

SHOALHAVEN CITY COUNCIL

DEVELOPMENT COMMITTEE

To be held on Tuesday, 1st September, 2009
Commencing at the conclusion of the Crown Reserve, Community and Commercial Operations
Committee (commencing at 5.00pm).

26th August, 2009

Councillors,

NOTICE OF MEETING

You are hereby requested to attend a meeting of the Development Committee of the Council of the City of Shoalhaven, **to be held in Committee Rooms 1, 2 and 3, City Administrative Centre, Bridge Road, Nowra on Tuesday, 1st September, 2009 commencing at the conclusion of the Crown Reserve, Community and Commercial Operations Committee (commencing at 5.00pm)** for consideration of the following business.

R D Pigg
General Manager

Membership (Quorum – 7)

Clr Ward – Chairperson
Clr Young
Clr Findley
Clr Bennett
Clr Fergusson
Clr Brumerskyj
Available Councillors
General Manager or nominee

BUSINESS OF MEETING

1. Apologies
2. **Report of the General Manager**
 - Strategic Planning & Infrastructure
 - Development & Environmental Services
3. **Addendum Reports**

Note: The attention of Councillors is drawn to the resolution MIN08.907 which states:

- a) That in any circumstances where a DA is called-in by Council for determination, then as a matter of policy, Council include its reasons for doing so in the resolution.
- b) That Council adopt as policy, that Councillor voting in Development Committee meeting be recorded in the minutes.
- c) That Council adopt as policy that it will record the reasons for decisions involving applications for significant variations to Council policies, DCP's or other development standards, whether the decision is either approval of the variation or refusal.

Note: The attention of Councillors is drawn to Section 451 of the Local Government Act and Regulations and Code of Conduct regarding the requirements to declare pecuniary and non-pecuniary Interest in matters before Council.

Cell Phones:

Council's Code of Meeting Practice states that "All cell phones are to be turned off for the duration of the meeting".

LOCAL GOVERNMENT ACT 1993

Chapter 3

Section 8(1) - The Council's Charter

(1) The council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism
- to promote and to provide and plan for the needs of children
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants
- to keep the local community and the State government (and through it, the wider community) informed about its activities
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected
- to be a responsible employer.

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REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 1 SEPTEMBER 2009

STRATEGIC PLANNING AND INFRASTRUCTURE

1. Local Heritage Assistance Fund Programme 2009/2010

File 1110-11

Purpose of the Report:

Local heritage assistance grants are offered on an annual basis to owners of recognised heritage items listed in the Shoalhaven Local Environmental Plan to complete small projects involving restoration and/or conservation works/plans. This report summarises the applications received and seeks Council's endorsement of individual grants to successful applicants.

RECOMMENDED that:

- a) In respect to the Shoalhaven Local Heritage Assistance Fund 2009/2010, grants be offered to the 15 applicants listed in the following Table for amounts as shown:

Owner / Applicant	Project Location	Heritage item and Level of Significance	Description of Project	Recommended Grant Amount
R&J Hanson	30 Pulman St Berry	"Pulman's" weatherboard farmhouse *State*	Reinstate original French door renovate window sills	\$500.00
Sally Lindsay	A15 Princes Hwy Berry	Constables Cottage *Local*	Replace cottage roof and guttering	\$4,000.00
G&J Nolan	11 Pulman St Berry	"Lynstow" Colonial weatherboard cottage *State**	Conserve original lathe and plaster ceiling *State*	\$300.00
CJ & EA Siminadis	23 Albany St Berry	Interwar weatherboard cottage *Local*	Replace timber paling side boundary fence *Local*	NIL - assessed as low priority and previous grant recipient
Michelle Robinson	176 Princes Hwy Milton	Candle makers cottage *Local*	Emergency structural repairs to cottage *Local*	\$2,500.00
Wally Payten	300 Wilfords Lane Milton	"Loch Levan" Dairy farm Complex *Local*	Emergency repairs to beehive well (potential to collapse)	\$1,250.00

Owner / Applicant	Project Location	Heritage item and Level of Significance	Description of Project	Recommended Grant Amount
David Loneragan On behalf Upper KV Progress Assn	Upper Kangaroo River Rd Upper Kangaroo River	Upper Kangaroo River Community Hall *Local*	Repairs to original timber window	\$250.00
Architects Edmiston & Jones	All Saints Anglican Church 70 Plunkett St Nowra	Anglican Church complex *Local*	Heritage Conservation Management Plan	\$350.00
Jillian Hyam on behalf of the Uniting Church Milton Ulladulla	38 Croobyer Rd Milton	Victorian Gothic Revival Rubblestone church *Local*	Conservation of timber entrance door.	\$300.00
Sally Marshman	719 Greenwell Point Rd Pyree	Upper Numbaa barn (fmr Berry estate Grain Mill) *State*	Drainage improvements, re-pointing bricks, install window sills damp proofing.	\$3,950.00
S & M Mott	97 Osborne St Nowra	“Elyard” Victorian Georgian Cottage “Local”	Roof conservation works	\$500.00
Rodney & Ann Chick	759 Woollamia Rd Woollamia	“Strathroy” Weatherboard and Fibro holiday cottage “Local”	Heritage conservation Management Plan	\$350.00
K & G Thompson	138 Princes Hwy Milton	Inter war residence *Local*	Exterior wall renovation works	\$500.00
Andrew Garlick on behalf of the Cambewarra Union Church	80 main Rd Cambewarra	Gothic carpenter style weatherboard church “Local”	Conservation works involving underfloor ventilation repairs to guttering etc	\$1,000.00
Lucie and Duncan Stanford	36 Victoria St Berry	Former Victorian Presbyterian Manse “State”	Renovation works to rectify rising damp and wall cracks	\$250.00
Eleanor Lyons	170 Moss Vale Rd Kangaroo Valley	Victorian weatherboard shop and residence “Local”	Front fence replacement and garden conservation works	NIL – assessed as Low priority and previous grant recipient
Robyn McKeown and John Hughes	472 Princes Hwy Bomaderry	“Illowra” fmr Estate managers residence *State*	Conservation works to living room and hall	\$1,000.00
			TOTALS	\$17,000.00

- b) Council consider increasing the funds available in future budgets for the Local Heritage Assistance fund.

Options:

Not applicable.

Details/Issues:

An advertisement was recently placed in the local press calling for applications from the owners of heritage items to participate in the 2009/2010 program. Total funding of \$17,000 is available and includes a proposed State Government Grant of \$8,500 and \$8,500 from Council's (Strategic Planning Group) budget. Successful applicants are required to match the value of the money offered on a \$ for \$ basis and complete the works by May 2010.

Applications closed on 8 August 2009. Eighteen (18) applications were received for works totalling \$181,239.70 with requests for funding being a total of \$86,958.50. At the time of writing this report one application has been withdrawn as the works have now been completed. To qualify for assistance the applications must be from recognized heritage properties within the Shoalhaven and be for works that will conserve or restore the building; for example, painting schemes using a palette of colours which are more in keeping with the period of the building, reinstating original fabric, removing unsympathetic infill elements and works which will prevent costly repairs in the future (e.g. re-roofing, surface drainage works and replacement gutters). Grants may also be provided to prepare conservation management plans or construct interpretive signage.

All applications have been assessed in regard to their compliance with State Government requirements and endorsed by Council's independent heritage adviser as required under the terms of the State Government offer. As with previous years the requested amounts have been scaled back considerably due to the very small pool of funds available. Somewhat larger amounts have been recommended to three applications (up to \$4,000 maximum) to rectify serious structural problems or reduce potential water damage through leaky roofs/ rising damp. The costs of repairs to these items will rapidly escalate unless such works are carried out as soon as possible. Funding for two projects were not given a high priority this year although it is noted that both applicants had received grants previously. These applications were for replacement contemporary side and front fences of a similar style and garden restoration. Details of the grant applications are shown in the accompanying table below together with recommended amounts for successful applicants.

