/stations can be installed now, or at a later time.</p> <p><b>Note:</b> Opportunities for electric vehicle charging points/stations should also be considered in the public domain. This may include consideration of the capacity for electric vehicle charging points/stations to be installed at a later time.</p>
P4 Angled parking minimises impacts of vehicle fumes on alfresco dining areas and improves driveability.	A4.1 Angled parking shall be "nose in" parking.
P5 To encourage the use of bicycles.	<p>A5.1 New developments, particularly educational establishments, recreational facilities, shops and civic buildings, should provide appropriate bicycle parking/storage facilities in accordance with current AUSTROADS Guidelines and or Australian Standards.</p> <p>A5.2 The design and installation of bicycle parking facilities should also comply with AS2890.3.</p> <p>A5.3 Larger developments should provide showers and associated amenities to encourage and cater for bicycle use.</p>

5.4 Car Park Landscape Design

Performance Criteria	Acceptable Solutions
<p>P6 The car park landscape design:</p> <ul style="list-style-type: none"> <li>Lessens the visual impact of car park areas.</li> <li>Provides shade areas for cars and pedestrians.</li> <li>Ensures that the landscaping is an integral part of the car park design.</li> </ul>	<p>A6.1 A development application must include detailed landscape plans indicating dimensions, levels and drainage, existing vegetation as well as location, type and character of proposed plantings.</p> <p><b>Note:</b> Refer to Chapter G3: Landscape Design Guidelines for more information.</p>

## DE21.57 Proponent Initiated Planning Proposal - Taylors Lane, Cambewarra (Moss Vale Road South URA) - Exhibition Outcomes and Proposed Finalisation

**HPERM Ref:** D21/188736

**Department:** Strategic Planning

**Approver:** Robert Domm, Director - City Futures

**Attachments:** 1. Submissions from Public Authorities (under separate cover) [↗](#)  
2. Public submission [↓](#)

### Reason for Report

- Present the outcomes from the public exhibition of the Planning Proposal (PP) and supporting exhibition material related to Lot 1 DP 949932, Taylors Lane, Cambewarra; and
- Enable the resulting amendment to Shoalhaven Local Environmental Plan (SLEP) 2014 and the related amendments to Shoalhaven Development Control Plan (DCP) 2014, Shoalhaven Contributions Plan (CP) 2019 and Integrated Water Cycle Assessment (IWCA) for Moss Vale Road South URA to proceed to finalisation.

The PP seeks to reclassify a watercourse and rezone part of an existing riparian corridor from E2 Environmental Conservation to R1 General Residential to provide additional land for residential development in Moss Vale Road South URA.

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

That Council:

1. Adopt and finalise the Planning Proposal (PP054): Rezoning of Riparian Land at Lot 1 DP 949932, Taylors Lane, Cambewarra, as exhibited.
2. Forward PP054 to NSW Parliamentary Counsel's Office to draft the required amendment to Shoalhaven Local Environmental Plan 2014.
3. Make the resulting amendment to the Shoalhaven Local Environmental Plan 2014 using Council's delegation.
4. Adopt and finalise the amendment to Shoalhaven DCP 2014 Chapter NB3 - Moss Vale Road South URA as exhibited and give the required public notice advising of its commencement date.
5. Adopt and finalise the amendment to Shoalhaven CP 2019 as exhibited and give the required public notice advising of its commencement date.
6. Amend the exhibited IWCA Addendum Report to identify the subject land as "medium density / integrated housing", consistent with the exhibited DCP amendment, then proceed to finalise it.
7. Advise key stakeholders, including the Proponent, adjoining landowners, the Cambewarra Residents and Ratepayers Association, development industry representatives and those who made a submission, of this decision and when the LEP, DCP and CP amendments will be made effective.

DE21.57

## Options

1. As recommended.

Implications: This is the preferred option as it will enable the LEP amendment to be finalised and the subject land rezoned from E2 Environmental Conservation to R1 General Residential and help facilitate the supply of additional housing in Moss Vale Road South URA. The residue will remain protected as a riparian corridor in the E2 zone and will be revegetated and enhanced as part of the future development application. The proposed amendments to Shoalhaven DCP 2014, Shoalhaven CP 2019 and the IWCA for Moss Vale Road South URA will satisfy the requirements of Part 6 of Shoalhaven LEP 2014 by helping ensure that the resulting development contributes towards the provision of essential infrastructure.

2. Make an alternate resolution.

Implications: This is not the preferred option. Depending on the nature of any alternative, this may delay or prevent the LEP amendment. The changes sought in the PP are based on an independent riparian lands study and have the support of the Natural Resource Access Regulator (NRAR). Any further changes may be at odds with the findings of the riparian lands study and require a revised Gateway determination, re-exhibition of the PP and further consultation with State Government agencies. Council may not have the ability to grant development consent to a future subdivision of the subject land if the related amendments to Shoalhaven DCP 2014, Shoalhaven CP 2019 and the IWCA for Moss Vale Road South URA are delayed or do not proceed with the PP.

3. Not adopt the recommendation.

Implications: This is not the preferred option. The amendment to the LEP would not proceed and the subject land would remain zoned E2 Environmental Conservation. This would potentially be a missed opportunity to provide additional housing in an appropriate location to meet the needs of a growing population and to facilitate the correct identification and enhancement of an existing riparian corridor.

## Background

This PP is the result of a request from the proponent, Biara Grove Developments Pty Ltd, to reclassify a watercourse and also rezone part of an existing riparian corridor from E2 Environmental Conservation to R1 General Residential. This will potentially enable the land if rezoned to be developed for residential purposes (approximately 30 lots) in association with adjoining land. The subject land is outlined red in **Figure 1**. It adjoins the eastern boundary of the existing Moss Vale Road South Urban Release Area (URA) and is part of Lot 1 DP 949932. The existing LEP zoning and watercourse on the subject land is shown in **Figure 2**.

In June 2020, the proponent received development approval for a proposed 50 lot residential subdivision on the surrounding R1 zoned land which comprises Stage 1 of the Moss Vale Road South URA. The approved development is being undertaken in two stages (stages 1a and 1b). Dependent on the progression of this PP, the subject land is the proposed future third stage (1c) of this subdivision.





Figure 1: Subject land

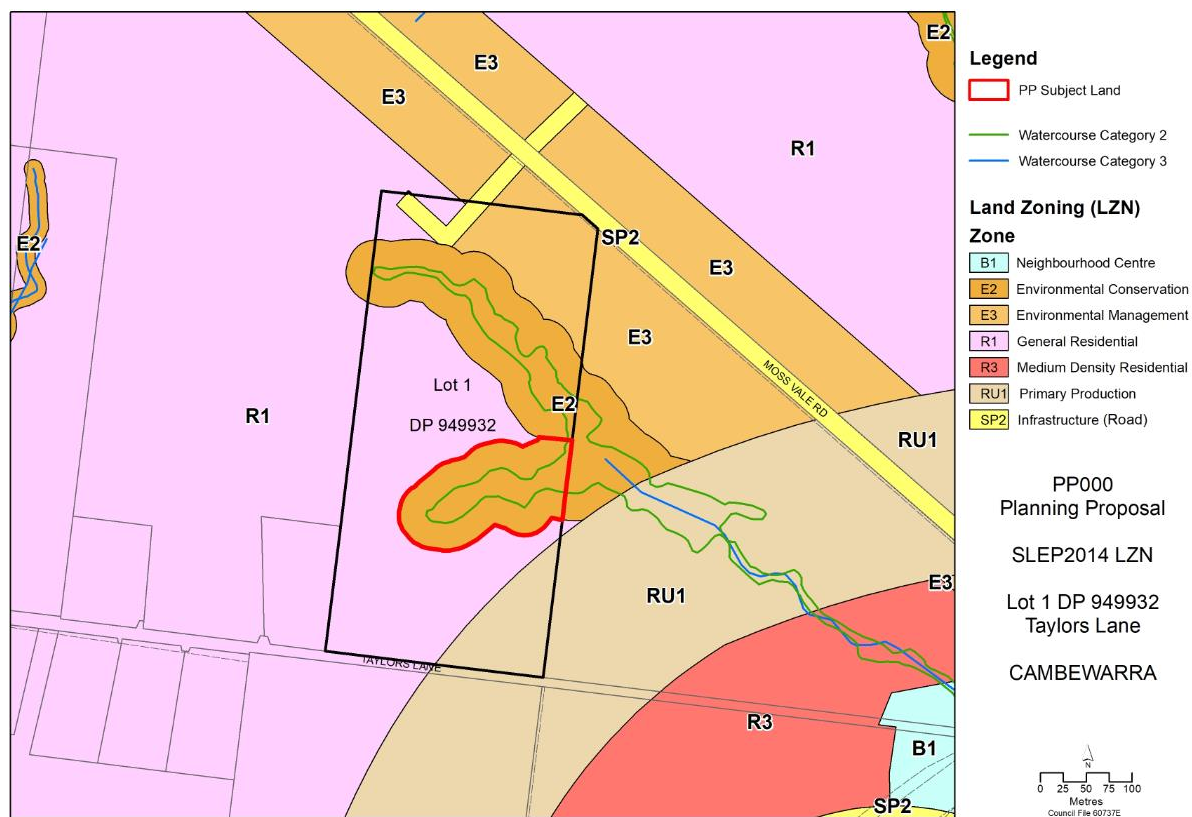


Figure 2: Existing LEP zoning & watercourse classification

The PP is supported by an independent riparian lands study commissioned by Council. It concluded that the LEP zoning & watercourse classification is inaccurate and that not all of the subject land has riparian land characteristics.

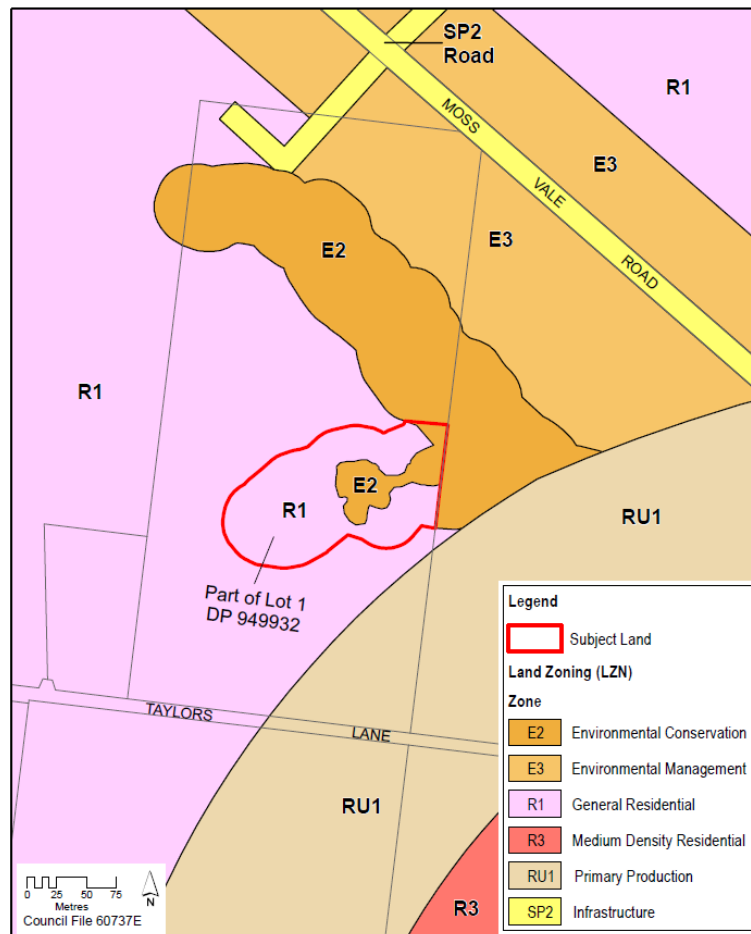
DE21.57

Council previously considered this PP at the Development and Environment Committee meeting on 2 June 2020 (item [DE20.50](#)) where it resolved (in summary) to:

- 1) *prepare a PP and supporting draft amendments to Shoalhaven DCP 2014, CP 2019 and the IWCA for Moss Vale Road South;*
- 2) *seek a Gateway determination from the Department of Planning, Industry and Environment (DPIE);*
- 3) *place the PP on public exhibition;*
- 4) *receive a subsequent report on the outcomes of the public exhibition.*

The full resolution can be viewed [here](#) (MIN20.386).

The proposed zoning plan endorsed by Council on 2 June 2020 and included in the PP sent to DPIE prior to exhibition is at **Figure 3**. It is generally based on the findings of the riparian lands study, but proposed to use the 'averaging rule' from NRAR guidelines to reduce the width of the corridor in several places.



**Figure 3: Proposed LEP zoning plan (pre-exhibition)**

The PP received a favourable Gateway determination from DPIE on 23 July 2020 authorising it to proceed, subject to consultation with several public authorities and public exhibition. Council was given delegation to make the resulting LEP amendment.

The outcomes of the consultation with public authorities and the public exhibition are outlined below.

### Consultation with Public Authorities

The PP was referred to the public authorities in **Table 1** for comment in August 2020. Copies of the submissions received from public authorities are provided as **Attachment 1**.

**Table 1: Public authorities consulted**

Authority	Reason
Natural Resource Access Regulator (NRAR)	Development in or near watercourses
NSW Department of Premier and Cabinet - Aboriginal Cultural Heritage Regulator (ACHR)	Aboriginal cultural heritage matters
Transport for NSW (TfNSW)	Impacts on State controlled roads
Shoalhaven Water	Water and sewer infrastructure planning
Endeavour Energy	Energy infrastructure planning

TfNSW, Shoalhaven Water and Endeavour Energy made submissions which raised no objections to the PP. No submission was received from the ACHR.

NRAR's initial submission dated 28 October 2020 objected to the PP on the basis that the:

- proposed riparian corridor (E2 zone) was not wide enough overall.
- 'averaging rule' should not be used to further reduce the corridor width in several places.

In response and after a dialogue the proponent agreed to amend the proposed zoning plan to make the riparian corridor wider and more uniform in width. The revised proposed zoning plan (**Figure 4**) was referred back to NRAR which subsequently advised that it was satisfied with the changes. The correspondence between Council and NRAR's assessing officer is included in **Attachment 1**.

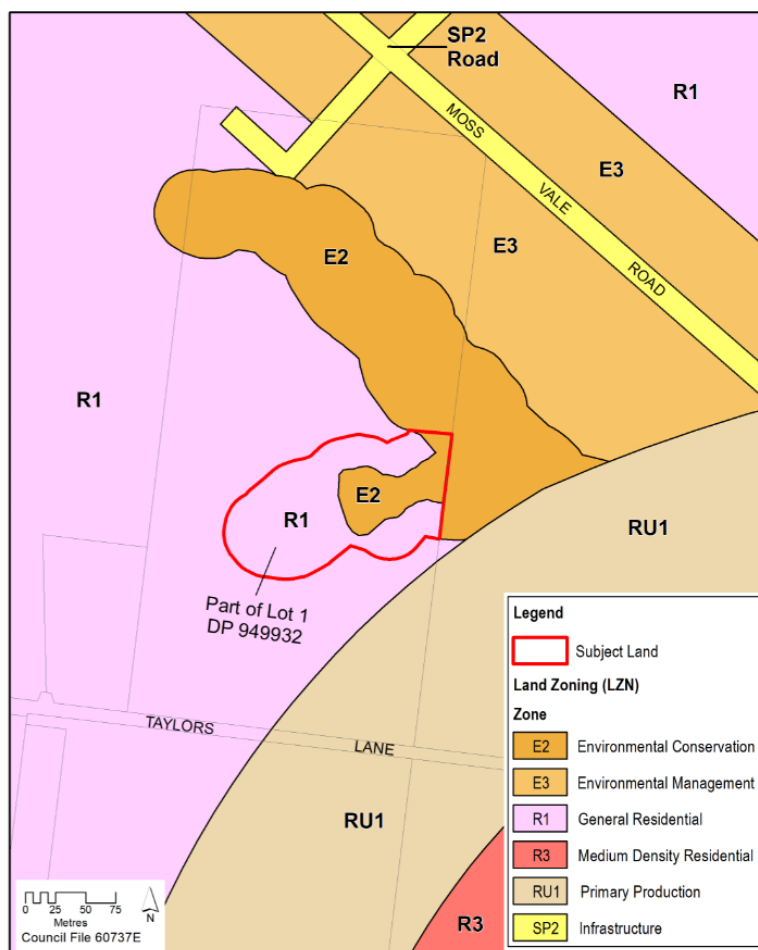
NRAR also suggested that the proponent's proposed layout plan for stage 1c should be reconsidered so that:

- there is physical separation between proposed residential lots and the riparian corridor (e.g. with a perimeter road).
- roads, drainage and other subdivision works do not potentially encroach into the riparian corridor.
- the quality of runoff entering an adjacent farm dam is not potentially compromised.

The proponent has considered these matters at a conceptual level as part of the PP and will consider them in more detail at the appropriate point as part of any future development application, should the PP proceed.

Based on the assessment undertaken as part of the PP process, Council is satisfied that the infrastructure needed for the future stage 1c can be accommodated without encroachments into the riparian corridor. It is noted that the subsequent development application will also need approval from NRAR before consent can be granted. NRAR has acknowledged these comments and advised that it has no objection to the PP proceeding.





**Figure 4: Revised LEP zoning plan (exhibition)**

#### Error in Integrated Water Cycle Assessment Addendum Report

The exhibited IWCA Addendum Report incorrectly identifies the proposed R1 zone land as “small lot residential”. It should be identified as being “medium density / integrated housing”, consistent with how it is identified on the indicative layout plan in the exhibited DCP amendment.

