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**REPORT OF GENERAL MANAGER**

**DEVELOPMENT COMMITTEE**

**TUESDAY, 16 JULY 2013**

**PLANNING AND DEVELOPMENT**

***ITEMS TO BE REFERRED TO ORDINARY MEETING***

**1. Verons Estate Planning Proposal (Rezoning) - Gateway Determination      File 1422E**

**PURPOSE:** Delivery Program Activity: 5.1.2.32.

To advise Council that the Department of Planning & Infrastructure (DPI) has issued “gateway” approval for the Verons Estate Planning Proposal, which was prepared in accordance with Council’s resolution on 26 June 2012; and to seek Council’s endorsement to exhibit the Planning Proposal.

**RECOMMENDED that Council:**

- a) **Make all necessary arrangements be made to exhibit the Verons Estate Planning Proposal in accordance with DP&I’s “gateway” determination for a minimum of 28 days, and**
- b) **The road design and road construction special rates be removed from Lots 20 to 32 in Verons Estate and distribute the road design shortfall across the broader rating base consistent with Council’s previous approach.**

**OPTIONS**

- 1. Proceed to exhibit the Planning Proposal as per the “gateway” determination.
- 2. Revise the Planning Proposal and resubmit it to DP&I requesting on alternate “gateway” determination.

**DETAILS**

On 26 June 2012, Council resolved to prepare and submit a draft Planning Proposal for Verons Estate, to make one dwelling per lot permissible with consent on land in the Badgee Lagoon catchment (Lots 1-19) part of the Estate. Council resolved to incorporate the following components into the Planning Proposal:

- i) *The minimum lot size overlay would allow one dwelling per lot on the land within the Badgee Lagoon catchment;*

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ii) *Proposed zoning (based on State Government's comments): Swan Lake catchment: E2 and E3. Badgee Lagoon catchment: E2 and E4, subject to addition of E4 to SLEP 2009 and extensive agriculture as a permissible use (in either the land use table or Schedule 1 - Additional Permitted Uses);*

iii) *No biodiversity overlay.*

The above resolution (MIN12.658) resulted from a report to Council's Development Committee on 5 June 2012, which is available on Council's website at:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d12/130633>

The proposed zoning is a combination of E2 – Environmental Conservation, E3 – Environmental Management, and E4 – Environmental Living. Note: these are the new zones under draft Shoalhaven LEP 2013 and assumes this proposal will be finalised after the overall LEP. It is proposed to potentially enable dwellings to be approved on Lots 1-19 by reducing the required minimum lot size in the proposed E4 areas within the Badgee Lagoon catchment, from 40 ha to 7 ha (the existing lots are approximately 8 ha in size). The 40 ha minimum lot size will be retained over the lots in the Swan Lake catchment and the proposed E2 areas within the Badgee Lagoon catchment.

The draft Verons Estate Planning Proposal was submitted to DP&I in May 2013. A copy of the Planning Proposal is provided in the Councillor's room. The Planning Proposal and associated documentation is available on DP&I's LEP tracking website at:

<http://leptracking.planning.nsw.gov.au/PublicDetails.aspx?Id=1021>

DP&I issued a "gateway" determination on 7 June 2013. The determination allows Council to exhibit the Planning Proposal and sets a timeframe target of 12 months for completion of the Local Environmental Plan (LEP). The "gateway" determination states that the inclusion of a Conceptual Development Footprints map as shown in the Planning Proposal should be considered. It is particularly important from a bushfire risk management perspective to provide certainty about the location of dwellings in the Estate.

# A copy of the determination and accompanying letter is provided in **Attachment 'A'**.

Consultation requirements stipulated in the gateway determination are summarised below.

The Planning Proposal must be exhibited for at least 28 days and Council must comply with the requirements for public exhibition of planning proposals.

The following government agencies must be given at least 21 days to comment on the proposal:

- NSW Office of Water
- Roads & Maritime Services
- Endeavour Energy

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- Shoalhaven Water
  - Southern Rivers Catchment Management Authority
  - Office of Environment & Heritage
  - NSW Department of Primary Industries – Fishing & Aquaculture
  - NSW National Parks & Wildlife Services
  - NSW Rural Fire Service
  - Commonwealth Department of Sustainability, Environment, Water, Population & Communities.

A public hearing is not required under section 56(2)(e) of the Environmental Planning & Assessment Act (EPAA).

The letter accompanying the gateway determination also states that the public should be clearly advised of the proposed approach in respect to the permissibility of “extensive agriculture”. Note that Council’s approach in this regard will be determined once Council has finalised its position on the permissibility of “extensive agriculture” in the E4 zone (see discussion below).

#### **Permissibility of extensive agriculture**

Under Draft Shoalhaven LEP 2013, as exhibited, “extensive agriculture” will be permissible with Council’s consent in the E3 zone, but not in E2 or E4 zones. It is understood that consideration will be given to making “extensive agriculture” a permissible use in the E4 zone as part of the Citywide LEP process. As reported to Council in June 2012, if “extensive agriculture” is ultimately not listed as a permissible use in E4 across the City, it will be made a permissible use in the E4 areas of Verons Estate via Schedule 1 (‘additional permitted uses’) of the planning proposal. It would be inappropriate to make extensive agriculture permissible in the E2 land.

#### **FINANCIAL IMPLICATIONS:**

As at 31 March 2013, \$186,562 had been expended on the Verons Estate rezoning investigations. Income included:

- \$2,571 carried over from previous landowner contributions.
- Loan funds totalling \$162,968 (which is being repaid over 10 years via special rates). This has been fully expended, hence the need for supplementary funding – see below.
- \$25,000 temporarily allocated from Strategic Planning Consultants Budget of which \$3,977 remained unspent at 31 March 2013. Additional supplementary funding is likely to be required to enable the project to be completed. The total supplementary funding will have to be recouped from landowners at the appropriate stage, possibly via a voluntary planning agreement or similar.