Applications for Local Heritage Assistance Funding 2009/10

Owner / Applicant	Project Location	Heritage item and Level of Significance	Description of Project	Estimated Cost	Requested Amount	Recommended Grant Amount
R&J Hanson	30 Pulman St Berry	"Pulman's" weatherboard farmhouse *State*	Reinstating original French door renovate window sills	\$3,500.00	\$1716.00	\$500.00
Sally Lindsay	A15 Princes Hwy Berry	Constables cottage *Local*	Replace cottage roof and guttering	\$22,000.00	\$11,000.00	\$4,000.00
G&J Nolan	11 Pulman St Berry	"Lynstow" Colonial weatherboard cottage *State*	Conserve original lathe a plaster ceiling *State*	\$790.00	\$395.00	\$300.00
CJ & EA Siminadis	23 Albany Street Berry	Interwar weatherboard cottage *Local*	Replace timber boundary fence *Local*	\$4,200.00	\$2,000.00	NIL
Michelle Robinson	176 Princes Hwy Milton	Candle makers cottage *Local*	Emergency structural repairs to cottage *Local*	\$6,000.00	\$2,800.00	\$2,500.00

Wally Payten	300 Wilfords Lane Milton	"Loch Levan" Dairy farm Complex *Local*	Emergency repairs to beehive well	\$7,500.00	\$3,750.00	\$1,250.00
David Loneragan On behalf of Upper KV Progress Assn	Upper Kangaroo River Rd Upper Kangaroo River	Upper kangaroo River Community Hall *Local*	Repairs to original timber window – NB: other proposed works to later alterations considered ineligible for grant	\$4,100.00	\$2,050.00	\$250.00
Architects Edmiston & Jones	All Saints Anglican Church 70 Plunkett St Nowra	Anglican Church complex *Local	Heritage Conservation Management Plan	\$8,300.00	\$4,400.00	\$350.00
Jillian Hyam on behalf of the Uniting Church Milton Ulladulla	38 Croobyer Rd Milton	Victorian Gothic Revival Rubblestone church *Local*	Conservation of timber entrance door.	\$600.00	\$500.00	\$300.00
Sally Marshman	719 Greenwell Point Rd Pyree	Upper Numbaa barn (fmr Berry estate Grain Mill) *State*	Drainage improvements, re-pointing bricks, install window sills damp proofing.	\$68,115.00	\$34,000.00	\$3,950.00
S & M Mott	97 Osborne St NOWRA	"Elyard" Victorian Georgian Cottage "Local"	Roof conservation works	\$3,500.00	\$1,750.00	\$500.00
Rodney & Ann Chick	759 Woollamia Rd Woollamia	"Strathroy" Weatherboard and Fibro holiday cottage "Local"	Heritage conservation Management Plan	\$2,500.00	\$1,250.00	\$350.00
K & G Thompson	138 Princes Hwy Milton	Inter war residence *Local*	Exterior wall renovation works	\$6,091.00	\$2,500.00	\$500.00
Andrew Garlick on behalf of the Cambewarra Union Church	80 Main Rd Cambewarra	Gothic carpenter style weatherboard church "Local"	Conservation works involving underfloor ventilation repairs to guttering etc	\$22,410.00	\$11,205.00	\$1,000.00
Lucie and Duncan Stanford	36 Victoria St Berry	Former Victorian Presbyterian Manse "State"	Renovation works to rectify rising damp and wall cracks	\$5,000.00	\$2,500.00	\$250.00
Elanor Lyons	170 Moss Vale Rd Kangaroo Valley	Victorian weatherboard shop and residence "Local"	Front fence replacement and garden conservation works	\$2,748.70	\$1,400.00	NIL
Robyn McKeown and John Hughes	472 Princes Hwy Bomaderry	"Illowra" Fmr Estate managers residence *State*	Conservation works to living room and hall	\$5,885.00	\$2,942.50	\$1,000.00
TOTALS				\$181,239.70	\$86,958.50	\$17,000.00

Projects relating to items of State significance include; several Berry Estate items, the former Presbyterian Manse and an impressive Federation residence at Berry. Successful applicants, together with the amount of the grants, are shown in the last column of the above table. The works would need to be completed by May 2010.

Economic Social & Environmental (ESD) Considerations:

The grants although small are an important tool in assisting owners to maintain Shoalhaven's cultural assets for future generations. The monetary component is included in the annual State of the Environment report and demonstrates Council's continuing commitment to heritage management and promoting sustainability principles.

Financial Considerations:

The total amount of the grant is \$17,000. Councils funding component for the grants (\$8,500) has been budgeted for in the 2009/10 financial year and Council's commitment to the Shoalhaven Heritage Strategy has enabled the remaining money (\$8,500) to be provided by the NSW Department of Planning's Heritage Office.

Due to the small size of the grants, only limited advertising about the fund has occurred. However, given the doubling of applications received this year, it is clear that owners of heritage items are now starting to utilise this resource and the demand for such funding will continue to grow.

It is therefore suggested that additional funds be made available in future budget considerations.

2. Policy Review - Strategic Planning & Infrastructure Group - Development Control Plans **File 33571-02 (PDR)**

Purpose of the Report:

To reaffirm 33 existing Development Control Plans and related policies pending completion of reviews that are currently underway and the preparation of the new Citywide DCP. Council has resolved that policies be reported within 12 months of a Council election.

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RECOMMENDED that Council reaffirm the Development Control Plans and related policies identified in Attachment "A" and consider any required revisions to these plans in conjunction with the development of the required Citywide DCP

Options:

- a) Reaffirm the DCPs and related policies unchanged pending the completion of the Citywide DCP and consider any revisions or changes as part of this overall project – this is the preferred option.
- b) Not reaffirm the existing DCPs and related policies – would possibly result in a policy vacuum in certain areas.
- c) Request reviews of all or some of the identified DCPs and related policies – this would create resourcing issues and take staff away from existing major commitments in the short term (e.g. Shoalhaven LEP 2009, Citywide DCP etc).

Details/Issue:

It is desirable for all public policies (DCPs included) to be reviewed by Council, within 12 months of election. Council has a large number of individual DCPs and related policies that would need to be reviewed as part of this and these are identified in attachment "A"

However as Council is aware from recent reports and briefings, we have embarked on the review and consolidation of our existing DCPs into a single Citywide DCP. This is a requirement of the NSW Planning Reforms and the new single DCP needs to be in place when the new Citywide LEP is gazetted.

The preparation of the single Citywide DCP is currently a focus for staff and a series of Councillor Briefings have been arranged for July – September to discuss its preparation and content. The content of existing DCPs and related policies will be reviewed and, if needed, updated as part of this process or the other individual reviews that are currently underway (e.g. Review of DCP No.119 – Nowra Civic Precinct)

It is also likely that a number of superfluous DCPs or policies will be made redundant through the Citywide DCP process – for example where a DCP guided the development of a particular area or use and that development has now fully occurred.

It is therefore proposed that the current DCPs identified in Attachment “A” be reaffirmed in the short term and that any required revisions to these plans or their deletion be considered as part of the development of the Citywide DCP.

Economic, Social & Environmental (ESD) Consideration:

Deferring the review of the DCPs and related policies will allow resources to continue to be committed to the Citywide DCP project. This will enable staff to focus on the current approach and also deliver a coordinated, consistent outcome.

Financial Considerations:

None at present. The preparation of the Citywide DCP is currently being managed within existing budgets.

3. Bomaderry Industrial By-Pass - Developer Contributions Roads (PDR)

File 1028-06

Purpose of the Report: To recommend to Council how development contributions collected for the now deleted Bomaderry Industrial By-Pass (Contribution Project – 01ROAD0106) should be dispersed in the vicinity of the benefit area from which contributions were collected.