This is a minor error which will not materially change the outcomes of the IWCA Addendum Report, however, it should be corrected prior to it being finalised.

#### Change to Proposed Lot Size Map

A minor revision was made to the proposed Lot Size Map prior to public exhibition to reflect changes made in Shoalhaven LEP 2014 (Amendment No. 39) which took effect on 19 March 2021. Amendment No. 39 made changes to Clause 4.1H and the associated layer on the Lot Size Map which enables the provision of small lots (300-500sqm) in certain high amenity locations in urban release areas. The revised proposed Lot Size Map would enable small lots along the western side of the subject land (opposite a future park), should the PP proceed.

#### **Community Engagement**

The overall PP package was publicly exhibited from Wednesday 24 March to Friday 23 April 2021 inclusive (31 days) on Council's website. The package was also available for viewing electronically at the City Administration Centre, Nowra and at the Ulladulla Service Centre. Letters advising of the public exhibition were sent to all adjoining landowners at Moss Vale

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Road South URA, development industry representatives, the Cambewarra Residents and Ratepayers Association and all previous submitters.

The exhibited PP package is still available for viewing on Council's website and included:

1. [Public Notice](#)
2. [Explanatory Statement](#)
3. [Planning Proposal \(PP054\) – Rezoning of Riparian Land at Taylors Lane, Cambewarra](#)
4. [Riparian Lands Study \(Niche Environment & Heritage, 2020\)](#)
5. [Aboriginal Cultural Heritage Assessment \(Biosis, 2018\)](#)
6. [Flora and Fauna Assessment \(Ecoplanning, 2017\)](#)
7. [Submissions from public authorities](#)
8. [Gateway Determination dated 23 July 2020](#)
9. [Draft Amendment to Shoalhaven DCP Chapter NB3: Moss Vale Road South URA](#)
10. [Draft Amendment to Shoalhaven Contributions Plan 2019 projects](#)
11. [Draft Addendum to the Integrated Water Cycle Assessment for Moss Vale Road South URA \(SEEC 2021\)](#)

As a result of the exhibition, one (1) submission was received which objected to the PP. A summary of the main issues raised in the submission and staff comments is provided below. A copy of the submission is provided as **Attachment 2**.

As a result of the submission received, no changes are recommended to the exhibited PP.

1. *This PP and other recent Council decisions at the Moss Vale Road South URA (for example, enabling 300sqm lots; removal of trees along Taylors Lane for the Far North Collector Road) seek to maximise returns for development at the expense of the environment.*

**Staff Comment:** The PP is supported by an independent riparian lands study which included detailed site survey and assessment of the watercourse condition and function. The study concluded that the watercourse classification in the LEP is inaccurate and that not all of the subject land has riparian characteristics. Thus, there is merit in rezoning part of the site from environmental to residential. The PP will also facilitate the revegetation and enhancement of the riparian corridor remaining in the E2 zone. The PP has been reviewed by NRAR which has no objection to its progression.

The provision of small lots (300-500sqm) in URAs is also consistent with Council's Affordable Housing Strategy 2017 that aims to provide more diverse and affordable lot sizes. Importantly, the 'small lots' are only permitted in certain high amenity locations (near future parks and tree lined boulevards).

In regard to the Far North Collector Road, Council resolved to defer a decision on the upgrade of Taylors Lane in June 2020 and undertake a review of options that would retain the trees. The review is in progress and will be reported to Council in due course.

2. *The increase in lots proposed in the PP makes the provision of open space even more important. Keeping the current E2 and E3 zones as open areas not only adds to the rural character of the development but also adds recreational areas for families whose houses will have small, if any, yard space.*

**Staff Comment:** DCP Chapter NB3 establishes a public open space network to meet the recreation needs of future residents of the URA. It incorporates significant patches of existing remnant vegetation, helping to enhance the landscape and environmental values of the URA. Council is currently acquiring these open spaces using low cost loans to help facilitate their

early delivery. As the subject land is not part of the planned public open space network, it would not be accessible to future residents for recreation.

3. *I have attached photos of the current area and what could be created. Note that most of the trees in the 1st photo would be gone.*

Staff Comment: This comment contains some inaccuracies. The trees in the foreground of the first photo are part of the subject riparian corridor and will be retained in the E2 zone under this PP. The patch of trees further back to the right will be largely retained within a planned public open space reserve in that location. Some of the trees in the background on the left are part of the Taylors Lane corridor. Options for the retention of those trees are currently being reviewed.

### **Conclusion**

It is now appropriate to finalise this PP and proceed to amend the LEP accordingly. The finalisation of the supporting amendments to the DCP 2014, CP 2019 and IWCA for Moss Vale Road South will also ensure that the subsequent development of the subject land is coordinated with development of the wider Moss Vale Road South URA and contributes to the provision of essential infrastructure.

### **Policy Implications**

If the rezoning proceeds, in addition to relevant amendments to the LEP, as noted earlier, updates will be made to:

- Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South URA – to include the rezoned land in the indicative layout plan, staging plan and other relevant sections.
- the Integrated Water Cycle Assessment for MVRs – to factor the rezoned land into the stormwater management and water quality treatment system for MVRs URA.
- Shoalhaven Contributions Plan 2019 – to include the rezoned land in the catchment area for local roads, drainage and public open space projects for the MVRs URA.

### **Financial Implications**

The PP is a 'major' proposal in accordance with Council's Planning Proposal (rezoning) Guidelines and has been processed on a full cost recovery basis, including staff time for preparation of the associated amendments to Shoalhaven DCP 2014, CP 2019 and the IWCA for MVRs URA.

**From:** [REDACTED] <[REDACTED]>  
**Sent:** Monday, 29 March 2021 9:58 PM  
**To:** Amanda Findley <[findleya@shoalhaven.nsw.gov.au](mailto:findleya@shoalhaven.nsw.gov.au)>; Annette Alldrick <[Annette.Alldrick@shoalhaven.nsw.gov.au](mailto:Annette.Alldrick@shoalhaven.nsw.gov.au)>; Nina Digiglio <[Nina.Digiglio@shoalhaven.nsw.gov.au](mailto:Nina.Digiglio@shoalhaven.nsw.gov.au)>; John Levett <[John.Levett@shoalhaven.nsw.gov.au](mailto:John.Levett@shoalhaven.nsw.gov.au)>; Kaye Gartner <[Kaye.Gartner@shoalhaven.nsw.gov.au](mailto:Kaye.Gartner@shoalhaven.nsw.gov.au)>  
**Subject:** Planning Proposal PP054. Lot 1 DP 949932 Taylors Lane Cambewarra

Dear Councillors,

Another sad DA variation to convert environmental land for residential development. (see [displaydoc.aspx \(nsw.gov.au\)](#) )

I am not surprised that Council supported the developer rather than the environment.

Many residents submitted objections to this DA variation. Council had a choice to approve, not approve or seek further information. Council chose the latter. Not surprising, the consultant's report supports the developer.

Thus we have the following variations over the last few years that have been supported by Council on this development:

- Reduce lot sizes from 500 square meters to 300 square metres.
- Rezone environmental zone E2 to residential.
- Remove all the trees along Taylors Lane. (Although Council has back-peddled on this one due to considerable opposition from Cambewarra residents).

My perception of these changes is that the development is to maximise returns at the expense of the environment.

Council would also gain a financial advantage through increases in rates.

However, this increase in lots makes the argument of retaining recreational and open space areas more important. Keeping the current E2 and E3 zones open areas not only adds to the rural character of the development but also adds recreational areas for the enjoyment of families whose houses will have small, if any, yard space.

I have attached photos of the current area and what could be created. Note that most of the trees in the 1<sup>st</sup> photo would be gone. The proposal photo is an example of a recreational area in a large residential area. A walking track was around this parkland. Just imagine what could be done with the current environmental zoning in the Taylors Lane Development.

Thanks for your time.

[REDACTED]



DE21.57 - Attachment 2





## DE21.58 Natural Areas Volunteers - Parkcare Action Plans - Carrington Park / George Street Park / Greenwell Point

**HPERM Ref:** D21/167911

**Department:** Works & Services

**Approver:** Paul Keech, Director - City Services

**Attachments:**

1. Draft - Carrington Park - Worrigeer - Parkcare Action Plan [↓](#)
2. Draft - George Street Park - Berry - Parkcare Action Plan [↓](#)
3. Draft - Greenwell Point Parkcare Action Plan [↓](#)

### Reason for Report

To allow Council to consider two updated and one new Parkcare Action Plan that have been prepared by Parkcare Groups in conjunction with Council staff. The plans are:

1.	Carrington Park – Worrigeer – Parkcare Action Plan	Worrigeer	Updated
2.	George Street Park – Berry – Parkcare Action Plan	Berry	New
3.	Greenwell Point Parkcare Action Plan	Greenwell Point	Updated

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

That Council

1. Endorse the updated and new “Parkcare” plans for
  - a. Carrington Park – Worrigeer (UPDATED)
  - b. George Street Park / Berry & District Garden Club – Berry (NEW)
  - c. Greenwell Point – (UPDATED)
2. Continue to allocate ongoing annual operating funding of \$400 (GST exclusive and CPI adjusted) for each Parkcare Group, totalling \$1,200 to cover safety PPE, miscellaneous materials, waste disposal and purchase minor tools.

### Options

1. Approve continued endorsement of Carrington Park - Worrigeer Parkcare Group, Greenwell Point Parkcare Group and approve new endorsement of George Street Park – Berry & District Garden Club Parkcare Group and adopt the Draft Action Plans.

**Implications:** Two groups are currently allocated a total of \$800 for continuing support and if this option is adopted one new group would be allocated \$400, both for ongoing support of Parkcare objectives which would be offset by the free resource offered to Council. The total cost of supporting the three Parkcare Groups would be an annual cost of \$1,200 which would be provided from the Works and Services Operational budget.

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2. Not approve the ongoing support of Carrington Park - Worrigeer Parkcare Group, Greenwell Point Parkcare Group, and refuse any new endorsement of George Street Park – Berry & District Garden Club, pending changes to the Action Plan.

Implications: This would be a lost opportunity for Council. It is estimated, from actual volunteer hours of existing Parkcare groups, that the additional proposed Action Plan, and the volunteer effort that supports it, allows the group to supplement Council's maintenance schedule at a higher level of service thus adding \$8,250 per annum (1 park x average of 275 volunteer hours x \$30 per hour for labour) to present a high quality park and reserve to the Berry Community.

## Background

Council engages volunteers such as Parkcare Groups to achieve higher levels of maintenance at minimal cost to Council. Council currently has 53 Parkcare Groups with 448 volunteer members under its Parkcare Programme.

The following two draft Parkcare Action Plans are up for readoption with no changes as part of the normal six year review process:

1. Carrington Park – Worrigeer – Parkcare Action Plan
2. Greenwell Point Parkcare Action Plan

The George Street, Berry, Parkcare Action Plan has been requested from members of the Berry & District Garden Club who were originally involved in the creation of the park and are willing to supplement Council's maintenance schedules to enhance the local area. The George Street Park is owned by the NSW Roads & Maritime Service with Council acquiring a licence agreement to maintain the area. As such, the plan will be reviewed at the time of the licence being renewed on 30 October 2024, differing from the usual six years as per the Bushcare/Parkcare Procedures (PRD20/28).

## Community Engagement

Participation and involvement in the Parkcare Groups is open to all community members. All the attached Action Plans involved consultation, as per the Bushcare / Parkcare Procedures (PRD20/28), 7.2 Community Consultation.

## Financial Implications

Two of the groups have been established in the Shoalhaven for a number of years and have been allocated the \$400 each, totalling \$800 in future Works and Services budgets.

One group is to be allocated \$400, which is offset by the free resource offered to Council and will continue to receive a commitment of \$400 for the group in future Works and Services budgets.

The total yearly contribution of \$1,200 has been provided for in the Draft 2021-2022 Operating budget for Works and Services.





## CARRINGTON PARK - WORRIGEE - PARKCARE ACTION PLAN

Document Number: D21/115644 • Adopted: **Date** • Minute Number:  
**Minute number** • File: 31955E • Produced By: City Services Group • Review  
Date: **Review Date**

### CONTACT INFORMATION

<b>Group Name:</b>	Carrington Park Estate Parkcare Group
<b>Contact:</b>	Hazel Solomon
<b>Address:</b>	6 Narwee Link, Worrigee
<b>Tel:</b>	4423 5997
<b>Email:</b>	davidsolomon924@yahoo.com.au
<b>Reserve Name:</b>	Carrington Park
<b>Location:</b>	Worrigee
<b>Reserve No:</b>	CEN429
<b>Land Tenure</b>	Freehold
<b>Comm Land Type</b>	Community Land

### 1. PARKCARE GROUP GOALS

To maintain the visual integrity of the entranceways and infrastructure at Carrington Park Estate.

### 2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE

GROUP ACTION	PRIORITY	METHOD	TIMING
Remove graffiti, paint walls and posts as necessary	H	Painting, graffiti wipes & graffiti removal liquid	As required

### 3. PARKCARE GROUP ACTION PLAN MAP



### 4. PARKCARE GROUP WHS DOCUMENTS

Type of Activity	WHS Document Name
Graffiti removal	SDS sheets as required

### 5. COUNCIL SUPPORT

Paint and materials
Technical advise

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

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

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

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

**8. POSSIBLE FUTURE FUNDING**

Project	Funding source
Nil	

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

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

Name of document	Year it was produced	Produced by
Generic Plan of Management Parks	2001	Shoalhaven City Council
Graffiti Management Policy	2013	Shoalhaven City Council

**11. RECOMMENDED PLANTING SPECIES LIST**  
(NO VIEWS TO BE IMPACTED)

Name or type of plant	Maximum Height	Structural Role in the park vegetation	Number
N/A			

**12. SITE WEED LIST**

Common Name	Extent	Control method used by group
N/A		

**Parkcare Group Name** Carrington Park Estate Parkcare

**Coordinator Name** .....

**Signature** .....

**Date** ....



## GEORGE STREET PARK - BERRY PARKCARE ACTION PLAN

**Document Number:** D21/105384 • **Adopted:** Date • **Minute Number:** Minute number • **File:** 31955E • **Produced By:** City Services Group • **Review Date:** 30/10/2024

### CONTACT INFORMATION

<b>Group Name:</b>	George Street Park / Berry & District Garden Club Parkcare Group
<b>Contact:</b>	Keith Pepper
<b>Address:</b>	21 George Street, Berry
<b>Tel:</b>	0411 621 305
<b>Email:</b>	keithandlyn@tpg.com.au
<b>Reserve Name:</b>	George Street Park
<b>Location:</b>	Berry
<b>Reserve No:</b>	N/A
<b>Land Tenure</b>	RMS – Council Licence
<b>Comm Land Type</b>	N/A

### 1. PARKCARE GROUP GOALS

Supplement Council park maintenance by weeding, mulching, pruning and planting, including general maintenance of infrastructure.

### 2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE

GROUP ACTION	PRIORITY	METHOD	TIMING
Planting of appropriate plant species	M	By hand	Ongoing
Mulching of existing garden beds	M	By hand	Ongoing
General weeding of garden beds	H	Hand tools	Ongoing
Keeping park free of litter	H	By hand	Ongoing
Staining/painting tables & seats	M	By hand	As required

Maintenance of the man made swale for the intermittent water course	M	By hand	As required
Maintenance of the park storage shed and equipment	M	By hand	As required

### 3. PARKCARE GROUP ACTION PLAN MAP



### 4. PARKCARE GROUP WHS DOCUMENTS

Type of Activity	WHS Document Name	Document No.
Pruning shrubs	Tree removing & Pruning	SWMS1424
Litter pick up	Roadside Waste, Biological Waste & Park Litter Collection	SWMS1417
Weeding	Weed Control Activities	SWMS1408
Weed spraying	Herbicide Spraying	SWI29 (v2)
Painting & maintaining park furniture	Park Furnishings and Play Equipment Maintenance	SWMS1201



Manual handling, bending, planting. Lifting	Hazardous Manual Tasks	PRD18/117
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#### 5. COUNCIL SUPPORT

Technical advice and support
Materials and garden tools as required

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

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

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

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

#### 8. POSSIBLE FUTURE FUNDING

Project	Funding source
Nil	

#### 9. PLAN WILL BE REVIEWED

Due to the licence agreement between RMS and Council, this plan will be reviewed at time the licence being renewed of 30 October 2024.



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

Name of document	Year it was produced	Produced by
Licence - LD7910	2019	Transport – Roads & Maritime Services
Generic Plan of Management - Parks	2001	Shoalhaven City Council

**11. RECOMMENDED PLANTING SPECIES LIST  
(NO VIEWS TO BE IMPACTED)**

None at this time. Replacement as required.

**12. SITE WEED LIST**

Common Name	Extent	Control method used by group
Paspalum	M	By hand & spraying
Milk thistle	L	By hand
Flea bane	M	By hand & spraying
Onion weed	H	By hand & spraying
Fireweed	M	By hand & spraying
Flat spurge	M	By hand & spraying
Flick weed	M	By hand & spraying
Parramatta grass	M	Spraying
Paddys lucerne	L	By hand & spraying
Wandering trad	M	By hand
Clover	M	By hand & spraying
Farmers friend	L	By hand & spraying
Flatweed	L	By hand

NOTE: As part of the Urban Design and Landscape Plan for the Foxground and Berry Bypass project the Reserve land will be placed under the care and control of Council as Part 10 Division 2 Section 159 of the Roads Act 1993 No. 33. In the interim, Council has entered into a Licence Agreement with RMS which allows for work to be undertaken on the land by Council and relevant volunteer groups.