Given the above financial situation, it is imperative that the rezoning investigation process is concluded in timely manner.

#### **Road construction and road design special rates – Lots 20 to 32**

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When the issue of the 13 lots in the Swan Lake catchment was reported to Council on 5 April 2011, it was recommended that Council:

- a) *Accept that land within the Swan Lake catchment is effectively unable to be rezoned for development due to the requirements of the South Coast Regional Strategy to demonstrate a neutral or beneficial effect; and*
- b) *Remove the special rates from the 13 properties which could not be rezoned for development.*

Council adopted part a) but instead of adopting part b) of the recommendation, resolved to only remove the rezoning special rates from Lots 20 to 32 (i.e. to continue to levy the road design and road construction special rates). Road work has now been undertaken along that part of Wandra Road that is considered appropriate given the environmental and planning constraints.

Council has also received objections to paying any special rates from the owner of one of the lots in the Swan Lake catchment.

Given the environmental constraints the road design and road construction special rates should be removed from Lots 20-32 commencing 1 July 2014.

#### **COMMUNITY ENGAGEMENT:**

Landowners have been consulted throughout the planning process. As is normally the case, Council writes to the owners whenever a report is prepared for Council's consideration on this project. Prior to Council's decision in April 2011, not to pursue rezoning to allow residential development on the land in the Swan Lake catchment, landowner meetings were held on 18 November 2010 and 31 March 2011. Furthermore, written feedback from landowners was sought and received during this period and all feedback was considered by Council. There is now an expectation that the planning process will proceed to formal exhibition and be concluded without any unnecessary delay.

#### **CONCLUSION**

The Verons Estate Planning Proposal has been given gateway approval, thus enabling it to be placed on public exhibition. It is proposed to rezone the Estate to a combination of environmental zones and to allow one dwelling per lot on Lots 1-19 by reducing the minimum lot size to 7 ha. The 40 ha minimum lot size will be retained on land that drains to Swan Lake. Except for those areas that would be rezoned to E2 - Environmental Conservation, extensive agriculture is proposed to be permissible with consent.



# Planning & Infrastructure

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 Postal: PO Box 5475, Wollongong NSW 2520

Shoalhaven City Council

Mr Russell Pigg  
 General Manager  
 Shoalhaven City Council  
 PO Box 42  
 NOWRA NSW 2541

Received

Our ref: PP\_2013\_SHOAL\_001\_00 (10/03077)  
 Your ref: 1422E (D13/80881)

14 JUN 2013

File No. \_\_\_\_\_

Referred to:         GJC        

Dear Mr Pigg,

## Planning proposal to amend draft Shoalhaven Local Environmental Plan 2013

I am writing in response to your Council's letter dated 10 April 2013 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to rezone land at Wandra Road and Advance Road, Verons Estate, Sussex Inlet to E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living and amend the minimum lot size for the subject land to 7ha and 40ha, permit extensive agriculture as an additional permitted use on land proposed to be zoned E4 in Verons Estate and investigate the potential to include a Conceptual Development Footprints Map within draft Shoalhaven Local Environmental Plan (LEP) 2013.

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

Prior to undertaking public exhibition, Council is to confirm if the planning proposal seeks to permit extensive agriculture as an additional permitted use on land proposed to be zoned E4 Environmental Living in Verons Estate or if the proposal seeks to permit extensive agriculture within the entire E4 Environmental Living zone. The planning proposal is to be updated to clearly advise the public of Council's approach.

I have also agreed the planning proposal's inconsistencies with S117 Directions 1.2 Rural Zones and 6.3 Site Specific Provisions are of minor significance or justified by an approved local strategy. No further approval is required in relation to these Directions.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation, however has asked not to be issued with delegation for the making of this plan because of the complex nature of the proposal. I have considered the nature of Council's planning proposal and have decided to support Council's position and not issue an authorisation for Council to exercise delegation to make this plan.

The amending LEP is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the department to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Lisa Kennedy of the Southern regional office of the department on 02 4224 9450.

Yours sincerely,



**Neil McGaffin** 7.6.13.  
**Executive Director**  
**Rural and Regional Planning**

## Gateway Determination

**Planning proposal (Department Ref: PP\_2013\_SHOAL\_001\_00): to make various amendments to draft Shoalhaven LEP 2013.**

I, the Executive Director, Rural and Regional Planning at the Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the draft Shoalhaven Local Environmental Plan (LEP) 2013 to rezone land at Wandra Road and Advance Road, Verons Estate, Sussex Inlet to E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living and amend the minimum lot size for the subject land to 7ha and 40ha, permit extensive agriculture as an additional permitted use on land proposed to be zoned E4 in Verons Estate and investigate the potential to include a Conceptual Development Footprints Map should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013)*.
2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
  - NSW Office of Water
  - Roads and Maritime Services
  - Endeavour Energy
  - Shoalhaven Water
  - Southern Rivers Catchment Management Authority
  - Office of Environment and Heritage
  - NSW Department of Primary Industries – Fishing and Aquaculture
  - NSW National Parks and Wildlife Services
  - NSW Rural Fire Services (S117 Direction 4.4 Planning for Bushfire Protection)
  - Commonwealth Department of Sustainability, Environment, Water, Population and Communities

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).



# Planning & Infrastructure

4. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated *7<sup>th</sup>* day of *June* 2013.

A handwritten signature in black ink, appearing to read "Neil McGaffin".

**Neil McGaffin**  
**Executive Director**  
**Rural and Regional Planning**  
**Department of Planning and Infrastructure**

**Delegate of the Minister for Planning and Infrastructure**