RECOMMENDED that Council allocate current funds and any subsequent funds (as per condition of past development consent) collected for the deleted Bomaderry Industrial By-Pass (Contributions Project – 01ROAD0106) to the strengthening and widening of various sections of Meroo Road, Bomaderry between Edwards Avenue and Halstead Place.

Options:

Council may choose to:

- a) Endorse the recommendations as detailed in this report.
- b) Seek amendment of the recommendation as detailed in this report.
- c) Not endorse the recommendations as detailed in this report.

Details/Issue:*Background*

Council at its meeting of 16th December 2008 (MIN 08.1763), in part resolved that:

- a) *Delete the Bomaderry Industrial By-Pass project from the S94 Contributions Plan and apply contributions to works in the vicinity.*

The report to the Ordinary meeting of Council pertaining to the above resolution is attached (Attachment 'A').

Issues

Development contributions (including interest) collected for the Bomaderry Industrial By-Pass (Contribution Project – 01ROAD0106), deleted by Council at its meeting of 16th December 2008 (MIN 08.1763) totals \$84,693.28 as at July 2009. This amount is anticipated to increase by appropriately \$1,889.77, plus annual indexation, for a development consent approved (DA07/1678) which has not yet paid this development contribution to Council.

In accordance with the Council resolution of 16th December 2008 (MIN 08.1763), it is recommended that Council allocate current funds and any subsequent funds (as per condition of past development consent) collected for the deleted Bomaderry Industrial By-Pass (Contribution Project – 01ROAD0106) be used on the strengthening and widening of Meroo Road, Bomaderry. It is proposed that this strengthening and widening will include various sections between Edwards Avenue and Halstead Place which currently do not have kerb and guttering and/or exhibit pavement failures.

The above strengthening and widening works will provide road improvements that will benefit development that has contributed to the deleted Bomaderry Industrial By-Pass (Contribution Project – 01ROAD0106) in lieu of Council delivering this project. This work is in addition to Council's provision and upgrade of transport routes such as Meroo Road which is in the vicinity of the deleted Bomaderry Industrial By-Pass.

Economic, Social & Environmental (ESD) Consideration:

The strengthening and widening of Meroo Road will provide economic benefits to local residents and industries ensuring this route can facilitate development demand. There are also social and environmental gains from upgrading existing infrastructure.

Financial Considerations:

The strengthening and widening of Meroo Road, as detailed in this report, is to be fully funded from past development consents that required development contributions to be paid to the deleted Bomaderry Industrial By-Pass (Contribution Project – 01ROAD0106). Acknowledging the past commitments by Council to provide and upgrade Meroo Road, no matching contribution will be provided by Council.

4. **Shoalhaven Contributions Plan Amendment No 77.3 - Planning Area 3 Roads**
File 28709-02

Purpose of the Report: To seek Council endorsement of the draft Shoalhaven Contributions Plan Amendment No 77.3 – Planning Area 3 Roads for public exhibition.

RECOMMENDED that:

- a) **Council endorse the draft Shoalhaven Contributions Plan Amendment No 77.3 for public exhibition for a minimum period of 28 days;**
- b) **Notice of exhibition of the draft Shoalhaven Contributions Plan Amendment No 77.3 be placed in local newspapers;**
- c) **The draft Shoalhaven Contributions Plan Amendment No 77.3 be placed on Council’s internet site with easy links to make comments electronically;**
- d) **Relevant Community Consultative Bodies be made aware of the draft Shoalhaven Contributions Plan Amendment No 77.3; and**
- e) **A further report on the draft Shoalhaven Contributions Plan Amendment No 77.3 be submitted to Council after the public exhibition period.**

Options:

Council may choose to:

- a) Endorse the draft Shoalhaven Contributions Plan Amendment No. 77.3 for public exhibition.
- b) Seek further amendments to the draft Shoalhaven Contributions Plan Amendment No. 77.3 prior to public exhibition.
- c) Not adopt the draft Shoalhaven Contributions Plan Amendment No. 77.3 for public exhibition.

Details/Issue:

Background

Council is in the process of preparing a new Contributions Plan to meet legislative requirements as per a previous report to Council of 4th August 2009 (Attachment A).

It is intended that the draft Shoalhaven Contributions Plan Amendment No. 77.3 will be reviewed and incorporated as an amendment into the current 1993 Contributions Plan (1993 Plan). This amendment, along with other recent amendments to the 1993 Plan will then be incorporated into the new Contributions Plan.

This report outlines amendments recommended following the review of the Planning Area 3 Roads component of the 1993 Plan. A copy of the draft Amendment No. 77.3 will be available to view in the Councillor’s Room.

Planning Areas 3 Roads

The 1993 Plan contains 34 road projects in Planning Area 3. The draft Amendment proposes 15 projects for inclusion into the Contributions Plan and for funding consideration in Council’s capital works planning.

In addition to rectifying anomalies in the 1993 Plan, the review has considered:

- The status of each project in terms of works undertaken;
- The amount of contributions collected for each project as a proportion of developers' share;
- The potential development remaining within the Planning Area;
- Changes in circumstances since the 1993 Plan was made effective; and,
- Current need for road projects in the Planning Area.

The draft Amendment proposes to:

- Delete 20 Area 3 Road projects from the 1993 Contributions Plan. These projects and the reason for deletion are included in Attachment 'B';
- Retain and update 7 projects from the 1993 Contributions Plan. The project and reason for inclusion is detailed in Attachment B;
- Create 2 new Area 3 Road projects. The project and reason for inclusion is detailed in Attachment B; and
- Retain 6 recoupment projects for the cost of road projects that Council has undertaken in anticipation of new development.

The apportionment and contribution rates for roads projects to be retained or included in the Amendment are detailed in Table 1:

Table 1 – Planning Area 3 Proposed Road Projects

Project	Project Cost	Development Share	Contribution Rate	Council Share
03 ROAD 2001 Dowling Street, Falls Creek	\$49,526	\$12,381	\$6,190.73/ ET	\$37,144
03 ROAD 2011 Hart Road, Falls Creek	\$194,210	\$38,842	\$12,947.36/ ET	\$155,368
03 ROAD 2013 Sinclair Road (Part 3), Falls Creek	\$122,472	\$40,824	\$13,608.00/ ET	\$81,648
03 ROAD 2014 Sinclair Road (Part 1 & 2), Falls Creek	\$74,981	\$56,753	\$8,107.57/ ET	\$18,228
03 ROAD 2016 Port Jervis Estate Roads, Tomerong	\$955,421	1) \$894,500	\$14,908.33/ ET	\$0
		2) \$50,326	\$2,648.76/ ET	\$10,595

Project	Project Cost	Development Share	Contribution Rate	Council Share
03 ROAD 2019 Tasman Park Estate Roads, St Georges Basin	\$266,604	\$89,591	\$5,599.44/ ET	\$176,613
03 ROAD 2021 St Georges Basin Bypass	\$5,123,898	\$27,401	\$109.17/ ET	\$426,401
		\$620,935	\$654.99/ ET	\$3,255,977
		\$22,379	\$109.17/ ET	\$93,664
		\$185,895	\$185,895 Lump Sum	\$0
03 ROAD 2022 Grange Road, St Georges Basin	\$642,439	\$123,895	\$604.36/ ET	\$518,544
03 ROAD 2024 Atherton St/ Wool Rd, Basin View	\$128,010	\$67,374	\$6,737.37/ ET	\$60,636
03 ROAD 2025 Basin View Estate Roads	\$242,300	\$60,575	\$8,653.57/ ET	\$181,725
03 ROAD 2028 Wandean Road, Wandandian	\$502,135	\$469,387	\$7,334.18/ ET	\$0
		\$27,290	\$5,457.99/ ET	\$5,458
		N/A	0.09/ Tonne	N/A
03 ROAD 2033 Naval College Road, Tomerong	\$8,578,146	\$414,379	\$1,650.91/ ET	\$8,163,766

Project	Project Cost	Development Share	Contribution Rate	Council Share
03 ROAD 2053 The Wool Lane, Sanctuary Point	\$447,370	\$91,970	\$243.95 / ET	\$198,821
		\$111,843	\$111,843 Lump Sum	\$0
03 ROAD 0114 Windley Road, Wandandian	\$256,608	\$256,608	\$6,415.20/ ET	\$0
03 ROAD 0115 Sydney/ Bowen Street, Huskisson	\$938,739	\$520,330	\$332.48/ ET	\$418,409
Total	\$18,522,859	\$4,183,478		\$13,802,997

Economic, Social & Environmental (ESD) Consideration:

The proposed works identified in the draft Shoalhaven Contributions Plan Amendments No. 77.3 will be constructed using best practice industry standards. This will ensure that Economic, Social and Environmental Considerations are appropriately considered at the time of development.