**Parkcare Group Name** George Street Park / Berry District Garden Club

**Coordinator Name** Keith Pepper

**Signature** .....

**Date** ....

**President Name** .....

**Signature** .....

**Date** ....



## GREENWELL POINT PARKCARE ACTION PLAN

Document Number: D21/117597 • Adopted: **Date** • Minute Number:  
**Minute number** • File: 35254E • Produced By: City Services Group • Review  
Date: **Review Date**

### CONTACT INFORMATION

<b>Group Name:</b>	Greenwell Point Parkcare Group
<b>Contact:</b>	Judith Cole
<b>Address:</b>	95 Adelaide Street, Greenwell Point
<b>Tel:</b>	4447 0796
<b>Email:</b>	heyjude@activ8.net.au
<b>Reserve Name:</b>	Greenwell Point Foreshore / Titania Park
<b>Location:</b>	Greenwell Point
<b>Reserve No:</b>	CGP255
<b>Land Tenure</b>	Freehold
<b>Comm Land Type</b>	Park

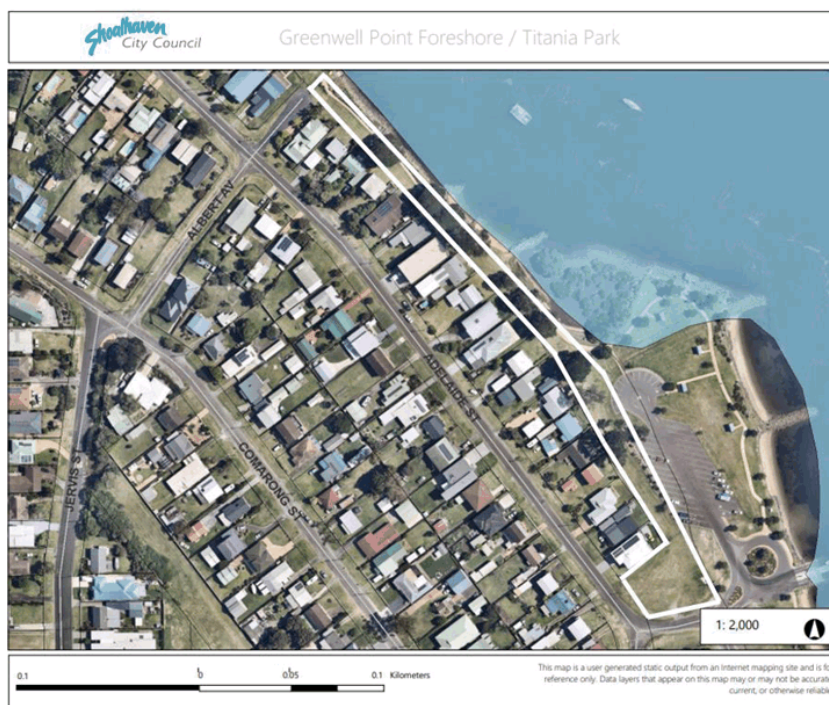
### 1. PARKCARE GROUP GOALS

To maintain garden beds in Greenwell Point Foreshore/Titania Park to supplement Council's maintenance programs.

### 2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE

GROUP ACTION	PRIORITY	METHOD	TIMING
Landscape maintenance	H	By hand	Ongoing
Trim pathway edge	H	Motorised edger	Ongoing
Planting trees ( replacement only as necessary)	H	By hand	As required
Litter pick up	H	By hand	As required

### 3. PARKCARE GROUP ACTION PLAN MAP



### 4. PARKCARE GROUP WHS DOCUMENTS

Type of Activity	WHS Document Name	Document No.
Weeding	Weed Control Activities	SWMS1408
Weed spraying	Herbicide Spraying	SWI29(v2)
Manual handling, bending, planting, lifting	Hazardous Manual Tasks	PRD18/117
Litter pick up	Roadside Waste, Biological Waste & Park Litter Collection	SWMS1417

### 5. COUNCIL SUPPORT

Provide materials and equipment

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

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

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

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

**8. POSSIBLE FUTURE FUNDING**

Project	Funding source
Nil	

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

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

Name of document	Year it was produced	Produced by
Plan of Management – Greenwell Pint Foreshore Reserve	2006	Shoalhaven City Council

**11. RECOMMENDED PLANTING SPECIES LIST**  
(NO VIEWS TO BE IMPACTED)

Name or type of plant	Maximum Height	Structural Role in the park vegetation	Number
Callistemon Little John Bottle Brush	1m	Attract native birds to the park	As required and approved
Lomandra	1m	To add to the amenity value of the park	As required and approved

**12. SITE WEED LIST**

Common Name	Extent	Control method used by group
Milk thistle	L	Remove by hand and spot herbicide
Kikuyi	L	Remove by hand and spot herbicide
Couch grass	L	Remove by hand and spot herbicide
Mouse eared chickweed	L	Remove by hand and spot herbicide

**Parkcare Group Name** Greenwell Point Parkcare Group

**Coordinator Name** Judith Cole

**Signature** .....

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

## **DE21.59 DS20/1397 – 408 Bunkers Hill Road, Barrengarry – Lot 144 DP 751262**

**DA. No:** DS20/1397/4

**HPERM Ref:** D21/131520

**Department:** Development Services

**Approver:** Phil Costello, Director - City Development

**Attachments:**

1. Assessment Report - S4.55 - 408 Bunkers Hill Rd BARRENGARRY - Lot 144 DP 751262 (under separate cover) [↗](#)
2. DRAFT - Determination - 408 Bunkers Hill Road, Barrengarry - Lot 144 DP 751262 (Por 144) (under separate cover) [↗](#)

**Description of Development:** S4.55(1A) – Modification to the design of the approved Animal Boarding and Training Establishment (equine education centre)

**Owner:** GC Scarf

**Applicant:** Allen Price & Scarratts Pty Ltd

**Notification Dates:** 21 January 2021 to 8 February 2021

**No. of Submissions:** Eleven (11) submissions in objection.

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

On 23 February 2021, the Development & Environment Committee resolved (MIN21.95) to call in DS20/1397 – 408 Bunkers Hill Road, Barrengarry due to the community interest.

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

That modification application DS20/1397 to modify the design of the approved animal boarding and training establishment (equine education centre) at Lot 144 DP 751262, 408 Bunkers Hill Road, Barrengarry be approved subject to the recommended conditions of consent contained in **Attachment 2** of this report.

### **Options**

1. Approve the modification application in accordance with the recommendation of this report.

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

Note that in some instances there may be 3<sup>rd</sup> party appeal rights.

2. Refuse the application.

Implications: Council would need to determine the grounds on which the application is refused, having regard to sections 4.55(1A) and 4.15(1) considerations.

Noting the applicant has an existing approval which they can act upon and have the ability to revert the existing partially constructed building back to the approved layout.

DE21.59



3. Alternative recommendation.

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



Figure 1 – Location Map indicating the location of the subject building in red.

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## Background

### Approved Development

On 14 November 2017, Council granted Development Consent No. DA17/1157 under delegated authority for an *Animal Boarding and Training Establishment (equine education centre)* and the temporary use of the building as a *Function Centre* on the subject site.

The approval included the construction of a rural shed and its use as an Equine Education Centre. As indicated by the applicant, a small herd of Shire horses are to be utilised in the proposed use, skilled trainers and animal welfare specialists will provide tuition concerning the training and husbandry of horses. Practical classes are to be held in the 'round yards' on the property, with programs running for between 2 to 5 days either during the week or on the weekend. This use is considered to be the primary purpose of the development. It is noted that the Equine Education Program approved with Development Consent No. DA17/1157 under Condition 1 is not impacted by this proposal.

Approval was also granted for temporary use of the facility as a function centre under clause 2.8 of SLEP 2014. The objective of this clause is to permit the temporary use of land where the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land. The permissibility of the temporary use was assessed under the original approval as being secondary in nature, and on completion of each function, the building will revert to its primary use. The operating restrictions on the



temporary use of the building include a limitation to 26 days in any period of 12 months and for a maximum capacity of 120 guests, for a period of three (3) years commencing from the issue of an Occupation Certificate (as amended by DS19/1196).

Further, the use of the site as a function centre relies on the continuing operations of the 'animal boarding or training establishment'. The existing conditions of consent, which are not proposed to be modified, control how this will occur. In particular, Condition 5 states:

5. *Should the use of the building for the purpose of an Animal Boarding and Training Establishment cease to operate, then the temporary use of the building as a Function Centre must also cease.*

It is noted the site has four (4) approved tourist cabins under Development Consent No. DA14/1117 on the subject land. The site also has a managers residence, 'Silos' which is a former piggery, part of which has been converted into a three-bedroom residence.

### Proposed Development

#### *a) Proposed modification*

The subject Section 4.55 application proposes to modify the approved Equine Education Centre (rural shed) with regard to the layout and design of the approved building. Minor changes are also proposed to the approved stormwater plans, car parking arrangement and access driveway.

No other modifications to the consent are proposed in relation to the operations or primary or secondary uses of the premises including the functioning of the equine centre, the approved function centre operations including number of guests, number of days the approved temporary use can operate.

The applicant's submitted cover letter (D20/387819, dated 24 August 2020) outlines the proposed amendments to the building as follows:

- a) *"Removal of the elevated raised floor area of the building and an increase in excavation to lower the building in the landscape thereby further reducing the visual impact of the development.*
- b) *Removal of louvres on the western façade diminishing any acoustic impacts the building might have had on Bunkers Hill Road.*
- c) *Closing off the majority of the northern façade thereby reducing any impacts, acoustic or otherwise on the neighbouring property that is in different ownership.*
- d) *Relocation of the bathroom to the north western corner thereby separating it from the catering area and facilitating the location of the stables to a central location on the western side of the building. This layout increases the flexibility of the open area which will now be uninterrupted by stables and ancillary accommodation areas.*
- e) *The focus of the building will now be to the east where it will overlook land in the ownership of the developer.*
- f) *The number of openings in the external façade of the building will be reduced – the increased insulation inherent in this change will improve the acoustic qualities of the completed building.*
- g) *The construction standard of the building will now be BAL29 – increasing the safety of the building in regard to managing the risk of bushfire.*
- h) *To modify Condition 1 of the development consent to reference updated plans submitted with this application, as follows:"*

STAMPED DOCUMENTS / PLANS	REF / SHEET NO.	PREPARED BY	DATED
<b>Landscape Site Plan</b>	DA 01 Rev B	Grove Architects Realm Studios	19/10/2017 08/05/2020
<b>Sections</b>		Realm Studios	08/05/2020
Floor Plan	DA 02, Rev C DA 10 Rev A	Grove Architects	18/10/2017 06/07/2020
<b>Roof Plan</b>	DA11	Grove Architects	06/07/2020
Long Elevations	DA 03, Rev B DA12	Grove Architects	19/10/2017 06/07/2020
Short Elevations & Section	DA04 DA13	Grove Architects	30/01/2017 06/07/2020

Numerically and materially, the proposed changes to the approved building are as follows:

<b>Building:</b>	<b>Approved (DA17/1157)</b>	<b>Proposed modification (DS20/1397)</b>
GFA	340sqm (approx.)	463sqm (approx.)
Roof area	520sqm (approx.)	666sqm (approx.)
Maximum Height	8.525m (approx.)	7.1m
Building width	14.85m	15.5m
Building length	33.9m	36m
Façade materials	Vertical hardwood cladding with tree trunk columns	Vertical and horizontal timber cladding
Roof materials	Recycled corrugated iron	Corrugated roof
Gable ends	One Bay open entry canopy with truss exposed. Ampelite panel infill back at wall line.	Fixed toughened glass set into minimal aluminium channel
Car parking spaces	30	34

*b) Prospective use of existing works*

The building subject to this application is already partially constructed contrary to the approved plans under DA17/1157. Accordingly, the subject Section 4.55 application is seeking to modify the existing consent to reflect the building plans as already partially constructed, for the prospective use of these works already undertaken, as well as future works to complete the construction.

Decisions in the Land and Environment Court have consistently held that the provisions of Section 4.55 (previously Section 96) can be used to modify a development consent where the works subject to the modification have already been carried out (*Windy Dropdown Pty Ltd v Warringah Council* [2000] NSWLEC 240 and *Willoughby City Council v Dasco Design and Construction Pty Ltd and Another* [2000] 111 LGERA 422).

These two cases considered the power of Section 4.55 to approve development that has already been carried out, concluding that it can be used, and subsequently the development can be considered on its merits. In effect the modification of the consent is prospective in operation, despite the fact the works have already been carried out. Consequently, for the purpose of this application, the power under Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) to modify an approved development is capable of being used to approve the development works, even in the case where the relevant works have already been carried out. With that power established, the application can then be considered on its merits. The attached Section 4.15 Assessment Report (Attachment 1) provides that detailed merit assessment and concludes the proposal is worthy of support.

The applicant has submitted a Building Information Certificate for the existing unauthorised works which is pending.

*c) Reason for proposed modification*

The cover letter indicates that the applicant's clients in conjunction with their architect have decided to make these amendments in order to improve the efficiency and functionality of the development.

Further to this, the applicant has provided the following justification for the proposed amendments in their letter dated 23 December 2020 (D21/12505):

- *"The approved design contains a 'corridor' type area albeit 4m wide that is wasted space and could only function as access to the main open area of the building. It also provided minimal privacy to the bathroom area and obstructed the outlook to the eastern views.*
- *The redesign locates all the ancillary services to one side and faces the main area east downhill away from neighbouring properties and towards the predominant view which as noted above is in the ownership of the applicant.*
- *The comparison between the approved building and the modified proposal demonstrates that the latter provides a more efficient open space that offers a much more flexible floor plan with a superior outlook.*
- *The modification provides a better solution for acoustics in particular in protecting the neighbouring properties and Bunkers Hill Road which is outlined in the acoustic report that accompanies this submission.*
- *The moderate increase in building length allows us the flexibility to provide a wet weather solution for the practical demonstrations of the equine program and a more versatile layout for (secondary) temporary use functions.*
- *As per the 'WTV Letter' and 'WTV Layout' from White Top Venues, the moderate increase in building width is crucial for 3 rows of tables to comply with staff safety standards.*
- *The proposed modification is far more sympathetic to the recent restrictions imposed by NSW government in response to social distancing as a result of Covid-19.*
- *Regarding the increased size of the bathroom, we have not increased the number of toilet cubicles, urinals, or basins. The new design allows for more privacy to the main area, is more efficient for queuing and promotes social distancing.*
- *Regarding the "reduced door dimension" – there is no intent in any changes, other than replacing the 'sun tuff' ampelite panel material with 8mm thick toughened glass to comply with BAL 29. The large sliding doors similar to the approved plans are still a feature. "*
- *The glazing of both Gables consists of 10mm toughened glass with aluminium frames to comply with BAL 29. The development approval included the installation of 'suntuff' ampelite panels. The proposed change involves considerable additional expense but will provide superior acoustics, aesthetics, and bushfire protection.*
- *Overall, the focus of the building has changed from north to east where the building overlooks land in the ownership of the developer.*
- *Council has correctly noted that there is no intent to increase the maximum number of guests allowed to attend the property so there will be no net increase in impacts associated with the modified development."*

The applicant has confirmed that the modified proposal will not compromise the intent of the initial approval for the development primarily as an 'animal boarding or training

*establishment* and secondary as a temporary *'function centre'*. Specifically, per the requirements of clause 2.8 of *Shoalhaven Local Environmental Plan 2014* (SLEP 2014), the temporary use of land must not prejudice the subsequent carrying out of development on the land in accordance with the provisions of SLEP 2014 or any other environmental planning instrument. This is not affected by the proposed modification.