Financial Considerations:

The draft Amendment allows Council to collect Development Contributions to assist in the funding of roads within Planning Area 3. The draft Amendment identifies a total of 15 road projects which Council will be able to collect contributions for, of which 6 will be to recoup the cost of construction in anticipation of new development. An objective of the draft amendment is to ensure equitable sharing of costs for essential community infrastructure

Projects associated with rural residential development are generally proposed to be fully development funded. For all other projects, contribution rates are calculated by dividing the estimated cost of the project by the total (existing and potential) benefiting lot/dwellings. Council funding required to match Development Contributions will need to be considered in future capital works planning

Purpose of the Report: To respond to Council's Resolution of 14th April 2009 (MIN09.467) which requested that a report on the structure and operation of the previous Heritage Committee be presented with the view to re-establishing this Committee.

RECOMMENDED that Council defer consideration of re-establishing the Shoalhaven Heritage Advisory Committee until a project is defined to review the Heritage Provisions in the Local Environmental Plan or another specific heritage project which would benefit from committee involvement.

Options:

There are a number of options available to Council in relation to establishing a Heritage Committee.

- Option 1: Elect to appoint a stand alone committee for a fixed period of say 3 years to coincide with the implementation of the adopted heritage strategy.
- Option 2: Appoint a committee without any fixed time period.
- Option 3: Entrust heritage matters to an existing committee.
- Option 4: Decline to establish a committee.
- Option 5: Defer consideration of re-establishing the committee until a project is defined to review the Heritage Provisions in the Local Environmental Plan or another specific heritage project which would benefit from committee involvement.

Details/Issue:

Structure and Operation of the Previous Committee

In 1994, an Australian Heritage Council \$ for \$ grant for \$40,000 was received to prepare a heritage study of the Shoalhaven Local Government Area. A condition of that grant was a requirement to establish a Heritage Committee.

The Committee was established on the 19th September 1995 with the following objectives:

- To review and comment upon the consultant parts of the Heritage Study and ensure that the Study reflects the heritage environment of Shoalhaven;
- Stimulate public participation and the supply of information where possible; and
- Assist with raising public awareness of the Study and its processes through press items etc and help the community establish realistic expectations of what the Study will achieve.

The Committee was to be disbanded following the completion of the Heritage Study. Eleven members were initially appointed, however the final make up of the Committee in 1998 was composed of Councillors with 16 members from the following:

- Royal Australian Institute of Architects (1)
 - Milton/Ulladulla Chamber Tourism & Business (1)
 - Shoalhaven Historical Society (2)
 - National Trust of Australia (NSW Branch) (1)
 - Nowra CBD Promotions Committee (1)
 - Berry & District Historical Society (1)
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- Shoalhaven Tourism Board (2)
 - Greenwell Point and District Family History Group (1)
 - Lady Denman Heritage Complex (1)
 - Sussex Inlet District Forum (1)
 - Australian Institute of Landscape Architects (1)
 - Shoalhaven Family History (1)
 - Milton Ulladulla Historical Society (1)
 - Kangaroo Valley Historical Society (1)

Upon completion of the Study, the Committee endorsed its findings and recommended that approximately 800 heritage items and 12 new heritage conservation areas be included in the proposed heritage amendments to the Shoalhaven Local Environmental Plan (SLEP). The Committee also endorsed a draft DCP which provided guidelines for the management of the heritage items, conservation areas and pastoral and natural landscapes.

The Committee was disbanded in October 1999 and its functions were subsequently absorbed by Council's Policy and Planning Committee.

Following the public exhibition of the Heritage Amendment to SLEP in August 2000, a new Working Party was formed in December 2001 consisting of Councillors and the Mayor. The Working Party made further recommendations to Council requesting the deletion of approx 350 heritage items and all of the new conservation areas. The Draft DCP, including management guidelines for the rural and natural landscapes, was deferred indefinitely. The draft amendments to the LEP were adopted in May 2004 without further exhibition and the Plan was submitted to the Minister for Planning for gazettal. The Councillors Working party was disbanded.

In February 2005, Council requested the Minister for Planning to return the Plan to Council for further amendments, including the deletion of a further 16 items, primarily in Huskisson. These amendments were adopted by Council, but not exhibited for public comment. The Heritage Amendments to SLEP were finally submitted to the Minister for Planning for gazettal in September 2005 and gazetted on the 13th April 2007.

Why Establish a New Committee?

In the NSW Heritage Office publication "*Looking after your Community's Heritage*", the author Bruce Pennay writes "*Local government has the primary responsibility for identifying and managing heritage items in NSW. Councils are required to make decisions on heritage matters and accordingly need to have an understanding of the principles involved in making judgements on these issues. Increasing community awareness, appreciation and involvement in heritage are ways of ensuring that the Council and the community work together. Councillors need to be involved in this public consultation process because ultimately they have the responsibility of representing and expressing the community's heritage values.*"

Community concern for heritage springs from a desire to protect sites and structures which they regard as important and which they want to conserve and pass on to future generations. Councils that have good knowledge of their cultural assets are better equipped to understand the community they live in, what it was and what it hopes to be. It defines what is distinctive about a local area and its people and establishes character and identity.

The following comments suggest there is scope to improve processes in the Shoalhaven and engage with the community in a more meaningful way in regard to heritage management:

- The Shoalhaven's heritage community could be encouraged to communicate with Councillors and staff regarding Heritage impacts of strategies;
- The adequacy of financial incentives for owners of heritage places could be reviewed, with the community included in discussions as to how these incentives are distributed. (Assessment of heritage grants are currently determined by Council staff and Councils Heritage Adviser, whereas tourists and arts grants are assessed by their respective boards);
- A Committee could assist Council to obtain resources to complete Graham Lodge and implement the policies of the Conservation Management Plan (e.g. providing an interpretive centre to highlight the history of the Shoalhaven);
- Council could consider a heritage awards program, and/or a main street programme, and/or work with the National Trust and other organisations on heritage promotion programmes such as Heritage Week;
- Heritage conservation/cultural tourism could be promoted;
- Council could review the management of its own heritage places and review the adequacy of financial resources and disaster planning;
- Council could prepare a list of endorsed heritage suppliers and consultants; and
- Council could regularly apply for monetary grants from external organisations other than the NSW Heritage Branch.

Possible Role of a Heritage Committee

Within the Shoalhaven, a Heritage Committee could assist by:

- Commenting on the collection and recording of local heritage material and artefacts;
- Commenting on funding submissions to other agencies, including requests for heritage grants from the Heritage Office and NSW Department of Planning Heritage Grants Program;
- Commenting on specific development applications before the Council when required;
- Assist with the preparation and monitoring of the current Heritage Strategy;
- Provide advice to the Council on the management of heritage by the Council (this includes reviewing Council or Government Policies which affect heritage places in the area);
- Raise community awareness of heritage conservation through publications, seminars, public displays and annual heritage awards; and
- Compile a register of local heritage suppliers and heritage consultants.

Alternatively it is suggested that Council defer consideration of re-establishing a formal committee until a specific purpose, such as review of Heritage Provisions in the Local Environmental Plan or another specific heritage project, is identified. However, should Council wish to establish a committee now, the following structure, objectives and composition are proposed.

Possible Structure and Operation of a Heritage Committee

The Committee could be established over a fixed term of 3 years aligned to the core tasks of Councils current work program i.e. the adopted Heritage Strategy. The continuation of the Committee could then be subject to the requirements of any future strategy. The Committee could meet up to 4 times a year and the quorum for the purposes of voting should be four (4). The following objectives, composition and membership criteria could be considered.

Objectives

- To support Council in implementing the Shoalhaven Heritage Strategy;
- To assist with the development and implementation of strategies, policies and programs relating to heritage conservation;
- To encourage awareness and pride in Shoalhaven's unique heritage;
- To make recommendations to Council about further work required to document and protect Shoalhaven's heritage;
- To assist Council in its endeavours to source external funding to further heritage conservation, promotion, management and education;
- To provide comment and feedback on heritage issues relevant to Shoalhaven's Aboriginal community.

Composition

A possible list of representatives to assist the Committee may include:

- The Mayor, Councillors and relevant staff
- Business/promotions representative.
- Tourism representative
- Representative from the Shoalhaven Historical Society
- Representative from the Milton Ulladulla Historical Society
- Representative from the Lady Denman Maritime Museum
- Representative of the NSW Branch of the National Trust
- Council's independent Heritage Adviser
- Representative of Shoalhaven's Aboriginal community

The previous Heritage Study Committee included representatives of a large number of local Heritage organisations. In doing so again, a large and potentially unmanageable Committee would exist. To keep the Committee to a reasonable size, it is suggested that the Shoalhaven and Milton Ulladulla Historical Societies could be charged with representing the interests of all local groups.

Membership Criteria

The above representatives should have:

- Demonstrated extensive knowledge of local heritage;
- Practical experience in promoting and protecting heritage in Shoalhaven;
- An understanding of Local Government;
- A commitment to consultative processes; and
- The ability to effectively listen to and co-operate with others holding similar or different points of view.

A copy of the current Shoalhaven Heritage Strategy 2008-2011 and Heritage Council's information on establishment of a heritage committee are attached to this report (attachments A and B).

The complete Heritage Office publication "*Recommendations for Local Council Heritage Management*" are included in Councillors information folder.

Economic, Social & Environmental (ESD) Consideration:

The principles of cultural sustainability and tourism encourage the effective management of heritage assets. Council's requirements for State of the Environment reporting would also be enhanced through the creation of the Heritage Committee.

Financial Considerations:

To be effective, the Committee would need to meet at least 4 times a year. Additional staff resources would be required, and it should be noted that the increasing workload on existing Committee staff would potentially allow less time for other existing Committees to meet. It would also be desirable to invite Council's Heritage Adviser to attend meetings with remuneration being covered through fee arrangements.

E J Royston
DIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE

R D Pigg
GENERAL MANAGER

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 1 SEPTEMBER 2009

DEVELOPMENT AND ENVIRONMENTAL SERVICES

6. Development and Environmental Services - Local Approvals Policies.

File 7467 and 3399

PURPOSE OF THE REPORT:

The Local Government Act requires that all local approvals policies (LAPs) be reviewed within twelve (12) months of an election of a new Council.

The subject LAPs are presented to Council at this meeting to provide Council the opportunity to reaffirm, modify, amend or rescind them. Copies of the LAP's have been included in the Councillors' Information Folder.

RECOMMENDED that:

- a) **Council reaffirm the Mobile Food Stalls/Vehicles and Temporary Food Premises Local Approvals Policy without any change; and**
- b) **Council reaffirm the On-site Sewage Management Development Control Plan No. 78/Local Approvals Policy with minor amendments as detailed in this report and remove the development application requirements of this DCP/LAP on the day SDCP 2009 takes effect so that the document operates as an Local Approvals Policy only.**

OPTIONS:

- a) Resolve to:
 - i. reaffirm the Mobile Food Stalls/Vehicles and Temporary Food Premises Local Approvals Policy without any change;
 - ii. reaffirm the On-site Sewage Management Development Control Plan No. 78/Local Approvals Policy with minor amendments as recommended and remove the development application requirements of this DCP/LAP on the day SDCP 2009 takes effect so that the document operates as an LAP only; or
- b) Resolve to review one or both local approvals policies, and give directions on matters to be considered; or
- c) Resolve to make amendments to one or both local approvals policies; or
- d) Rescind one or both local approvals policies.

DETAILS/ISSUE:

Mobile Food Stalls/Vehicles and Temporary Food Premises

Persons, organisations and Clubs selling food from mobile food stalls/vehicles and temporary food premises have an obligation under the Food Act to sell safe food.

The Mobile Food Stalls/Vehicles and Temporary Food Premises Local Approvals Policy requires operators to obtain an approval under Section 68 of the Local Government Act to operate a stall/vehicle or temporary premises for the purposes of selling food to ensure controls are maintained and observed. The Policy applies to the whole City.

The objectives of the Policy are:

- the storage and handling of food in a proper manner;
- that food offered for sale is fit for human consumption;
- a minimum standard of hygiene, sanitation and waste disposal is met;
- that food is free from contamination and food production/handling procedures comply with the Food Act, 2003;
- a harmonious relationship with established business and commercial activities is achieved;
- avoidance of traffic hazard and limited disruption to pedestrian thoroughfares; and
- compliance with the Environmental Planning and Assessment Act, 1979.

No change to this Policy is recommended. It is recommended that Council reaffirm the Policy in its current form.

On-site Sewage Management

Council's existing On-site Sewage Management Development Control Plan No. 78/Local Approvals Policy currently applies to *all land not connected to a reticulated public sewerage system*.

The DCP/LAP specifies minimum site requirements for the on-site disposal of effluent and details information that is required to be submitted with a development application under the Environmental Planning & Assessment (EP&A) Act, 1979 and applications to operate an on-site sewage management facility under the Local Government Act, 1993. The DCP/LAP also provides criteria for determining these applications.

The objectives of the DCP/LAP are the:

- prevention public health risk;
- protection of lands;
- protection of surface waters;
- protection of groundwaters;
- conservation and reuse of resources (e.g. reuse of wastewater); and
- protection of community amenity.

It is recommended that the DCP/LAP be amended to bring it in line with recent changes to the Local Government Act so that to it *'applies to all land in the City where approval can be granted to install an on-site sewage management facility as defined by the Act'*.

On-site sewage management facilities also include grey water systems. Home owners and commercial operators may wish to install a grey water reuse system where their property is connected to Council's reticulated sewerage system.

The DCP/LAP has been amended to reflect changes in legislation, standards and guidelines and industry best practice. The document has been re-formatted in some areas so that it is more user friendly and provides clarification of information required to be submitted with applications. The recommended changes are highlighted in a copy of the amended DCP/LAP included in the Councillors' Information Folder and can be summarised as follows:

- updates to include changes to legislation, standards and guidelines and links to these;
- clarification of circumstances where variation to the Policy can be applied to allow for new technologies or designs;
- update of special requirements for Kangaroo Valley (drinking water catchment) in accordance with Drinking Water Catchments Regional Environmental Plan;
- some updates on industry best practice;
- removal of unnecessary extracts of legislation;
- clarification on information required to be submitted with applications;
- requirement to consider impact of nutrients from effluent on soil, in order to properly calculate the size of an effluent disposal area; and
- update of rainfall data.