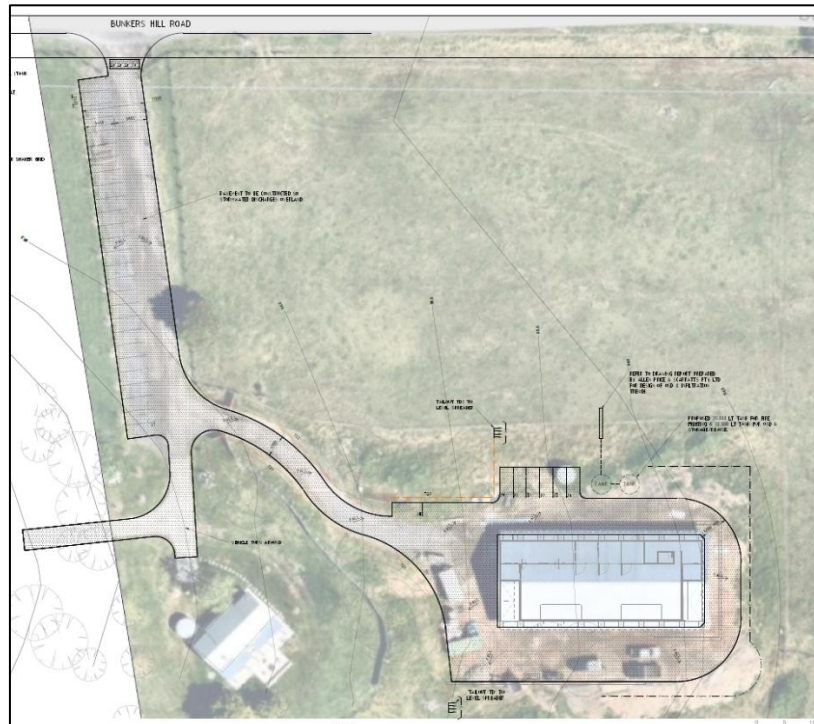
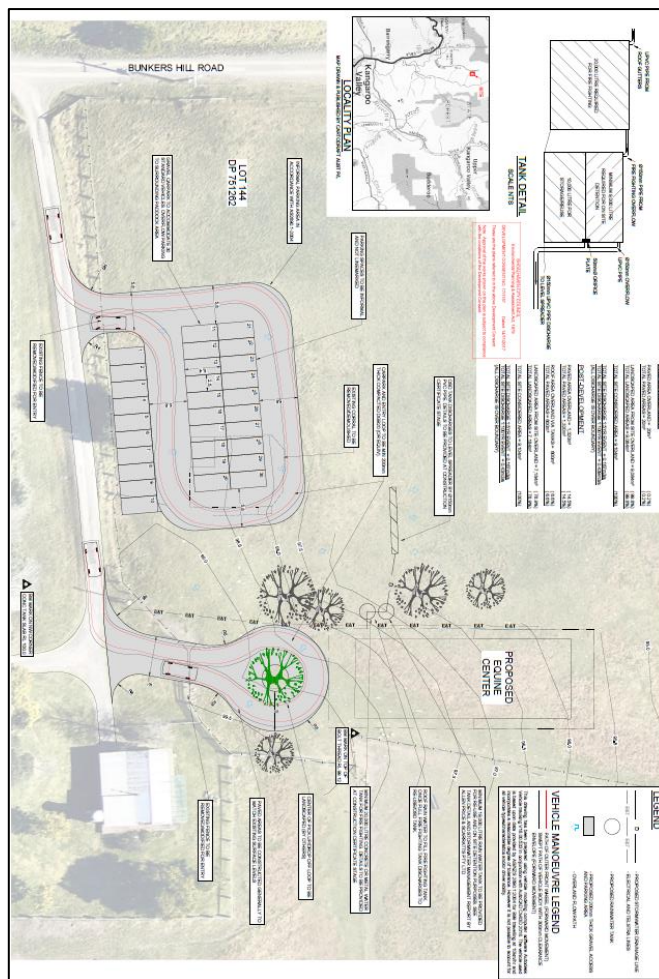


Figure 2 – Proposed Stormwater Plan  
(Westlake Punnet Dwg No. 20568-002, dated 30/10/2020)

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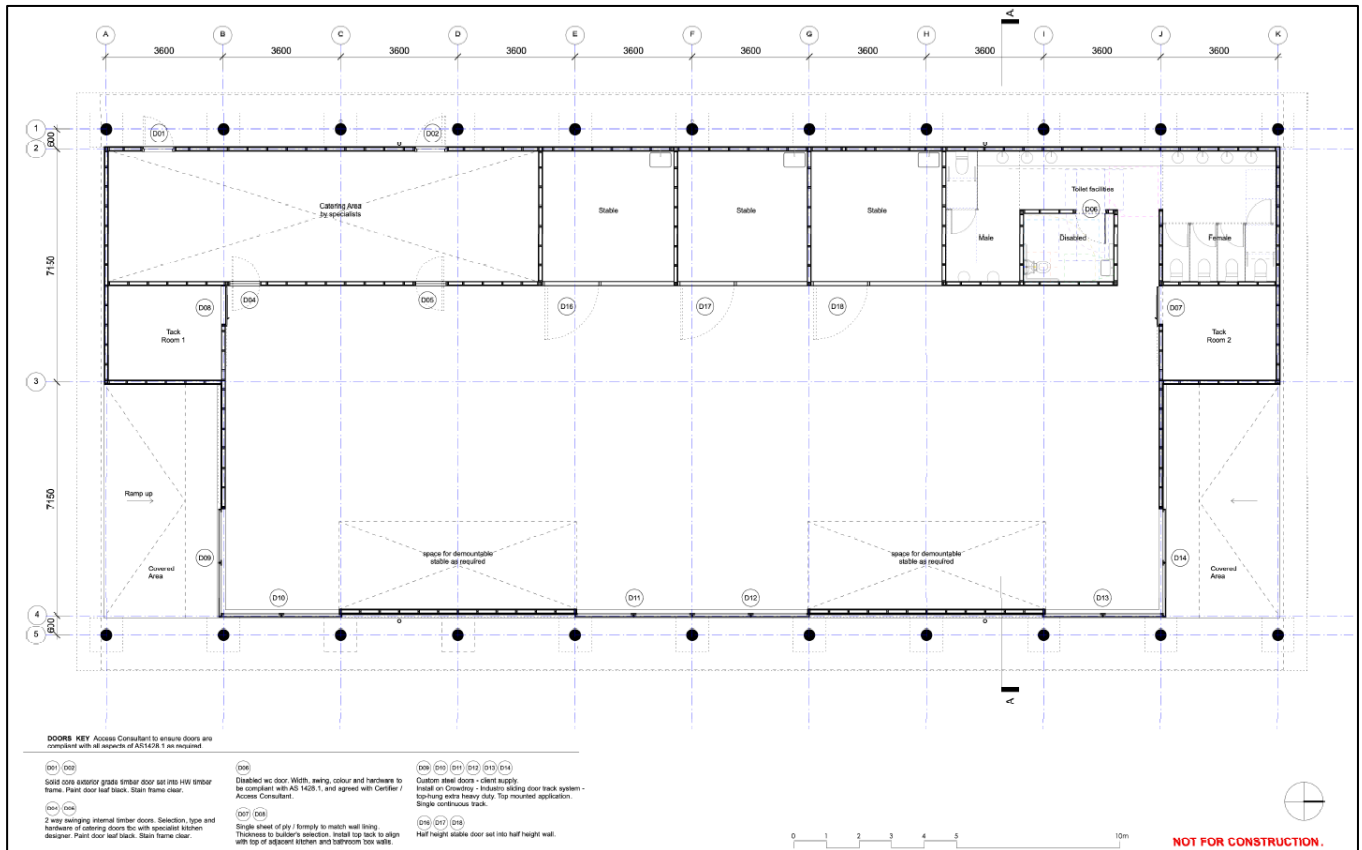


Figure 4 – Proposed Floor Plan  
(Grove Architects Dwg No. DA10, Rev A, dated July 2020)

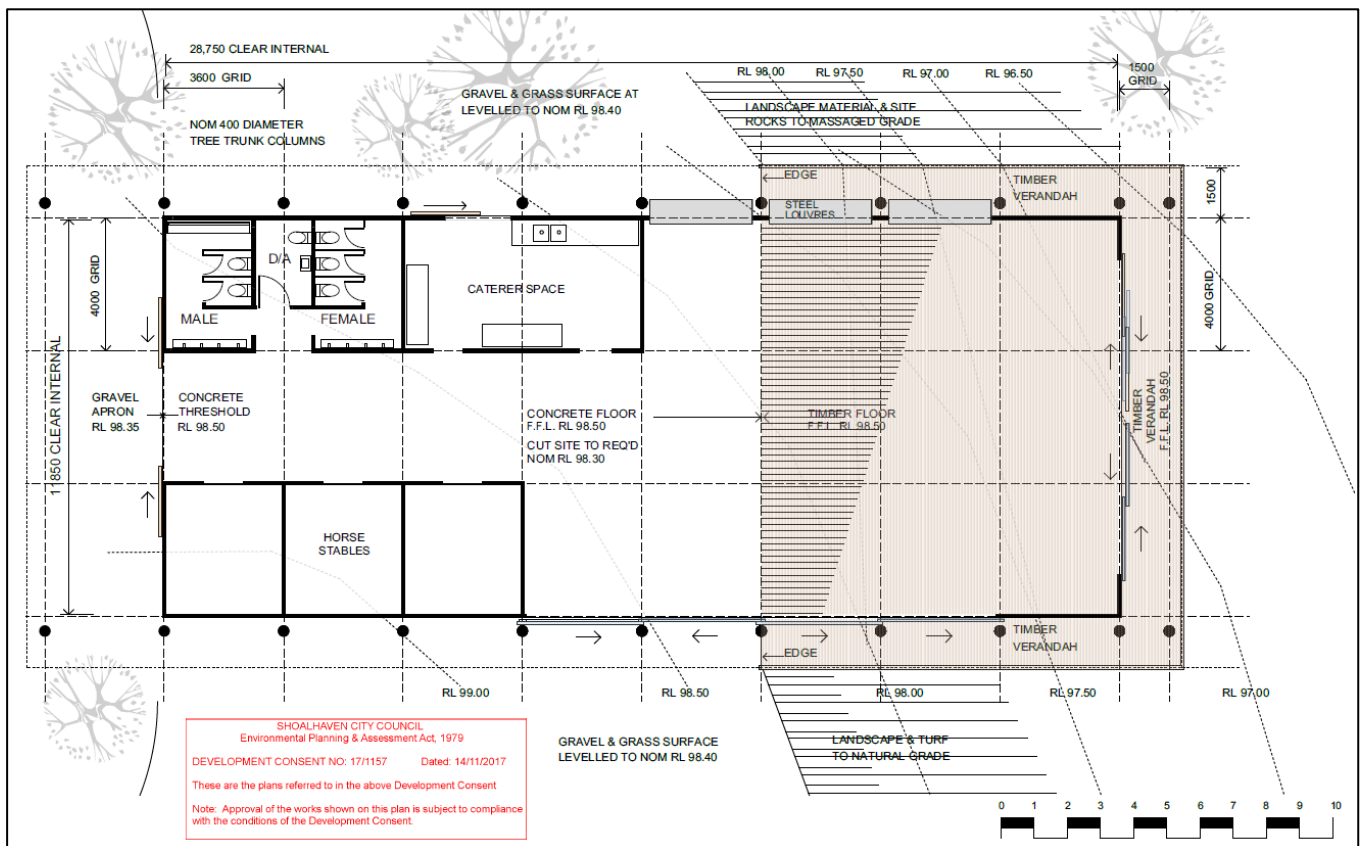


Figure 5 – Approved Floor Plan  
(Grove Architects Dwg No. DA02, Rev C, dated 18.10.17)



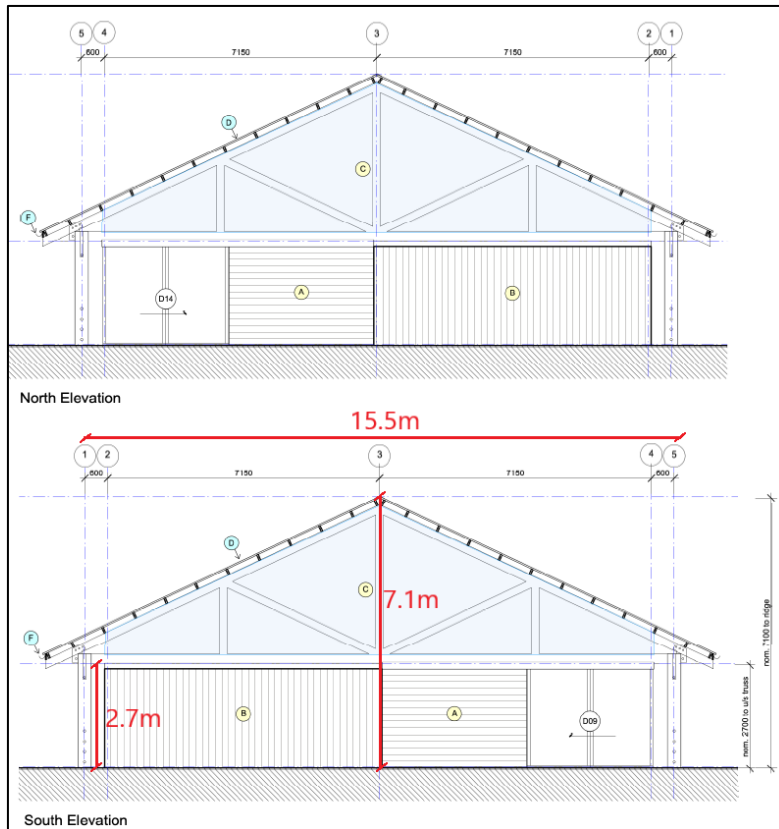


Figure 6 – Proposed North and South Elevations  
(Grove Architects Dwg No. DA13, Rev 4, dated July 2020)

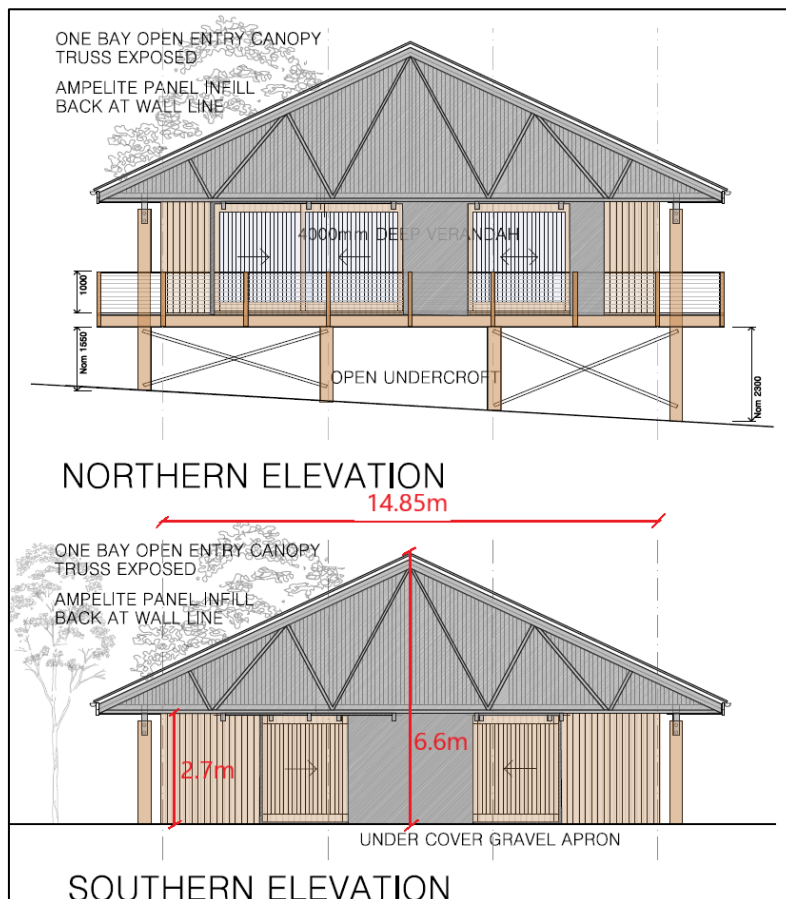


Figure 7 – Approved North and South Elevations  
(Grove Architects Dwg No. DA04, Rev first issue, dated Jan 2017)

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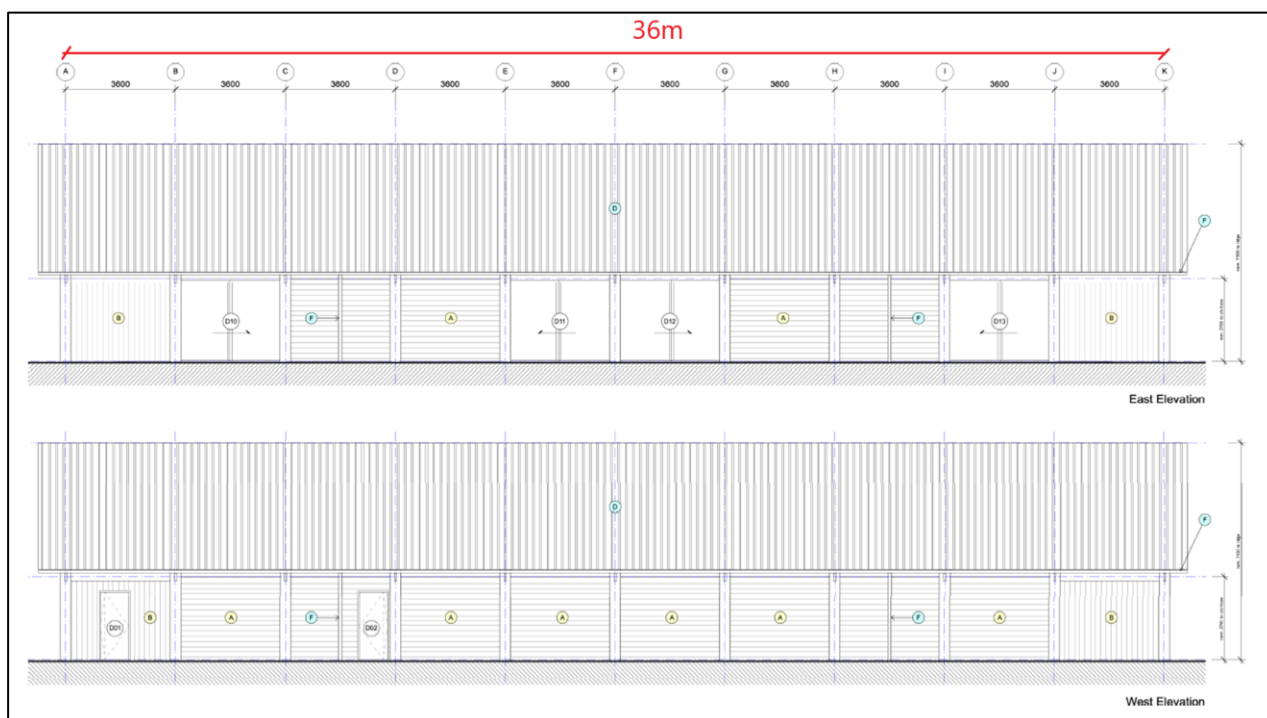


Figure 8 – Proposed East and West Elevations  
(Grove Architects Dwg No. DA12, Rev A, dated July 2020)