The requirements for development applications from this DCP/LAP have been included in the Draft Shoalhaven Development Control Plan 2009.

The document has previously been adopted by Council as both a DCP and an LAP.

It is recommended that Council adopt the amended DCP/LAP and determine to remove the development application requirements of this DCP/LAP on the day SDCP 2009 takes effect so that the document operates as an LAP only.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

These policies assist Council in achieving its charter under the Local Government Act to protect public health and the environment.

FINANCIAL CONSIDERATIONS:

No financial considerations applicable as a result of the recommended changes to existing policy.

PURPOSE OF THE REPORT:

The purpose of this report is to consider a review of the Operation of Markets Policy (the Policy) in relation to the frequency of markets in the Shoalhaven, following Council's resolution to review the Policy with respect to weekly markets.

RECOMMENDED that:

- a) **This report be received for information;**
- b) **Given that "markets" are currently being separately addressed in the draft Shoalhaven Local Environmental Plan (SLEP) 2009 process, Council's Operation of Markets Policy be reviewed during the public exhibition of the draft SLEP 2009, so that the Policy is consistent with any new provision of this draft instrument; and**
- c) **In conjunction with Recommendation 2 above, the revised Operation of Markets Policy, be included as a component of the draft Shoalhaven Development Control Plan (SDCP) 2009, in order for the revised provisions to become effective when draft SLEP 2009 is gazetted.**

OPTIONS:

- a) Council adopt the recommendation presented in this report; or
- b) Council not adopt the recommendation and provide direction to the General Manager.

DETAILS/ISSUE:**Introduction**

Council, on 24 March 2009, considered the review of a determination of refusal to allow the Shoalhaven Heads Hotel to operate a weekly local fresh produce fair, under Section 82A of the *Environmental Planning and Assessment (EP&A) Act 1979*.

At that meeting, Council resolved in part that:

"b) A review of the Markets Policy be reported in regard to weekly markets"

A Councillor Briefing was held on 13 May 2009 to explore the issues to be considered regarding this resolution. The following is a summary of those issues:

- Within the provisions of the Shoalhaven Local Environmental Plan (SLEP) 1985, that markets not be considered as a "temporary use" only, but as a defined land use;
- The Operation of Markets Policy allow an increase in the frequency of markets with respect to the various types of markets available; and

-
- A clarification of “localities” within the greater city area, as opposed to localities as it currently applies to individual towns and villages, as prescribed in Council’s Policy.

Markets in the Shoalhaven - The Current Situation

Markets in the Shoalhaven Local Government Area (LGA) are commonly held in a number of village and town areas and are often organised by “not for profit” community groups that benefit from the income from stallholders. The funds received are generally used to support the core work of the community group. The stallholders benefit by income from sales.

Existing markets operate under a development consent that is generally time-limited (usually for an initial 12- month period). Should an extension be required to the consent, this must be done through a Section 96 amendment process under the *EP&A Act 1979*, which may result in the granting of a further five (5) year approval, with additional time periods considered in the future. This process allows a review of the operations and the conduct of the markets.

The markets that are run by such community groups are commonly held on public reserve land. There are some cases where the market is held at the premises of a community organisation or school. In certain instances, markets are proposed on private land, as was the development application that resulted in the Policy being reviewed, where the proponent sought approval to run weekly fresh food produce market/ fair on privately-owned, business-zoned land.

Current Provisions of SLEP 1985 and the Operation of Markets Policy

Under SLEP 1985, ‘market’ is not a defined land use; and neither is it defined under the *EP&A Model Provisions 1980*. Thus, “market” under the SLEP 1985, is usually defined as “commercial premises” and as such it is a prohibited use in several zones including the majority of the residential zones, and the open space zones.

Clause 39C of the SLEP 1985 (Temporary Use of Land), is consistently used to permit the development of markets in zones where markets are not prohibited. This Clause provides that Council may grant consent to the temporary use of any land for any purpose for a maximum period of twenty-eight 28 days in any one (1) year. Council’s Operation of Markets Policy has also been written to be consistent with Clause 39C which allows one (1) market per month per locality with provisions for Council to consider a second monthly market per locality; where a second market is proposed, it should meet the following criteria:

“The applicant demonstrating the market will be beneficial to the community; does not impact on the financial viability of existing businesses; and the majority of the stalls meet a “make it, bake it, sew it, grow it” criteria.”

Therefore, an application for “market” is commonly made under Clause 39C - Temporary Use of Land provision under the SLEP 1985 and assessed against the Operation of Markets Policy.

Proposed Provisions under Draft SLEP 2009

Under the draft SLEP 2009 (currently awaiting State Government's public exhibition certification), a "market" is proposed as a defined use within its dictionary and is included in the land use tables as a land use either permissible with consent or prohibited in each of the zones.

Draft SLEP 2009 defines "market" as *"retail premises comprising an open air or an existing building used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis"*.

Markets are proposed to be permitted with consent in the following zones in the Draft SLEP 2009:

- Zone RU1 - Primary Production
- Zone RU2 - Rural Landscape
- Zone B4 - Mixed Use
- Zone B7 - Business Park
- Zone IN1 - General Industrial
- Zone IN2 - Light Industrial
- Zone IN4 - Working Waterfront
- Zone RE1 - Public Recreation
- Zone RE2 - Private Recreation
- Zone E3 - Environmental Management

In addition, under Draft SLEP 2009, markets come under the group termed 'retail premises'; and thus are permissible under any zone that permits retail premises. Draft SLEP 2009 defines "retail premises" as *"a building or place used for the purpose of selling items by retail or for hiring or displaying items for the purpose of selling them by retail or hiring them out, whether the items are goods or materials (or whether also sold by wholesale)"*.

Therefore, markets are also proposed to be permissible with consent in the following zones under Draft SLEP 2009:

- RU5 - Village
- B2 - Local Centre
- B3 - Commercial Core
- B5 - Business Development

Markets are prohibited in all other zones under the Draft SLEP 2009.

The proposed provisions in the draft SLEP 2009 would mean that upon its gazettal, the zones where markets may be permissible with consent would be far greater, and Council will no longer need to rely on the temporary use of land clause as a mechanism to consider applications for markets.

The draft SLEP 2009 has addressed Council's intention to consider markets as a defined land use rather than just a "temporary use"; and thus enabling the operation of weekly markets within zones that allow markets to be permissible with consent.

Consideration of Weekly Markets within the Markets Policy

The current policy provides that there should be only one (1) market per month per locality, and where a second market is proposed it should meet certain criteria benefitting the community and not have detrimental impact on the financial viability of existing businesses in that locality.

Modifying the existing Markets Policy to provide for weekly markets in a locality, would be in conflict with Clause 39C of the SLEP 1985, as Clause 39C only allows the temporary use of any land for any purpose for a maximum period of twenty-eight 28 days in any one (1) year.

To amend Clause 39C to allow for the weekly use of temporary land would require an amendment to the SLEP 1985, which is unlikely to gain State Government support at this point in time given the draft SLEP 2009 currently has already made provisions to include a definition for "market" and to allow markets with consent in various other zones than currently are permissible under SLEP 1985.

Clarification of Localities for Markets

The localities referred to in the Operation of Markets Policy are those adopted for areas within the Shoalhaven LGA, through the NSW Government's Geographic Names Board (GNB). For example, the markets held at the Nowra Dog Tack at Albatross Road are in the South Nowra locality and the two (2) approved markets currently exist in the Huskisson locality. There are no currently approved markets in the defined Nowra locality. If Council wished to create additional location "categories" this could be provided, although it may not be necessary given that there are separate localities within what would generally be regarded as the Nowra/Bomaderry urban area.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

This report does not identify any economic, social or environmental (ESD) considerations.

FINANCIAL CONSIDERATIONS:

This report does not identify any financial considerations.

CONCLUSION

In considering Council's resolution of 24 March 2009 to review the Markets Policy in regard to weekly markets, this report outlines the current provisions in SLEP 1985, the Markets Policy and new provisions that are being proposed under the Draft SLEP 2009. Given that the Markets Policy is currently written to be in line with the current provisions of the SLEP 1895, the Policy cannot legally be revised unless the SLEP 1985 is amended to allow for weekly markets. The Draft SLEP 2009 process which has already commenced, has already made provisions to include a definition for "market" and to allow markets with consent in a number of other zones than currently permissible under SLEP

1985, thus, when gazetted, an application for a “market” need not be reliant as a “temporary use of land”, and would allow the operation of weekly markets, with consent.

In this regard, to include development controls for weekly markets into Council’s Operation of Markets Policy is premature at this stage as the current Clause 39C under the SLEP 1985 which operation of markets rely on at present, does not allow for this. It is recommended that the Policy not be reviewed at this stage and that it be further considered once the exhibition of SLEP 2009 is undertaken and staff are in a better position to know what is the likely gazetted position for SLEP 2009. In conjunction with this recommendation, it is also recommended that any revised Operation of Markets Policy be included as a component of the draft Shoalhaven Development Control Plan (SDCP) 2009, so that the revised provision for “markets” becomes effective when the draft SLEP 2009 is gazetted.

8. Development Application for Adult Shop - Lot 9 DP 809875 - 4 Nowra Lane, Nowra. Applicant: The Condomerie. Owner: A & A Campbell Pty Ltd. File DA09/1901

PURPOSE OF THE REPORT:

A development application has been submitted to Council for a change of use of a vacant shop previously used as a shoe shop to an adult shop.

Council resolved on 17 December 2008 that any development application lodged under Policy 04/121 - Adult Shops (*now POL08/165 - Adult Shops*), be referred to the elected Council with a Section 79C assessment for determination.

The matter is being reported to Council in accordance with the above resolution for its determination.

As many Councillors would be aware the business commenced operations without approval and is currently operating.

RECOMMENDED that in respect of DA09/1901 for the proposed Adult Shop at Lot 9 DP 809875, 4 Nowra Lane, Nowra, the application be approved subject to compliance with the conditions contained in Attachment ‘A’.

OPTIONS:

- a) Approve the application, subject to conditions; or
- b) Refuse the application on the grounds that Council considers that the application does not comply with Council’s Adult Shop Policy in that it is located on a pedestrian thoroughfare potentially utilised by children in accessing areas listed in section 3.3.2 of the Policy.

It will be noted from the following the report, staff have concerns in regard to Council’s ability to defend a decision based on b) above.

DETAILS/ISSUE:

Proposal

The submitted development application proposes a change of use from a shoe store to an adult shop. The premises will offer, for sale, adult material including clothing, lingerie, party costumes, novelty gifts, sex aids, DVDs, books and general adult products. Restricted adult products such as DVDs and sex aids are proposed to be located in a adults only section that is partitioned off from the rest of the shop.

Background

The proposed adult shop previously operated out of shop 4/77 Junction Street, Nowra for approximately three years. In April 2009 the business relocated to shop 1/4 Nowra Lane and commenced to operate without development consent. Council inspected the property in May 2009 and advised the operator that development consent was required for the change in use. This application is a result of that inspection.

The Site

The subject land is comprised of Lot 9 DP 5809875, 4 Nowra Lane, Nowra (see **Attachment 'B'**). It is located south of Junction Street within the Nowra commercial area. The land has an area of approximately 869m² and currently has a single storey commercial/retail building comprised of three shops with associated car parking constructed on the site.

The subject land is zoned 3(b) (Business "B" (Transitional) Zone) under the Shoalhaven Local Environmental Plan 1985 (SLEP 1985). The objectives of the zone are to *"provide for forms of business activities normally located on the fringe of the central business district which require large sites, including retailing of bulky goods"*.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

Assessment Section 79(c) of the EP&A Act:

The following is an assessment of the application having regard to the matters of consideration under Section 79(c)(1) of the EP&A Act, 1979.

(a) Any planning instrument, draft instrument, DCPs and regulations that apply to the land.

The following State and Regional Environment Planning Policies (SEPPs and REPPs), Environmental Planning Instruments (LEPs), Development Control Plans (DCPs), Council Codes/Policies are relevant to this development application.

- **Illawarra Regional Environmental Plan (IREP) (Deemed SEPP):** The provisions of the IREP apply to the site. An assessment against the requirements of the IREP has indicated that the subject land is not identified as a wildlife corridor, land of prime crop and pasture potential, land supporting rainforest vegetation, land containing extractive materials or land containing coal resources. It is however, identified as part of the sub-regional commercial centre and land with landscape or environmental attributes.

The clauses/matters contained in the IREP that have relevance to this application are overviewed below:

-
- Clause 3 of the IREP contains the aims and objectives of the plan. The submitted proposal does not conflict with the general aims and objectives as outlined in this clause;
 - Part 8 (Provisions relating to commercial centres) of the IREP contains objectives for commercial centres. The objectives are:
 - (a) to ensure that commercial service centres are developed to suit the convenience of consumers and to optimise private and public investment; and
 - (b) to promote shopping and pedestrian amenity in all commercial centres.

The subject application is consistent with the objectives contained in this part of the IREP.

- The Regional Landscape and Environmental Study: The IREP contains no specific provisions that apply to land with “landscape and environmental attributes”. The Regional Landscape and Environmental Study that supports the IREP provides specific recommendations for broad areas of the south coast, including this area of Nowra. As the development is within the existing urban zoned area of Nowra and this area has no recommendations for change, the subject application complies with the requirements.

In summary, it is considered that the proposal does not conflict with the aims and relevant provisions of the IREP.

- **Shoalhaven Local Environmental Plan 1985 - as amended (SLEP 1985):** The provisions of SLEP 1985 apply to this site. In terms of clauses/matters contained in SLEP 1985 that have relevance to this application, the following provides an overview:

- Clause 2 (Aims and objectives): The submitted proposal satisfies the general aims and objectives as outlined in this clause;
- Clause 9 (Zone objectives and development control table): The subject land is zoned 3(b) (Business “B” (Transitional) Zone) under SLEP 1985. The proposed development as described on the development application form (shop) is permissible within the zone (i.e. not listed as a prohibited use) subject to development consent from Council; and
- Clause 37A (Notification of certain development): The submitted application was notified in accordance with Council’s Community Consultation Policy. Refer to Community Consultation section for further details.

In summary, it is considered that the proposal does not conflict with the aims and relevant provisions of SLEP 1985.

- **Development Control Plan 18 - Car parking Code:** There are 8 vehicle spaces that were provided via DA89/3038 when the building was extended for the shoe shop. While the current proposal seeks to use some additional floor space for display of restricted items at the rear of shop 1, previously used as a service corridor, it does not result in any additional car parking requirements.

-
- **Development Control Plan 82 - A Signage Strategy:** The applicant proposes the following signs with the wording “The Condomerie - A Sensual Shop - for adults who love to play”:
 - 2 x roof mounted signs (4.5m x 1m) - meets acceptable solutions
 - 1 x under awning sign (1.3m x 0.4m) - meets exemption criteria
 - 1 x above entry sign (1.8m x 0.6m) - meets exemption criteria
 - 1 x wall mounted sign facing car park (3.6m x 0.6m) - meets acceptable solutions
 - 1 x wall mounted sign on south facing wall (3.6m x 0.6m) - while it meets the criteria of exempt development the sign is located on the wall of a building on adjoining land (148 Junction Street) that does not form part of this application. Unless the adjoining owners’ consent can be obtained Council could not approve this sign.

A review of the proposed signage against the requirements of DCP 82 has determined that the signage complies with the requirements of the signage strategy.