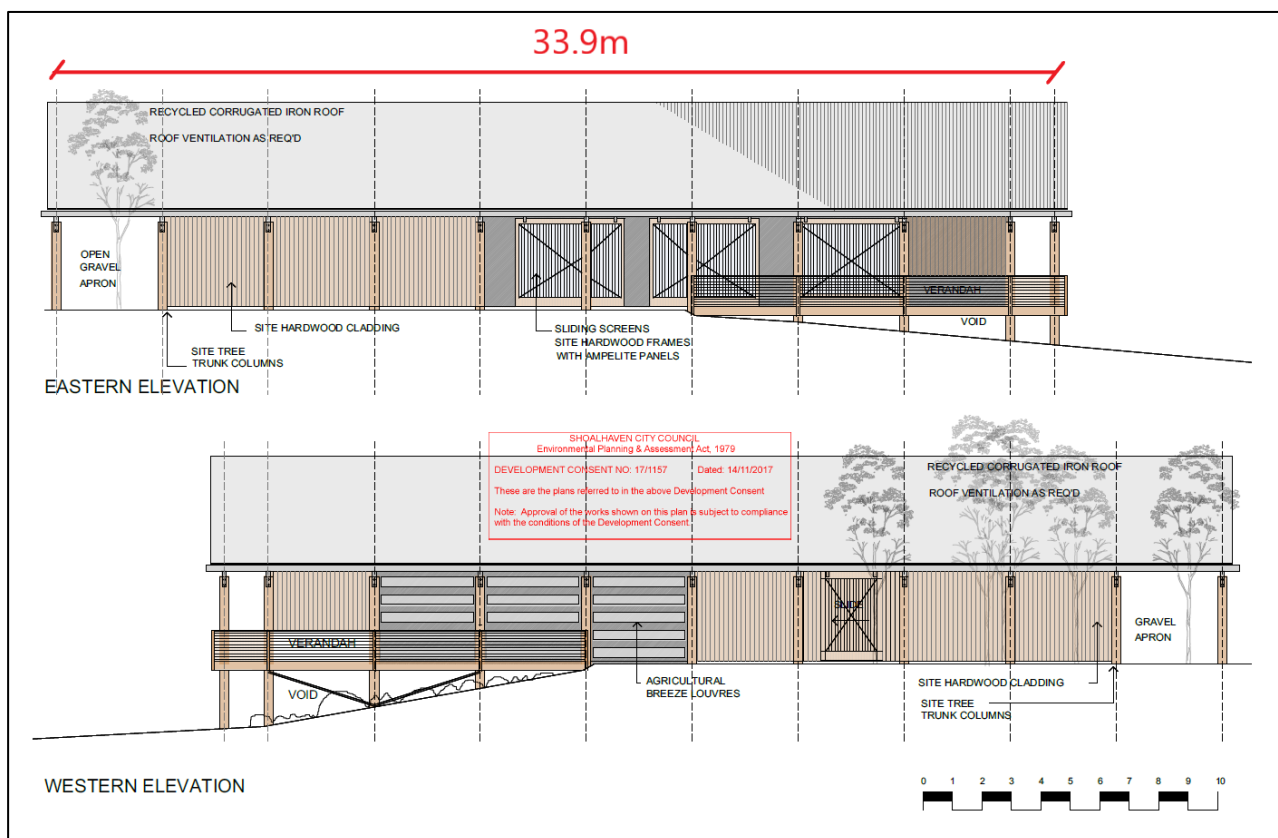


Figure 9 – Approved East and West Elevations  
(Grove Architects Dwg No. DA03, Rev B, dated 19.10.17)

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### Subject Land

The development site comprises Lot 144 DP 751262 (408 Bunkers Hill Road, Barrengarry). Refer to Figure 1.

### Site & Context

The development site:

- Contains the partially completed equine education centre the subject of this application (Figure 11) and tourist facility.
- Is largely cleared, however, there is remnant vegetation in the southern portion. It is surrounded by large rural properties which are heavily vegetated.
- Is zoned RU1 Primary Production under the *Shoalhaven Local Environmental Plan 2014* (SLEP 2014) and is 25.19ha in area.
- Is identified as being wholly bush fire prone land and of aboriginal cultural heritage significance. It is located within the Sydney drinking water catchment.
- Utilises existing access from Bunkers Hill Road.
- Adjoins land zoned RU1 Primary Production (to the north, east and south) and E2 Environmental Conservation (to the west).

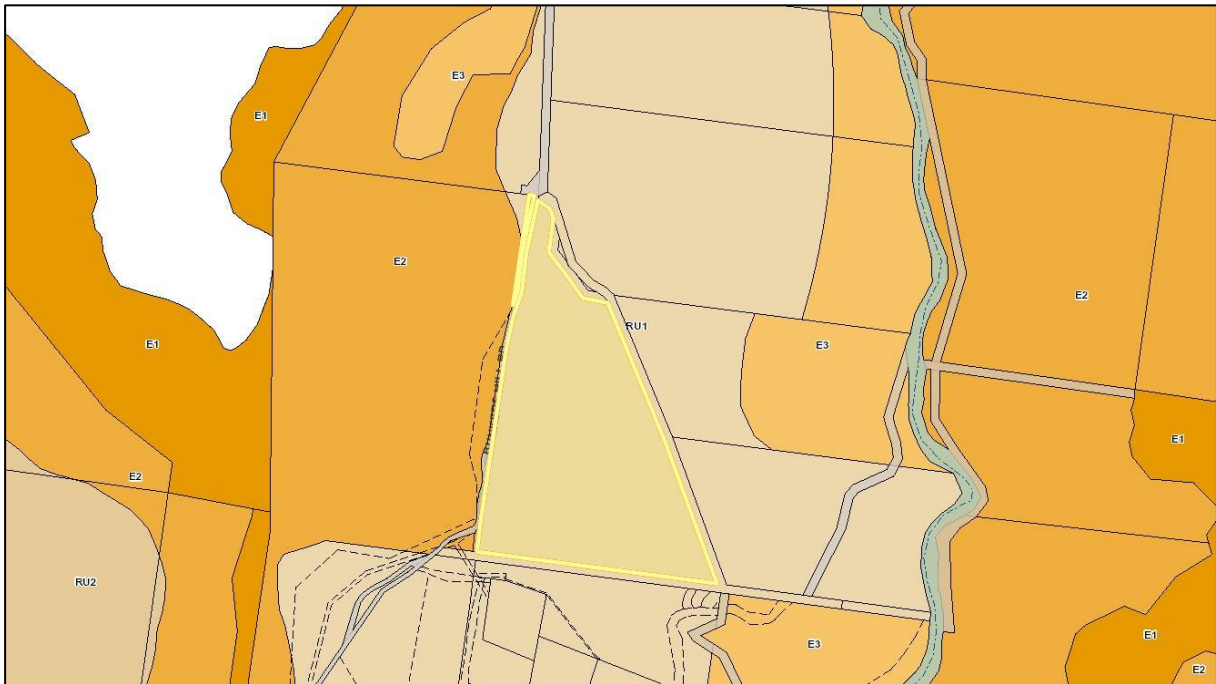


Figure 10 – Zoning Extract



Figure 11 – Photograph of partially completed equine education centre.

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### History

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

- On 14 November 2017, Council granted Development Consent No. DA17/1157 for development described as *Animal Boarding and Training Establishment (equine education centre) and the temporary use of the building as a Function Centre* on the subject site. This consent approved the following:
  - Construction of a rural shed for use as an Equine Education Centre.
  - Use of a small herd of Shire horses by skilled trainers and animal welfare specialists for tuition concerning the training and husbandry of horses.
  - Practical classes to be held in the 'round yards' on the property, with programs to run for 2-3 days either during the week or on the weekend.
  - Use of the facility as a temporary function centre for events including (not limited to) weddings and events in conjunction with the Equine Education Centre. The operating restrictions on the temporary use of the building include a limitation to 26 days in any period of 12 months and for a maximum capacity of 120 guests.

With regard to the approval for a function centre, it is noted that the consent does not limit the types of functions or events able to be undertaken at the site. Accordingly, any events, functions, conferences and the like that meets the definition of 'function centre' and is able to operate within the conditions of consent, may occur at the venue. The following provides the definition of 'function centre' under SLEP 2014:

**function centre** means a building or place used for the holding of events, functions, conferences, and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

- On 19 August 2019, Council granted modified Development Consent No. DS19/1196 in relation to Development Consent No. DA17/1157 under delegated authority. The

modification related to a request to extend the limited consent condition (Condition No. 4).

Condition 4 of Development Consent No. DA17/1157 was modified to permit the temporary use of the building as a function centre for a period of three (3) years as measured from the issue of an Occupation Certificate rather than the determination date of the consent, being 14 November 2017. It is noted that this only modified the commencement date of the temporary use of the building. It is further noted that an Occupation Certificate is yet to be issued.

- On 28 August 2020, the applicant lodged the current modification application with Council.
- As a result of detailed assessment of the application, additional information was requested from the applicant on two (2) occasions – 4 September 2020 and 3 December 2020, relating to:
  - Consistency in documentation.
  - Written justification for the proposed design changes and how this will work, satisfying the existing consent for an animal boarding and training establishment (equine education centre) and temporary use of the building as a function centre (for weddings and the like).
  - Revised acoustic report addressing the proposed changes to the building layout, as the design of the building directly impacts the acoustic attenuation onsite. The nearest sensitive receivers must include all neighbours within a 700m radius.
  - Revised plans with further detail in relation to the proposed catering area, including:
    - Cooking station/equipment layout with mechanical exhaust ventilation/extraction system;
    - Floor, wall and ceiling materials;
    - Refrigeration provisions;
    - Equipment and hand washing facilities;
    - Vermin proofing and the exclusion of pests, such as flies, rodents. Particular attention is to be paid to the two (2) doorways into this area;
    - Ability to exclude dust and dirt from entering the kitchen, during and after stable maintenance. Again, particular attention is to be paid to the two (2) doorways into this area.
  - Consideration of drinking/potable water treatment requirements in accordance with the NSW Health Quality Assurance Program.
- On 7 September 2020, 2 November 2020, 23 December 2020, 29 January 2021 and 25 February 2021, the applicant submitted the required additional information, which was subsequently referred to the relevant sections of Council for comment.
- The application was notified as per the original development application in accordance with Council's Community Consultation Policy from 21 January 2021 to 8 February 2021. In response eleven (11) submissions by way of objection were received.

It is noted that the application has been submitted with letters of support from businesses and a neighbour of the site in relation to the development, however none were received in response to the notification of the subject application.

A Building Information Certificate has been submitted to Council for the existing unauthorised works which is currently pending.

## Issues

### Concerns raised in public submissions.

Submissions from eleven (11) objectors were received by Council. These relate to both matters of concern with the existing approval and use, and with regard to the proposed modification.

One (1) submission provided includes legal advice prepared in addressing the issues raised in the neighbour's objection. The matters addressed in the legal advice are considered in the assessment of submissions below.

#### *(a) Submissions relating to the existing approval or generally in relation to the use.*

Submissions raised the following concerns:

- Impacts on the rural character of the area.
- Characterisation of the development and use for functions, not weddings and the need for conditions of consent to reflect this.
- Time limitation on the consent – a 12-month trial should be imposed.
- The need for visual screening of the development to surrounding properties.
- Safety of the road accessing the site, including:
  - o Wildlife.
  - o The need for a minibus to transport patrons.
  - o The need for upgrades to bridge(s) on the access road.
  - o Risk to pedestrians on Bunkers Hill Road from increased traffic.
- Inaccurate description of the development under the original application and notification procedures.
- Risk of bush fires and safety of patrons.
- Concerns of increased traffic to the site and potential degradation of Bunkers Hill Road.
- Impacts of flooding on the access road and the risk this could leave patrons stranded.
- Lack of consistency in the assessment of past similar applications which have been refused, while the DA for this site was approved despite having similar issues.
- Suggestion that Council implement a policy/DCP with regard to rural functions.
- Conditions should be imposed in response to this modification application to further limit the existing use in relation to examples (such as); fireworks; reduced hours of operation to original approval; no amplified music with doors open; additional acoustic treatment to the façade of the building; limiting functions to once a month; policy with regard to compliance and implementing a trial period.

### Assessment:

The matters raised in these objections relate to the existing approval which is not proposed to be modified with the exception of the building design, stormwater, and parking. The ability for temporary functions to be undertaken at the site, the frequency, number of patrons, access and conditions relating to Bunkers Hill Road, consideration of flooding, bush fire and characterisation of the use are all matters that were assessed under the original approval and are not proposed or able to be modified as a result of this subject application. Council is limited to only amend existing conditions or impose new conditions that relate to the specific subject-matter and nature of the modification sought.

Further to this, the existing consent is a valid consent, with any appeal or review period having lapsed. *Swadling v Sutherland Shire Council* (1994) 82 LGERA 431 established that a consent is valid until it is declared invalid by an order of the Court. Accordingly, despite any proposed modifications sought under this application, the existing consent remains valid and operative, and the conditions and uses approved under that consent remain even if this application is refused.



In relation to bush fire and road flood risks, these were assessed under the original application under which NSW Rural Fire Service and Council's engineers issued their approval. Accordingly, the question of whether the use should exist at the site for bush fire or flooding reasons, is not a matter that can be amended under this application. With regard to the fire safety of the proposed building as modified, General Terms of Approval and a Bush Fire Safety Authority were issued by NSW Rural Fire Service (dated 18/12/2020).

Concerning road safety and upgrades, the original development application did not consider the upgrading of Bunkers Hill Road was warranted. No intensification of the approved use is proposed under this application, and Council's Development Engineer is satisfied that the proposed modification, including an increase in four (4) car parking spaces, does not trigger the need for upgrading of Bunkers Hill Road nor a minibus to transport guests to and from the venue.

With this in mind, the above-mentioned submissions are noted, however Council is limited in its ability to amend or assess these matters as they are beyond the scope of the subject-matter of the Section 4.55 modifications under assessment.

Separate to this application, and in discussion with Council, the owner has offered to install a minimum of two (2) additional passing bays as works in kind to ensure Bunkers Hill Road is safer for residents and tourists. This can be undertaken outside of the DA/modification process.

*(b) Submissions relating to the proposed modification.*

Submissions raised the following concerns with regard to the proposed modifications which are further addressed below:

- i. Change to the characterisation of the use and reason for increase in the size of the building.
- ii. Dominance of wedding functions at the site as opposed to equine centre use.
- iii. Consideration of breaches of the development consent or advertisement of the premises contrary to the development consent in the assessment of the subject Section 4.55 application.
- iv. Concern that the building is already constructed.
- v. Validity of the consent - the proposed modification relates to a consent which is unlawful and therefore should not be able to be modified.
- vi. Minimal environmental impact – assessment under Section 4.55(1A).
- vii. Substantially the same – assessment under Section 4.55(1A).
- viii. Impacts on amenity, clause 2.8 of SLEP 2014 and a requirement to have 'no adverse impact' with regard to acoustic, noise and dust impacts.
- ix. Health and safety concerns.
- x. Lack of Neighbour Notification.

These are further addressed in detail below:

i. Change to the characterisation of the use and reason for increase in the size of the building.

Submissions raise the following concerns:

- *The current proposal is significantly different from the original approval as demonstrated by anomalies between the approved statement of environmental effects and the proposed modifications.*
- *The focus now appears to be primarily a wedding and function venue and not an animal boarding and training facility operating out of a farm machinery shed.*
- *The building shown in the modification application plans is plainly purpose-built as a 'function centre' and not an equine boarding and training facility for Shire horses as per the consent. The suggestion that the function centre use is "temporary" is not supported.*
- *Is the use for which development consent was granted permissible in the zone?*

Assessment:

The application proposes to modify the consent relating to amendments to the layout and design of the approved building, stormwater, and parking areas only. There is no change proposed to the approved use of the development proposed as part of this application.

- *Animal boarding or training establishment*

The development remains best characterised as an ‘animal boarding or training establishment’ (definition outlined below) under SLEP 2014 as approved under the original application, and which is not sought for amendment under this application. The proposal is permitted within the zone with the consent of Council.

*“animal boarding or training establishment means a building or place used for the breeding, boarding, training, keeping, or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital.”*

The Equine Education Program approved with Development Consent No. DA17/1157 is not impacted by this proposal.

The submission to Council that includes the supporting legal advice questions the approved definition of the “animal boarding or training establishment” use based upon the advertising material that has been obtained on the internet for the premises. The consideration of this material in the assessment of the application is further addressed below, however it is noted that the approved use is not proposed to be modified under this application.

The applicant has also provided supporting information explaining the operation of the development, including a letter from Scott Brodie, Facilitator, Thoroughbred and Veterans Welfare Alliance who is involved in equine activities at Barrengarry (D21/98533). The program outlines that 7 x 2 hour sessions are provided over 5 days, Monday to Friday. This includes the following training/activities:

- Hoof trimming, shoeing, and hoof care demonstrations in free time.
- Introduction to your horse and to equipment identifying basic horse anatomy.
- How does a horse tick - the horses mind and how the horse relates to man?
- Group Behaviour - The similarity between group behaviour in humans and horses.
- Join up in practice (essentially a trust exercise between the trainer and horse). Apply and relieve pressure. Target work. Positive re-enforcement.
- Consolidate join up. Lunge in halter, voice aids.
- Introduction to work in hand.
- Consolidate work in hand. Principals of classical horsemanship.
- Practical application classical principals.
- Introduction to lunging in side reigns. Problem solving.

The activity of breeding and training Shire horses on the development site is well-established having been undertaken by the owner for a number of years.

The information provided in support of the proposed activity and structure is thorough and gives Council a degree of certainty regarding its bona fide nature.