- **Development Control Plan 89 - Exempt & Complying Development:** A change in use from shop to shop is generally exempt development. In this case, the change in use is not exempt development because it involves the display and sale of publications classified Categories 1 and/or 2 restricted or RC under the Classification (Publications, Films and Computer Games) Enforcement Act, 1995.
- **Development Control Plan 93 - Controls for Waste Minimisation and Management:** A waste minimisation and management plan relating to the on-going use of the proposed development has not been submitted with the development application. However, it is considered that the development will generate minimal waste that will mostly consist of office waste and cardboard packaging. These materials can be disposed of via the Council collection system or taken directly to Council’s waste depot for recycling.
- **Adult Shop Policy POL08/165:** Council adopted, in 2000, the Adult Shop Policy POL04/121 and amended the Policy on 14 April 2009 following an application for an adult shop (DA08/2218) at Lot 2 DP 572831, 3 O’Keefe Avenue, Nowra. This policy aims “...to identify the most suitable locations for Adult Shops and to articulate the standards which Council will apply in the assessment of development applications”. The policy permits Adults shops in 3(a) and 3(b) Business zones provided that other sections of the policy concerning buffer distances, hours of operation and premises design are complied with.

The policy states that in assessing an application Council will pay particular attention to the following matters:

3.3 Buffer Zones

3.3.1 Land must not be used for an Adult Shop if the site is within 100 metres walking distance of:

- a) A residential zone; or*
- b) Land reserved or used for a church or a primary or secondary school; or*
- c) Community facilities regularly frequented by children or a public park; or*

d) Any building, facility, shop or agency that is predominantly orientated towards the provision of children's services, whether or not that service is provided by government, charity, church or commercial interests.

The proposed Adult Shop complies with the buffer zones as it is not within 100m of any of the listed uses, as detailed below in Section 6 of the Policy.

3.3.2 Land must not be used for an Adult Shop if the site is adjacent to a pedestrian thoroughfare that is used by children or young people in accessing:

- a) A residential zone; or*
- b) Land reserved or used for a church or a primary or secondary school; or*
- c) Community facilities regularly frequented by children or a public park; or*
- d) Any building, facility, shop or agency that is predominantly orientated towards the provision of children's services, whether or not that service is provided by government, charity, church or commercial interests.*

In the broadest possible sense the application could be said to not comply with this section as the site is adjacent to a pedestrian thoroughfare. However, this interpretation of the policy basically excludes nearly all, if not all, commercial premises from being used as an adult shop. This is inconsistent with purpose of the policy which states that *"the aim of this Policy is to identify the most suitable locations for Adult Shops and to articulate standards which Council will apply in the assessment of development applications."*

A more reasoned interpretation of the Policy finds that the proposed adult shop meets the criteria listed as Nowra Lane is on the fringe of the commercial district and is not a major pedestrian linkage to any of the listed uses. Nowra Lane does not provide a direct connection to a residential zone, church, school or building orientated towards children's services. Whilst it does connect directly to Marriott Park via Haig Avenue it is approximately 400m away with multiple streets that a person could take thereby avoiding the adult shop if desired.

In addition the proposed adult shop presents as a retail clothing shop and novelty shop to pedestrians on Nowra Lane with restricted items located in a restricted area at the rear of the shop.

3.4 The Premises

The premises must

- a) not share the same building as a residence;*
- b) be located on a well-lit public street;*
- c) not be accessed from a laneway or alley;*
- d) have only one visible entrance to the shop; and*
- e) not operate before 9.00 or after 9.00pm or on Sundays or Public Holidays.*

The premises complies with the above criteria.

3.5 Signage

Signs shall not:

- a) feature flashing or moving components; or*

-
- b) announce the availability of sexually explicit products; or*
 - c) contain advertising relating to sexually explicit products; or*
 - d) contain evocative graphics.*

The proposed signs comply with the above criteria.

6 Matters to be addressed in assessing an application

In assessing an application, Council will pay particular attention to the distance between the premises and the following:

Churches

The closest church is St Andrews Presbyterian Church at 5 Kinghorne Street. It is approximately 270 metres away from the proposed adult shop.

Schools

The closest primary school is Nowra Public in Plunkett Street which is about 670m from the proposed adult shop. The closest high school is Nowra High School in Moss Street. It is about 350m walking distance from the proposed adult shop to the school grounds.

Community facilities

There are no community facilities within 200m of the proposed adult shop.

Hospital/Medical Centre/Community Health Facilities

There are no hospitals/medical centres or community health facilities within 200m of the proposed adult shop.

Places for Young People (e.g. Amusement Centre, Scout Hall, e.t.c.)

The closest places for young people are the Harry Sawkins Park skate park at the end of McGrath Avenue or the Youth Centre on the corner of Kinghorne and Plunkett Streets. Both places are over 400m walking distance from the proposed adult shop.

Counselling Services

There are no known counselling services within 200m walking distance of the proposed adult shop.

Submissions received

No submissions were received during the consultation period. See below under community consultation.

Comments from Local Police

The application was referred to the local Police and no comments were received.

Proximity of the shop to other shops of a similar type

There is one other shop in Nowra known to sell adult products. The shop is at 71 Kinghorne Street (about 470m walking distance from proposed adult shop) and sells novelty, items, adult books and magazines. There is one internet based business in Nowra (Hidden Desires) that doesn't have a shop front and only distributes products via mail order and parties at customer's premises.

For all intent and purposes the adult shop complies with Council's Adult Shop Policy in all respects.

(b) Likely impact of that development on the natural and built environment and social and economic impacts in the locality.

- **Natural and Built Environment:** The shop is located within an existing building with no building works proposed and the use will have no impact on the natural or built environment.
- **Social Impacts:** There is currently one other adult shop operating in Nowra. A search of Council's records system has found no complaints associated with the use or operation of this premises. The proposed adult shop previously operated from a shop in Junction Street for approximately three years in which time Council received no complaints. The proposed adult shop relocated to its present location in April 2009 and Council has received no complaints about its operation.
- **Context and Setting:** The proposed use is consistent with the objectives of the zoning of the property and meets the requirements of Council's Adult Shop Policy.
- **Economic Impacts:** The proposed development given its size will have minimal economic impact other than providing occupancy for a vacant commercial premise.

(c) The suitability of the site for the development.

The Adult Shop Policy restricts Adult Shops to 3(a) or 3(b) business zones. This requires an adult shop to be located within a commercial district. The proposed development is on the fringe of the business district, is on a well lit street, is not in an isolated or concealed location and is therefore compliant with the locational requirements of the Policy. In this respect, it is considered that the site is suitable for the proposed development.

(d) Any submissions made in accordance with the Act or the regulations.

Community Consultation

The submitted development application was notified to nearby/adjoining property owners in a 150m radius from the subject land and to the Nowra Business Chamber. In addition notifications were hand delivered to 10 businesses located in the immediate vicinity of the proposal. No objections to the proposal were received during the notification period.

(e) The public interest.

The proposed use is consistent with the objectives of the zone and Council's Adult Shops Policy.

FINANCIAL CONSIDERATIONS:

No financial considerations for Council.

CONCLUSION:

This matter is being reported to Council in accordance with the Council resolution of 17 December 2008.

Following a comprehensive assessment of the matters for consideration under section 79(c) of the EP&A Act, 1979 and consideration of the policy issues, it is considered that Option 1 is the preferred course of action in this matter. This conclusion is based on the grounds that the proposed development complies with all aspects of the Adult Shop Policy. Recommended conditions of consent have been drafted and are provided in **Attachment 'A'**. In the event that the Committee is of the opinion that the application should be refused, a list of reasons for refusal are contained in **Attachment 'C'**.

Tim Fletcher
DIRECTOR, DEVELOPMENT AND ENVIRONMENTAL SERVICES

R.D Pigg
GENERAL MANAGER