- *Function centre*

No change is sought to change the current uses approved under the existing consent which approves the utilisation of the facility for weddings and the like. This use would be best defined as a ‘function centre’ under SLEP 2014 as follows:

*“function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.”*

It is acknowledged that within the RU1 Primary Production zone this use is prohibited. However, approval was granted as part of Development Consent DA17/1157 via the 'temporary use of land' provisions of clause 2.8, SLEP 2014. The objective of this clause is to permit the temporary use of land where the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land. The matters for consideration under clause 2.8 have been considered as part of the assessment of this application in so far as the proposed modifications relate to this clause. However, it is noted that development consent has already been granted for this temporary use which is not proposed to be changed by this application.

The applicant has provided Council with a letter (D21/12516, dated 8 December 2020) from the owners/managers of the development site, explaining the purpose of this application. They state:

*"...Having an architectural designed permanent structure to host our equine events and occasional use functions will be a huge benefit not only to us but also to the neighbouring accommodation providers and local businesses.*

*We have employed White Top Venues who are a professional event coordinator and are very experienced in the Shoalhaven Region. White Top advised us of the best design layout possible while having regard to the recent implications of COVID-19. We will also require additional full-time employees to assist in the running of our Equine Centre.*

*We have a passion for horses, and The Equine Program is our primary initiative. We will however rely on funds derived from the temporary use functions to subsidise the work we do with the likes of the Returned Soldiers League, The Rural Fire Service, and various other organisations. We have partnered with the right people who are not only professionals in their respective fields, but who are accountable to ensure the smooth running of all events.*

*Barranca currently supports 35 local Shoalhaven businesses all of which have suffered significantly because of bushfires and COVID. Once Archies is open we will be supporting these businesses and will need support from many others to ensure the successful running of our family business."*

Council is satisfied that the proposed modifications are for the purpose of the equine centre component of the approval as a dominant primary use, with functions a secondary temporary use. While the proposed physical layout of the building may more comfortably accommodate functions, the plans clearly show stables, tack rooms and space for demountable stables as required. Supporting information by the applicant has also be considered. The submissions raise that the stables would be used as a bar, evidenced by photomontages obtained online. Further assessment of the consideration of this information in the DA assessment process is discussed further below.

ii. Dominance of wedding functions at the site as opposed to equine centre use.

Submissions raise the following concerns:

- *It would appear that the requested "Occasional Use of Land for Functions associated with Primary Use' has morphed into a very regular use of the building 26pa (52pa requested) where the applicants "rely on funds derived from the temporary use functions to subsidise the work we do". It would appear that the function centre has become the dominant use of the subject land.*
- *Why did Council ratify the fundamental change of the function centre land use from an ancillary 'occasional' use to the dominant use, as proposed in DS19/1196?*
- *Given that Council was aware of the outcome of the LEC Marshall 2015 case in October 2018, on what legal basis was approval given to an extension of the temporary use of land for a prohibited function centre (DS19/1196), in spite of receiving objections referring to the Marshall case?*

- *It is considered that the building cannot practically be converted from the primary use to the temporary use.*

Assessment:

The temporary use of the building as a function centre is restricted to 26 days in any period of 12 months under the existing Development Consent which is not proposed to be amended by this modification.

It is noted that the provisions of clause 2.8(2), SLEP 2014 allow development consent to be granted for “*development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months*”. The existing conditions of consent reflect this requirement.

Although the applicant sought to increase the number of days from 26 to 52 days as part of modification application DS19/1196, this request was not pursued, and the number of days remains restricted to 26.

Modification Application No. DS19/1196 only approved modification to the wording of Condition 4 of the consent to read:

*“The temporary use of the building as a Function Centre is limited for a period of three years **as measured from the issue of an Occupation Certificate.**”*

This modified the commencement date of the temporary use of the building as a function centre from the date of determination of Development Consent DA17/1157 to the issue of an Occupation Certificate.

In short, the time commences when the construction etc. is complete as opposed to the issue of the consent, when the development cannot be used. The reason for this is to allow for a “*...reasonable time to become established....*” (as stated by the applicant).

This was not considered an extension of the temporary use of land as the approval remains for three (3) years from the Occupation Certificate (i.e., when use of the development is to commence), meaning the operation is limited to three years.

Again, it is noted that development consent was already granted for this temporary use following consideration of the provisions of clause 2.8, SLEP 2014 under the original consent. Accordingly, Council has not approved any change of the function centre land use from an ancillary ‘occasional’ use to dominant use as implied.

Council considers that the building can be converted from the primary use to allow for the temporary use. This is a matter that was considered as part of the assessment of DA17/1157, as required under clause 2.8.

- iii. Consideration of breaches of the development consent or advertisement of the premises contrary to the development consent in the assessment of the subject Section 4.55 application.

Submissions raise the following concerns:

- *How is the Council to consider the clear breaches of the development consent when determining the modification application?*
- *The venue has advertised online with plans showing a different layout to that sought under the application, and third-party sites have advertised for more than the approved number of patrons for weddings.*
- *The advertising material by the venue suggests that wedding functions are a dominant use, not a secondary use.*
- *The premises’ website for the proposed ‘equine’ activities does not include riding lessons which would be essential to the characterisation of the approved use.*

Assessment:

*Jonah Pty Limited v Pittwater Council* [2006] NSWLEC 99 related to the modification of a Court-granted development consent for a restaurant. The restaurant had a history of operating in breach of the conditions of consent and Council contended the application to modify the application with regard to the proposed layout should be refused stating:

*“The past non-compliance may be a predictor of future non-compliance. If the current owner/operator of the restaurant facility has not felt “hamstrung” by conditions of consents in the past, the Council submits that it is more likely that the owner/operator would not feel hamstrung to so comply in the future.”* [17]

Preston CJ held however that:

*“The issue of the relevance of past unlawful use to determining whether a consent should be granted or modified has been considered by courts in the past. The courts have consistently held that past unlawful use is not a relevant factor”* [19].

Paragraphs 20 to 31 detail further caselaw with respect to consideration of the issue of the relevance of an applicant’s past unlawful conduct in the consideration of an application. At [23] it details that *“in Windy Dropdown Pty Ltd v Warringah Council (2000) 111 LGERA 299, Talbot J noted on the hearing of the appeal that:*

*“The carrying out of illegal works generally is not an impediment to the consideration of an application on the merits (Kouflidis v City of Salisbury (1982) 29 SASR 321; 49 LGERA 17; Longa v Blacktown City Council (1985) 54 LGERA 422; Ireland v Cessnock City Council (1999) 103 LGERA 285)”*: at 301 [4].

The judgement further states however:

*“[37] The above conclusion that mere unlawfulness of past use is not a relevant factor does not mean, however, that past use – without any consideration of its unlawfulness – cannot ever be relevant.*

*[38] For instance, past conduct (regardless of whether it is unlawful) may have given rise to unacceptable impacts, such as unacceptable acoustic impacts on adjoining properties. The experience of impacts of the past use could be relevant in evaluating, first, the likely impacts of a prospective use for which consent is sought of the same or similar character, extent, intensity, and other features as the past use, secondly, the acceptability of the likely impacts and thirdly, if likely impacts are considered to be unacceptable, the appropriate measures that ought to be adopted to mitigate the likely impacts to an acceptable level. Past use would, therefore, be of relevance but it is for proper planning reasons, not because the past use happened to be unlawful. The unlawfulness of the past use is not relevant”.*

The proposed uses have not commenced, with no Occupation Certificate having been issued. Accordingly, ‘past conduct’ cannot be considered. However, with regard to the advertisement of the premises to operate contrary to the development approval, Council cannot and should not consider this in the merit assessment of this application, particularly with regard to the design of the building proposed to be modified.

Existing conditions of consent outline the approved uses and manage the manner in which the equine centre and temporary function centre is to operate. *The likely impacts of the prospective use for which consent is sought* does not change, with only the building envelope in which the approved uses are to occur changing. In this manner, the assessment has considered the “character, extent, intensity and other features” of the use as approved, and how it will operate in the proposed building envelope. Appropriate modifications to conditions related to potential acoustic impacts are recommended at modified Conditions 42 and 58.

*Ireland v Cessnock City Council (1999) 110 LGERA 311* is also noteworthy, mentioned at [27] of *Jonah Pty limited v Pittwater Council*:

*"[27] In a subsequent judgment in Ireland v Cessnock City Council (1999) 110 LGERA 311 dealing with the issue of whether a building certificate should be issued, Bignold J stated at 316 [38]:*

*"The proper approach to be taken to the available discretion will generally be that outlined in the judgment of King CJ of the South Australia Supreme Court in Kouflidis v Salisbury City Corporation (1982) 29 SASR 321; 49 LGERA 17, namely to leave to the criminal law, the punishment of the unlawful conduct involved in the erection of the building and to determine the present application on the merits, but **taking care not to allow the wrongdoer to benefit from his wrongdoing**".(emphasis added)*

It is not considered the existing unauthorised construction of the building predicates the recommendation of approval of this application. The application has been assessed on its merits, and it is not considered the applicant will benefit from the wrongdoing of undertaking the works contrary to the existing approval, in that the works as proposed are considered satisfactory and genuine for the proposed uses already approved.

The submissions have highlighted correspondence from past Council employees on this matter, where the scale of the building was discussed with regard to the categorisation of the equine centre and function centre uses. Council's assessment is satisfied that the primary use of the building will be for the equine centre and that the building is worthy of support on the merits of the proposal.

iv. Concern that the building is already constructed.

Submissions raise the following concerns:

- *This application is for a building that has already been illegally built.*
- *How is the Council to consider the clear breaches of the development consent when determining this application?*

Assessment:

As detailed earlier in this report, the Land and Environment Court has consistently held that an application to modify a development consent (via s4.55 or former s96) has the power to grant approval for the prospective use of unauthorised works.

A full consideration under Section 4.55(1A) of 'minimal environmental impact' and 'substantially the same development' is still necessary, and the attached Section 4.55 assessment report (Attachment 1) has provided this assessment, concluding that the proposal meets these tests and is recommended for approval.

Whilst there may be compliance issues, and a separate Building Information Certificate has been submitted with Council, the assessment of the subject Section 4.55 application cannot take these alleged breaches into account. There are separate compliance provisions in the legislation to deal with breaches. Additionally, it is not unusual if there has been a breach to await the outcome of an application to see if the application provides the remedy to a situation.

As detailed in this report, Council is satisfied with the information provided and that it justifies the development in its current form, demonstrating it is bona fide.

v. Validity of the consent - the proposed modification relates to a consent which is unlawful and therefore should not be able to be modified.

Submissions raise the following concerns:

- *The numerous anomalies and design changes between the current proposal and the original approval must surely call into question the bona fide nature of the original application.*



- *A new statement of environmental effects and DA would be appropriate so the development can be properly assessed by the community.*

Assessment:

Council is satisfied that the modifications proposed as part of this application can be considered under the provisions of Section 4.55 of the EP&A Act 1979. In undertaking this assessment, Council refers to *D L Newport Pty Ltd v Northern Beaches Council [2017] NSWLEC 1661* in which 'Legal Principles Governing the Power to Modify in s 96(2) (now 4.55(2) of the EPAA' outline that "modify" means "to alter without radical transformation". The proposed modifications under this application are not 'a radical transformation', but a redesign of the existing approved building, stormwater, and car park layout, with no proposed modifications to the way in which the building and uses will operate.

Given consent was granted for the development on 14 November 2017, the period within which an appeal may be made to the Court has expired in accordance with the provisions of the EP&A Act 1979.

vi. Minimal environmental impact – assessment under Section 4.55(1A)

Submissions raise the following concerns:

- *Section 4.55 (1A) permits the council to approve the modification only if: (a) It is satisfied that the proposed modification is of minimal impact.*
- *The suggestion in the original DA (now notably abandoned) that the function use was solely intended to fund "psychotherapy" is not supported. The website advertising for the "wedding functions" with the benefit of a "bar" and commercial kitchen gives a more accurate picture. In any event, providing "psychotherapy" to humans is not "breeding, boarding, training or caring of animals for commercial purposes" which the nominated proposed use requires as the permissible use. Both functions and a psychotherapy facility are prohibited.*
- *Will the changes proposed in the present modification result in "minimal environmental impact", as that phrase has been understood by the relevant judicial authorities?*

Assessment:

Council is satisfied that the proposed modification, being the amendments to the proposed design and layout of the approved building, stormwater and car park layout is of minimal environmental impact.

The proposed amendments to the layout and design of the approved building will reduce impacts of the development and according to Council's Environmental Services, the acoustic report dated 28/01/2021 is acceptable. The report proposes a number of mitigation measures to minimise disturbance to neighbouring properties similar to the previous report for the site. Modified conditions of consent are recommended to ensure these measures are undertaken and control any impact arising from the amendments to the design of the building.

There is no change to the approved use of the development proposed as part of this application. Accordingly, the operational restrictions imposed with the consent remain unaltered. It is particularly noted that the use of the building as a function centre remains approved for a maximum 120 guests.

It is noted for clarity that Council can only modify the existing development consent to the extent that is requested or agreed to by the applicant, or where there is a direct nexus between the proposed modifications and a need to impose new or alter existing conditions of consent. The proposed modifications sought under this application do not seek to amend the operations of the approved development, nor is there a nexus to amend any existing conditions of consent and they therefore must remain as approved.

The matter of characterisation has already been addressed in this report.

vii. Substantially the same – assessment under Section 4.55(1A)

Submissions raise the following concerns:

- *The change in focus of the application and its 20% internal increase in size means that it is not "substantially the same" as the DA use, and cannot therefore be approved as a modification application.*
- *Hatzia Andreou Holdings Pty Ltd v Bayside Council [2020] NSWLEC 1191 is a more recent example than the Trinnass v City of Sydney cited recently by Council officers.*

Assessment:

A full assessment against the principles governing the exercise of power under s4.55 established under *DL Newport Pty Ltd v Northern Beaches Council [2017] NSWLEC 1661* is contained in the assessment report at Attachment 1.

Council is satisfied that the proposed modification would be substantially the same as the development, which was originally approved, that is the proposal is considered to be "essentially or materially having the same essence" as the original approved building (*Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280*).

The only proposed modification under the application is design changes to the approved building, with all other aspects of the approval remaining unchanged.

viii. Impacts on amenity, Clause 2.8 of SLEP 2014 and a requirement to have 'no adverse impact' with regard to acoustic, noise and dust impacts.

Submissions raise the following concerns:

- *No adverse impact" and not "acceptable impact" should apply.*
- *In accordance with the provisions of clause 2.8, SLEP 2014, it is incumbent on the applicant to demonstrate, and for Council to assess, that the proposed modification does not merely have acceptable impacts but has no adverse impacts to the amenity of the neighbourhood.*
- *Prohibited developments operating under the temporary use clause 2.8 are required to demonstrate no adverse impact. This is a much higher standard than an "acceptable impact".*
- *Previous applications and approvals have not properly addressed the "no adverse impact" requirements.*
- *Noise impacts: The modification application does not adequately demonstrate that the development will have no adverse impact on the amenity of the neighbourhood, particularly in relation to noise.*
- *The noise impacts from the current proposal have not been properly assessed and do not provide basis to demonstrate there will be no adverse impact. Further to this, the increased traffic to and from the venue will result in adverse impacts.*
- *Acoustic impacts of the development and the validity of the acoustic assessment submitted with the application, including:*
  - a. *Flawed modelling and inaccurate distances in the submitted acoustic report.*
  - b. *Location of the stage in the acoustic assessment.*
  - c. *Design of the building and acoustic modelling being undertaken with doors open.*
  - d. *Consideration of acoustic impacts and reverberation of noise from cliffs surrounding the site.*
  - e. *Impacts of noise on the east of the site and future development potential.*

*Note that several similar applications where developers have proposed temporary wedding venues in rural zones have been refused outright (see DA18/2094 for 2819A*

*Moss Vale Road Barrengarry; DA18/2115/4 for 171B Strong's Rd Jaspers Brush; and DA19/1133 for 29 Tindalls Lane, Broughton).*

*The modification application does not adequately demonstrate that the development will have no adverse impact on the amenity of the neighbourhood, particularly in relation to noise.*

*The large escarpment surfaces ensure that sound generated in the valley resonates and transmits readily (as has been demonstrated to us during the building phases of developments nearby). The thought of regular evening events with function-level music exiting a building through open doors is fairly concerning. It is hoped that Council takes appropriate steps to investigate and regulate impacts.*

#### Assessment:

The matters for consideration under clause 2.8 have been considered as part of the assessment of this application. However, it is noted that development consent has already been granted for this temporary use.

It is noted that the development approval for the use has already been approved. Any assessment is to be based on the proposed modification and impacts associated with the changes proposed.

The Noise Impact Assessment (Reference No. 1703010e-l.docx, dated 25/02/2021) prepared by Harwood Acoustics and submitted by the applicant, has specifically addressed the issues raised in this submission, particularly the requirements of Clause 2.8. This report is read in conjunction with the Revised Environmental Noise Impact Assessment report (Reference No. 1703010E-R, Revision A, dated 28/01/2021) prepared by Harwood Acoustics.

With regard to clause 2.8, it is considered the interpretation of “not adversely impact ... the amenity of the neighbourhood”, is to be consistent with the judgement of the Land and Environment Court in *Marshall Rural Pty Ltd v Hawkesbury City Council*, being that **the noise level emitted from the subject function or event should not exceed the background noise level at any point within 30m of an affected residence**. Accordingly, this would not adversely impact the amenity of the neighbourhood.

An objector has submitted a draft Noise Impact Assessment prepared by Koikas Acoustics (dated 03/02/2021) to peer review the Harwood Acoustic report (dated 22/12/2020). This peer review concludes the following:

*“In light of the findings of a review conducted into the acoustic report prepared in support of the proposed temporary use of the equine training facility for use as a function centre, Koikas Acoustics Pty Ltd has formed the opinion that:*

- 1. The proposed use as indicated in the acoustic report would not meet the required threshold for compliance under c12.8 (3) (b) of the LEP and that noise levels would adversely impact adjoining land and the amenity of the neighbourhood.*
- 2. The acoustic consultant has not conducted adequate surveys of existing environmental noise levels.*
- 3. The acoustic report does not include sufficient detail to allow the consent authority to be confident in its findings”.*

In summary, the submitted Harwood Noise Impact Assessment (25/02/2021) states the following:

*“15. To that end, the predicted level of noise emission from this proposal is no more than 23 to 24 dBA (Leq, 15 minute) from guest noise and up to 30 dBA (Leq, 15 minute) with the inclusion of a reasonably high level of amplified music.”*

The submitted Environmental Noise Impact Assessment (28/02/2021) identifies the following background noise levels:

*“In this instance, short-term background noise measurements were taken near to the boundary of receptor location R1 on Wednesday 5 April 2015 at approximately 11.30 am. The measured background noise level at this time, at this location was 31 dBA L90, 15 minute. It is reasonable to assume that the background noise level in the vicinity of the nearest receptors will drop to 30 dBA (L90, 15 minute) or below, at least on some occasion during the evening and early night.”*

The predicted level of noise emission from this proposal, based on the submitted information, is identified to be no more than the background rating levels in accordance with the standard set by *Marshall Rural Pty Ltd v Hawkesbury City Council*.

Council's Environmental Health Officer has reviewed all the submitted information from the applicant and objectors and concluded the proposal and acoustic reports are acceptable with regard to clause 2.8. Council's Environmental Services have concluded that the proposed amended design of the building and use of the building will not adversely impact on any adjoining land or the amenity of the neighbourhood. The report proposes a number of mitigation measures and controls to minimise disturbance to neighbouring properties similar to the previous report for the site.

The development will continue to operate under the terms of clause 2.8 for temporary use of land as approved under the original consent (as modified) and remains consistent with the RU1 Primary Production zone objectives.

The modified design will particularly remain consistent with clause 2.8(3)(c), with the temporary use and location of any structures related to the use not to adversely impact on environmental attributes or features of the land or increase the risk of natural hazards that may affect the land.

Modified Conditions 42 and 58 are recommended to reflect the proposed mitigation measures proposed in the submitted Acoustic Report.

It is noted that submissions discussed the concerns of noise to the east and future developments; however, Council can only consider what is approved at this time and there are currently no residential properties to the east approved.

ix. Health and safety concerns

Submissions raise the following concerns:

- *The applicant is proposing to house and demonstrate Shire horses in unsafe conditions (owing to the low ceiling height).*
- *It is also very doubtful that the health of users of the facility can be guaranteed if manure and urine producing animals are housed directly adjacent to a commercial kitchen (-50kg of raw waste per horse per day).*

Assessment:

Council's Environmental Services has reviewed the submitted information and have found this, including the revised plans for the proposed kitchen/catering facility within the building, to be satisfactory and that compliance with the relevant legislation will be achieved.

Council is satisfied that existing conditions of consent will address the health and safety concerns raised.

x. Lack of Neighbour Notification

Submissions raise the following concerns:

- *The original application and subsequent variations have not been properly described or widely advertised to allow proper community consultation and consideration of whether the development results in adverse impacts.*

**Assessment:**

The application was notified to previous submitters only, noting the submissions on the previous modification application DS19/1196.

It is noted that the original development application was notified to surrounding residents in accordance with Council's Community Consultation Policy up to a buffer of 500m. No submissions were received.

The above process was consistent with the Community Consultation Policy and the requirements of the EP&A Act 1979.

**Planning Assessment**

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

The assessment concludes that the proposal meets the requirements of Section 4.55 and Section 4.15. There are no matters of concern under the relevant planning controls that affect the ability for the application to be approved.

**Consultation and Community Engagement:**

The application was notified to previous submitters only, noting the submissions on the previous modification application DS19/1196, during the period 21 January 2021 to 8 February 2021.

Submissions from eleven (11) objectors were received in relation to Council's notification of the development.

The assessment of the application considered the matters raised in the submissions (as above) and concluded that the application should be supported.

**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.

**Legal Implications**

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

**Summary and Conclusion**

The proposed development maintains compliance with the provisions of SLEP 2014 and is broadly consistent with the SDCP 2014.

This application has been subjected to detailed analysis of the main issues identified in this report, being the design of the modified development, including noise and traffic impacts, bush fire risk, and whether the development is of minimal environmental impact substantially the same development as the development for which consent was originally granted was modified. These issues have also been investigated and addressed by the applicant.

The application is considered capable of support as there are no substantive planning reasons to warrant refusal. Existing conditions of consent which are not proposed to be amended, ensure the approved uses - both primary and secondary uses – operate in accordance with the intent of the existing approval.

The Courts have consistently held that Section 4.55 has the power to modify an existing development consent to permit the prospective use of works which have already been undertaken where they differ from the approved plans, and that past unlawful use by the current owner/operator is irrelevant as a predictor of future unlawful use. Should this application be refused, the applicant has the ability to still act upon the existing consent to revert the building to the approved layout and to operate with a temporary function centre for a period of three (3) years from the issue of an Occupation Certificate.

It is considered the existing and modified consent conditions adequately ensure compliance with the requirements of clause 2.8 and accordingly it is recommended it is approved subject to the recommended conditions of consent as per Attachment 2.



**DE21.60 DA16/1465 - 173 Kinghorne St and 2 & 4  
Albatross Rd Nowra - Lot 1, 29 and 30 DP 25114****DA. No:** DA16/1465/4**HPERM Ref:** D21/203656**Department:** Development Services**Approver:** Phil Costello, Director - City Development

**Attachments:**

1. Previous Report to May Development & Environment Committee (under separate cover) [⇒](#)
2. Section 4.15 Planning Assessment Report (under separate cover) [⇒](#)
3. Notice of Determination [↓](#)

**Description of Development:** Demolition of existing structures and construction of a mixed-use development consisting of 55 apartments including 16 x 3 bedroom, 31 x 2 bedroom and 8 x 1 bedroom apartments, a basement car parking area and 3 commercial tenancies at ground floor with frontage to both Kinghorne Street and Albatross Road

**Owner:** Bill Zervos and Jasmine Anne Simpson & John Irwin Gould**Applicant:** Lee Carmichael Town Planning (now trading as) PDC Planners**Notification Dates:** 14 June – 14 July 2017**No. of Submissions:** Six (6) submissions in objection and Nil (0) in support.**Purpose / Reason for consideration by Council**

On 11 May 2021, it was resolved by the Development and Environment Committee that the Development Application (DA16/1465) *'That the Item be deferred to the June Development and Environment Committee meeting for further consideration.'* (MIN21.256).

This report is prepared to respond to the above resolution.

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

That Council receive this report as an update on the progress of the assessment of DA16/1465 and in satisfaction of the 11 May 2021 resolution of the Development & Environment Committee (DE21.50).

**Options**

1. Receive the report for information.

Implications: The application will be reported to Council upon receipt and assessment of the requested information.

DE21.60

2. Refuse the Development Application (DA).

Implications: The proposal would not proceed in its current form. 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.

The previous report to the Development & Environment Committee (May meeting) can be found at Attachment 1. Attachment 2 contains the section 4.15 planning assessment. Attachment 3 is the Notice of Determination.

3. Resolve alternatively.

Implications: The implications would be contingent on the Council decision.

**Location Map**



*Figure 1 - Extract of the subject site in the local context.*

DE21.60

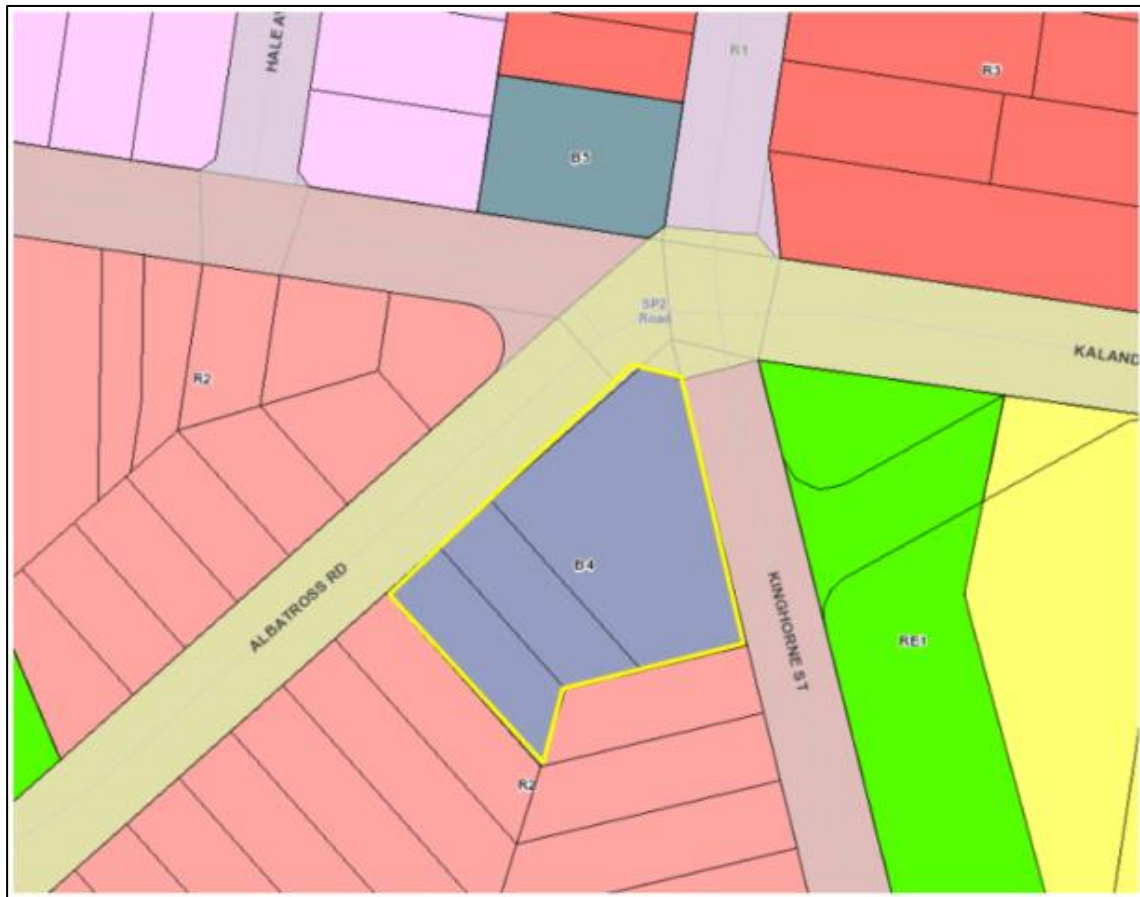


Figure 2 - Extract of the Shoalhaven Local Environmental Plan 2014 Land Use Zoning Map with the subject site with a yellow border

DE21.60

## Background

The subject DA was lodged with Council on 8 April 2016.

As detailed in the report to the Development and Environment Committee on 6 October 2020 (DE20.113) and 11 May 2021 (DE21.50), there are outstanding traffic issues with the proposal and an amended Traffic Report has been requested in order for Council to assess the traffic and access issues relating to the proposal.

Most recently the application was recommended for refusal at the Development and Environment Committee Meeting on 11 May 2021, with a number of reasons for refusal including that the SEPP (Infrastructure) 2007 and Council's DCP are not satisfied in relation to access and traffic impacts. This is predominantly because the required additional traffic assessment has not been supplied by the applicant in order to demonstrate compliance with these matters.

The Development and Environment Committee on 11 May 2021 resolved the 'That the Item be deferred to the June Development and Environment Committee meeting for further consideration.' (MIN21.256)

Following this council resolution, Council has sought a response from the applicant as follows:

- 12 May 2021, phone message to applicant's office. No response to date; and
- 18 May 2021, email applicant to request submission of outstanding information. No response to date.

**Planning Assessment**

The DA has been assessed under s4.15 of the *Environmental Planning and Assessment Act 1979* and previously reported to the 6 October 2020 and the 11 May 2021 meetings of the Development and Environment Committee with a recommendation of refusal.

**Policy Implications**

There are no policy implications in relation to this report.

**Consultation and Community Engagement:**

Details of the consultation and community engagement of the DA were outlined in the report to the Development and Environment Committee on 11 May 2021 (DE21.113).

**Financial Implications:**

There is no financial implication in relation to this report.

**Legal Implications**

There are no legal implications in relation to this report.

**Summary and Conclusion**

The DA will be reported to Council for further consideration once the additional information has been received, unless otherwise instructed by Council.



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Deering St, Ulladulla NSW 2539 | 02 4429 8999

**Address all correspondence to**

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

Environmental Planning and Assessment Act, 1979  
**DA16/1465**

**TO:**

Lee Carmichael Town Planning  
76 Berry Street  
NOWRA NSW 2541

being the applicant(s) for **DA16/1465** relating to:

**173 Kinghorne Street and 2 & 4 Albatross Road, NOWRA - Lot 1, 29 and 30 DP 25114**

**REFUSED USE AND/OR DEVELOPMENT:**

Demolition of existing structures and construction of a mixed use development consisting of 55 apartments including 15 x three bedroom, 34 x two bedroom and 8 x 1 bedroom apartments, a basement car parking area and 3 commercial tenancies at ground floor with frontage to both Kinghorne St and Albatross Road

**DETERMINATION DATE:**

**REFUSAL DATE:**

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

DE21.60 - Attachment 3



Determination Notice by way of Refusal - Page 2 of 3 - DA16/1465

### REASONS FOR REFUSAL

1. Non-compliance with SEPP 65 in relation to the Apartment Design Guide (s4.15(1)(a)(i) of the EPA Act);  
The development fails to satisfy clause 30(2)(a) and (b) of SEPP 65, in that the development does not demonstrate that adequate regard has been given to:
  - (a) the design quality principles (Principle 2: Built form and scale; Principle 3: Density; Principle 4: Sustainability; Principle 5: Landscape; Principle 6: Amenity), and
  - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria (3E-1 Deep Soil Zones, 3F-1 Visual Privacy, 3H-1 Vehicle Access, 3J-1 Bicycle and Car Parking, 3J-2 Bicycle and Car Parking, 4A-1 Solar and Daylight Access, 4D-3 Apartment Size and Layout, 4E-1 Private Open Space and Balconies, 4F-1 Common Circulation and Spaces, 4K-2 Apartment Mix).
2. The proposal exceeds the maximum building height development standard under clause 4.3 of SLEP 2014. The applicant's written request to vary the maximum building height development standard has not adequately addressed matters required to be demonstrated by clause 4.6(3)(a) and (b) of SLEP 2014. The Clause 4.6 Variation Request does not provide sufficient environmental planning grounds to support the variation, nor that compliance is unnecessary or unreasonable. (s4.15(1)(a)(i) of the EPA Act).
3. The development has failed to satisfy Council of preconditions 101(2)(a) and (b) of the ISEPP (s4.15(1)(a)(i) of the EPA Act).  
In accordance with Clause 101(2)(a) and (b) of the ISEPP, Council must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
  - (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
  - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
    - (i) the design of the vehicular access to the land, or
    - (ii) the emission of smoke or dust from the development, or
    - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land.
4. The proposed development is inconsistent with the Objectives, Performance Criteria and Acceptable Solutions as they relate to the following provisions of Chapter G21: Car Parking and Traffic Shoalhaven Development Control Plan 2014 (SDCP 2014) (s4.15(1)(a)(iii) of the EPA Act):
  - (a) 5.1 Car Parking Schedule.
  - (b) 5.2 Traffic.
  - (c) 5.4 Access.
  - (d) 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments.
5. The development is likely to have adverse impacts on the built environment (s4.15(1)(b) of the EPA Act).



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6. The site is not suitable for the development as proposed (s4.15(1)(c) of the EPA Act).
7. The development is not in the public interest (s4.15(1)(e) of the EPA Act).

### RIGHTS OF REVIEW AND APPEAL

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

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request and determination of the review must be undertaken within the prescribed period.

Division 8.3 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised within the prescribed period.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within the prescribed period.

#### Review of Modification Decision

An application for a review under section 8.3 of the Act is to be made within the prescribed period.

#### Approvals under Local Government Act, 1993

Section 100 of the Local Government Act, 1993 provides that an applicant may request Council to review its determination of an application.

Section 176 of the Local Government Act, 1993 provides that an applicant who is dissatisfied with the determination of the Council may appeal to the Land and Environment Court. The appeal must be made within the prescribed period.

### GENERAL ADVICE

#### Privacy Notification

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

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

Choose an item.

Choose an item.

**Planning, Environment & Development Group**

## DE21.61 Section 138 Application - SF10632 – Approved Subdivision, Moss Vale South URA – Lot 1 DP 949932 and Lot 3 DP 851823, Taylors Lane, Cambewarra

**DA. No:** SF10632/6

**HPERM Ref:** D21/210854

**Department:** Development Services

**Approver:** Phil Costello, Director - City Development

**Attachments:** 1. Extract from Approved Subdivision Works Certificate drawings - Taylors Lane [↓](#)

**Description of Development:** Development consent has been issued for a 50 Lot Torrens subdivision including 46 residential lots, 3 open space allotments and 1 residue allotment including roads, drainage, and utilities. Council is now considering an application under Section 138 of the Roads Act to carry out works in the road reserve which involves tree removal in Taylors Lane.

### Purpose / Reason for consideration by Council

This report is put to Council for information and to obtain endorsement for the approval of the Section 138 application for required works in the Taylor's Lane road reserve. The works will affect trees in Taylors Lane, which are the subject of a specific resolution of Council and body of work being undertaken by Strategic Planning (in City Futures). The approved subdivision predated the resolution of Council for investigative works concerning the trees. Details are provided in the body of this report.

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

That this report be received for information, noting, and endorsing the intention of staff to approve the subject S138 application for roadworks within the Taylors Lane road reserve which will also require tree removal from Taylors Lane.

### Options

1. As recommended.

Implications: This will enable the subdivision works to commence in accordance with the approval.

2. Resolve alternatively.

Implications: This will be contingent on the decision.

## Location Map

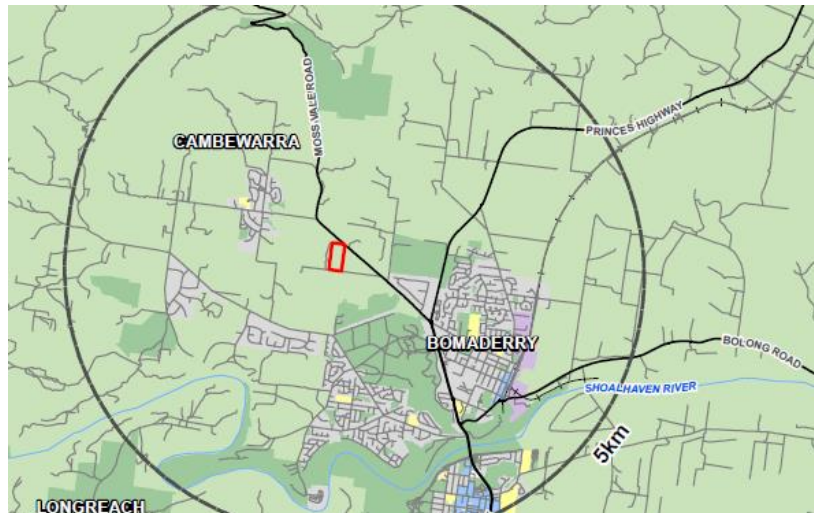


Figure 1 – Location

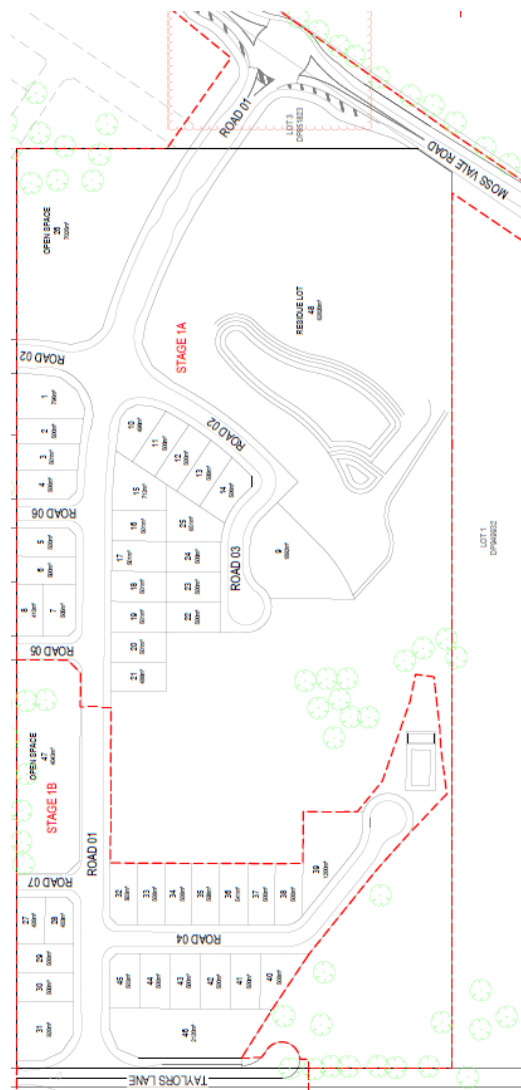


Figure 2 – Approved Plan of Subdivision

DE21.61

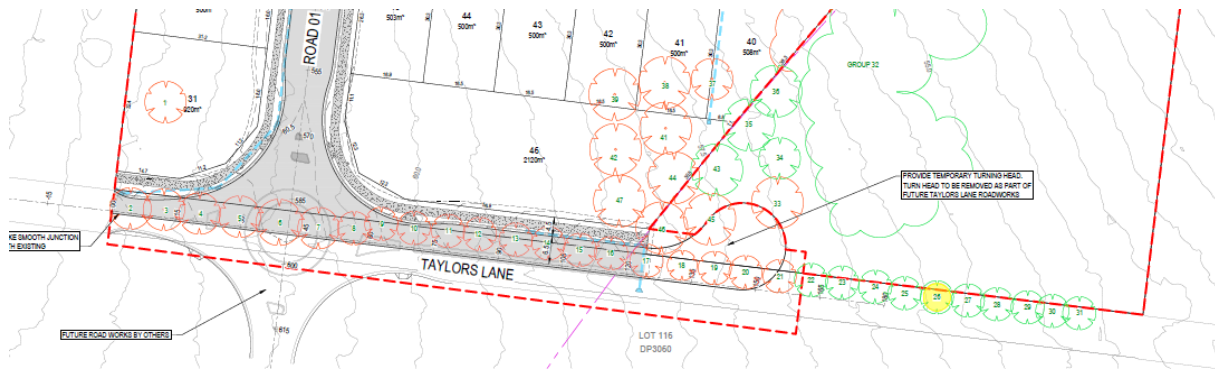


Figure 3 – Excerpt of Taylors Lane Portion  
(20 Trees are shown for removal in the above figure.)

## Background

1. Council's Development Control Plan for the Moss Vale Road South URA (DCP Chapter NB3) was first adopted on **28 August 2018** and commenced on 26 September 2018. It was subsequently amended, with the amendment being adopted on 1 December 2020 and commencement occurring on 9 December 2020.
2. Development consent was issued conditionally for the subdivision on **5 June 2020**. The consent was modified on two occasions, via DS20/1431 (15 October 2020) and DS20/1514 (18 March 2021). The development was thoroughly assessed against DCP Chapter NB3 and was found to be generally compliant, particularly in regard to the indicative layout plan.
3. On **23 June 2020** Council resolved to defer a decision on the upgrade of Taylors Lane as part of the Far North Collector Road project and undertake a review of the zoning and planning controls applicable to land around Taylors Lane (MIN20.419) as follows:

### MIN20.419

#### That Council:

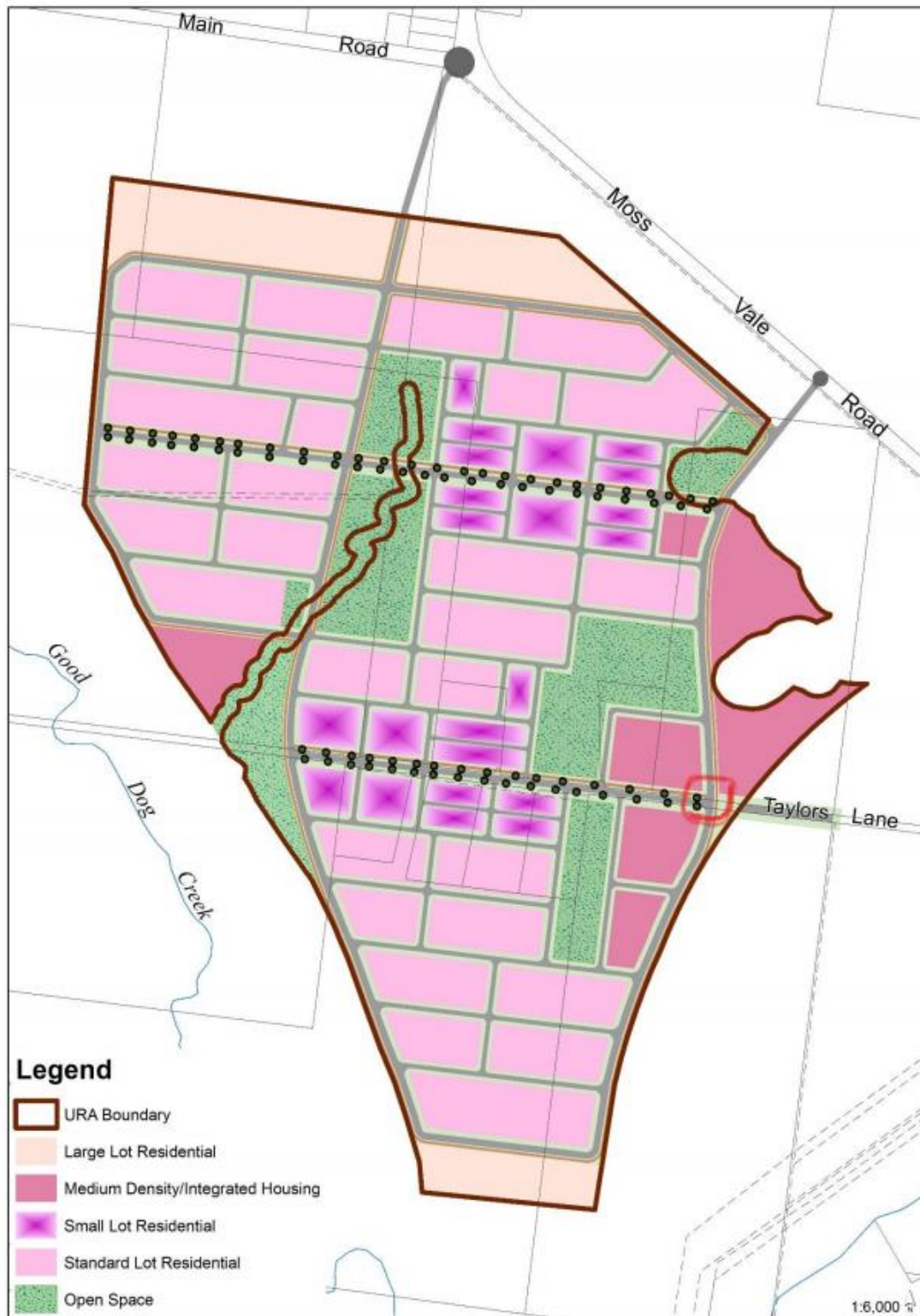
1. Undertake the following reviews, with the assistance of consultants if required given current Council staff commitments, considering both the required road project and desire for retention of the trees:
  - a. Review Shoalhaven Development Control Plan 2014 Chapter NB3: Moss Vale Road South Urban Release Area
  - b. Review the existing zoning and potential planning controls for the area between Moss Vale Road and the edge of the Urban Release Area
2. As part of the reviews consider all relevant options to retain the existing trees that are currently a feature of Taylors Lane and how they could be successfully retained and integrated into the future urban development enabled by the existing zones.
3. Reconsider the current appropriateness of the existing R3 Medium Density, B1 Neighbourhood Centre and SP2 Infrastructure (educational establishment) zones at the eastern end of Taylors Lane as part of the review process.
4. Receive a briefing, if appropriate/needed, and a subsequent report on the reviews and to enable decisions to be made regarding the interrelated Taylors Lane issues.

5. *Defer the decision on the proposed upgrading of Taylors Lane, Cambewarra in association with the Far North Collector Road pending the reviews and further community consultation as part of them.*

The review that is currently underway will consider options for how the existing trees along Taylors Lane could be retained and integrated into future urban development. At this stage, the outcomes of the review are unknown. The configuration of Taylors Lane as shown on Figures 2, 3 and 4 may or may not be consistent with the outcomes of this review. The consultant recently (April) submitted its draft review report to Council following several workshops in March where input was sought from directly affected local stakeholders (landowners and developers) in the review area. Council staff have reviewed the consultant's draft report and it is now back with the consultants to finalise. It is anticipated that the report will then be submitted to Council for consideration in coming months prior to proceeding to exhibition to enable broader community review/comment.

The proposed subdivision layout plan has been prepared generally on the basis of the existing indicative layout plan for Moss Vale Road South URA as adopted in the relevant DCP Chapter. Subdivision Certifiers Pty Limited subsequently issued the subdivision works certificate on **28 April 2021**.

4. A Section 138 application for works in the road reserve was submitted to Council on **12 April 2021**.
5. The works in the road reserve include tree removal (Figure 3 shows 20 trees), kerb and gutter, services and drainage as shown in Figure 3. The intersection will not be constructed in full however the kerb returns will be provided. This intersection is a key intersection and connection between the stages of subdivision within the Urban Release Area (URA). Figure 4 is the indicative layout plan with the intersection highlighted. **Attachment 1** to this report, is a more detailed plan of the proposed works. The extract is taken from the approved Subdivision Works Certificate (SWC) drawings.



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*Figure 4 – Indicative Layout Plan*

## Issues

The developer benefits from a legitimate consent. The proposed works are consistent with the current adopted plans for the area as identified under the DCP. The recent resolution of Council (planning review regarding Taylors lane trees) poses difficulty in that the outcomes of the aforementioned review are unknown whilst the approved development and Section 138 application foreshadow and require trees to be removed.

In light of the adopted development control plan, the development consent that is in place for the subdivision, the Section 138 must be resolved to facilitate progression of works and the subdivision of land.

**Financial Implications:**

Whilst it may be possible for the development to proceed whilst a portion of the land is set aside, the practicalities of this are questionable and are likely to have financial impact.

Additionally, if there are changes as a result of Council's review which impact on the development and development potential / yield of what has been approved, it is possible that the developer may have scope to pursue legal and / or cost remedies.

**Legal Implications**

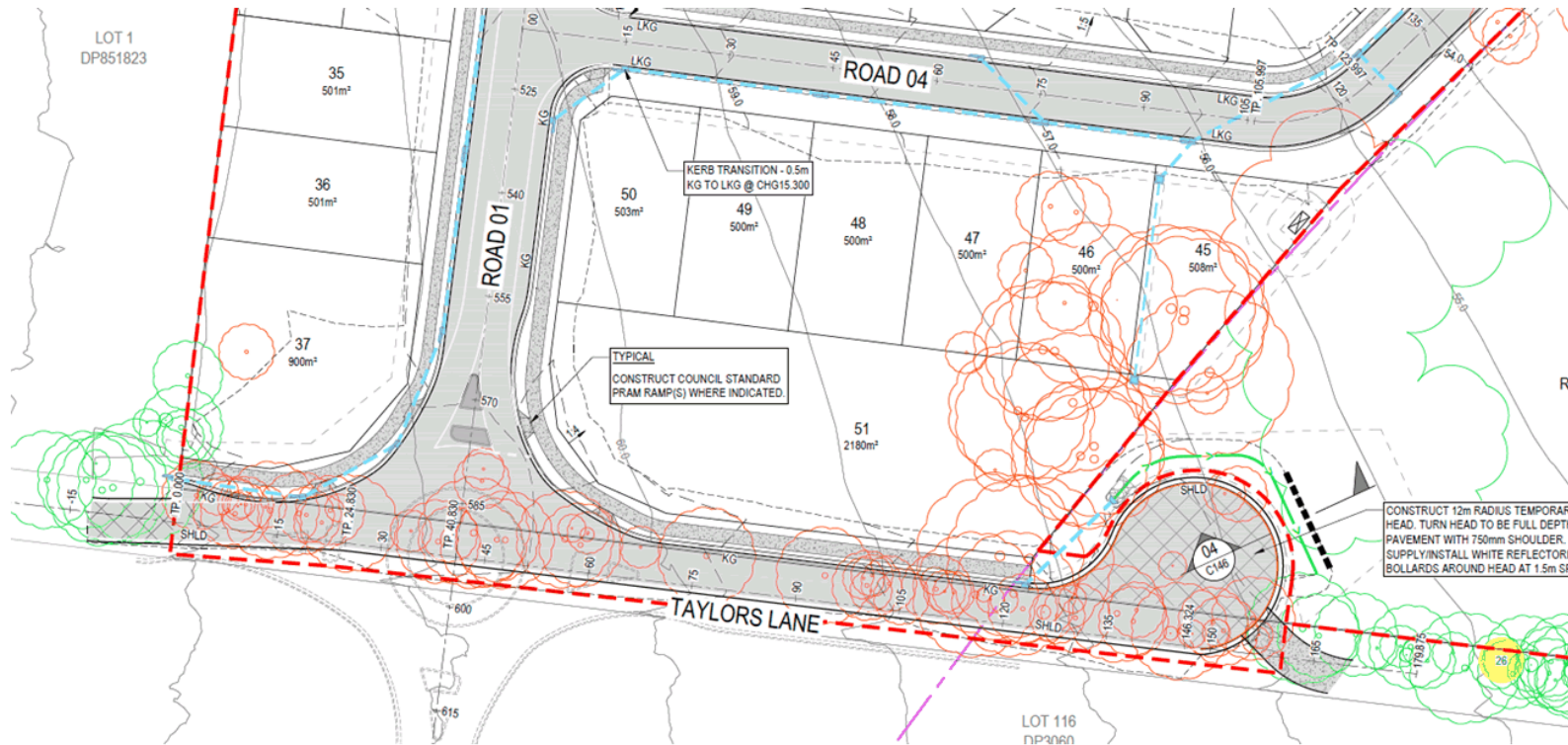
Although there is a resolution of Council concerning investigations into the trees, circumstances are such that there is no apparent reason to withhold approval of the Section 138 given the strategic and approval framework.

**Summary and Conclusion**

Having regard to the above, staff recommend the application be determined under delegation by way of conditional approval, which will result in the removal of trees in part of Taylors Lane in order to enable the developer to construct the subdivision as approved in line with Council's currently adopted strategic position.

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Attachment 1 - Extract from SWC plans – Civil Works Plan (General Arrangement Plan, sheet 3 of 3)

## 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.