

SHOALHAVEN CITY COUNCIL

DEVELOPMENT COMMITTEE

To be held on Tuesday, 7th July, 2009
Commencing at the conclusion of the Crown Reserve, Community and Commercial Operations
Committee (commencing at 4.00pm).

1st July, 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, 7th July, 2009 commencing at the conclusion of the Crown Reserve, Community and Commercial Operations Committee (commencing at 4.00pm)** 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, 7 JULY 2009

STRATEGIC PLANNING AND INFRASTRUCTURE

1. Use of Voluntary Planning Agreements for Waiving or Deferred Long-Term Payment of Development Contributions Outside Council Policy File 1057-02

Purpose of the Report: To inform Council of the ability to use Voluntary Planning Agreements to waive or facilitate long-term deferral of payment of Development Contributions outside standard provisions or Policies.

RECOMMENDED that Council use a Voluntary Planning Agreement to detail waiving or long-term deferred payment of Development Contributions outside Council Policy.

Options:

Council may choose to:

- a) Use Voluntary Planning Agreements to detail waived or deferred long-term payment of Development Contributions outside Council Policy.
- b) Not use a Voluntary Planning Agreement for this purpose.

Details/Issue:

Background

Council Policy allows for deferral of payment of Development Contributions or payment by instalments under certain conditions. This primarily relates to a current land owner making payments over a prescribed period which may or may not affect a subsequent landowner. However, Council recently resolved to defer payment of Development Contributions for car parking on two separate Development Consents outside these standard provisions, as per the attached Council resolutions (MIN08.1525 and MIN08.1704 – Attachment 'A'). The resolutions defer payment to future land owners of each site via a Caveat provided on the Certificate of Title with the intent of protecting Council's interest. The intention of this report is not to change the resolutions retrospectively, but to identify the advantages of using a Voluntary Planning Agreement for similar future resolutions of Council.

Recognising that a Voluntary Planning Agreement is an alternative method available to detail such arrangements, the following tables outline the advantages and disadvantages of using either a Voluntary Planning Agreement or Caveat to waive or defer long-term payment of Development Contributions.

Voluntary Planning Agreement

A Voluntary Planning Agreement is a voluntary agreement between a planning authority (or 2 or more planning authorities) and a person (developer), under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose. The advantages and disadvantages are:

Advantages	Disadvantages
<ul style="list-style-type: none">• Enhanced planning flexibility• Transparent and accountable way of dealing with developers• Enhanced range and extent of development contributions made by development towards public facilities• Final agreement is recorded on a public register• Can appear on Certificate of Title• Normally requires agreement to be entered into before a development application can be made• A person cannot appeal to the Court against the failure of a planning authority to enter into a planning agreement or against the terms of a planning agreement• Section 93H (l) of the Environmental Planning & Assessment Act was enacted to enable registration of Voluntary Planning Agreements on the titles of properties	<ul style="list-style-type: none">• Time consuming, i.e. preparation and exhibition of agreement (28 day period) and explanatory note, etc. However, this could be minimised by the applicant/developer undertaking drafting of the document• Decision to use a Voluntary Planning Agreement ideally needs to be determined on lodgement of a Development Application

Caveat

A Caveat is a form of statutory injunction provided for under the Real Property Act 1900. A Caveat is lodged at the Department of Lands, and it effectively prevents the registration of any dealing (except for some statutory exceptions and any specifically permitted dealings) until the Caveat is removed from the Certificate of Title. The advantages and disadvantages are:

Advantages	Disadvantages
<ul style="list-style-type: none">• Method for Council to protect its interest (i.e. defer payment of Development Contributions)• Appears on Certificate of Title	<ul style="list-style-type: none">• Not available on a public register• Possibility of future land purchasers not being aware of the requirement to pay contributions• Caveat can be refused on registration to the Department of Lands• Caveat can be challenged, and removed if deemed unreasonable• Potential for Council staff to lose track of the Caveat arrangement (i.e. not

Advantages	Disadvantages
	<p>recorded on a register)</p> <ul style="list-style-type: none"> • A caveat should only be placed upon a title if the caveator (ie Council) has a caveatable interest • Once registered, a caveat can be subject to "lapsing action". Lapsing action is commenced (usually) by the owner of the property and may need to be resolved in Court

To avoid potential confusion, legal challenge and possible public perception that Council is not being transparent in its processes when dealing with developers, it is recommended that similar future arrangement by Council to defer payment of Development Contributions outside Council Policy be undertaken via a Voluntary Planning Agreement.

Economic, Social & Environmental (ESD) Consideration:

This report does not pose any economic, social and environmental (ESD) considerations.

Financial Considerations:

Use of a Voluntary Planning Agreement to detail deferred payment of Development Contributions is an opportunity for Council to better manage any long term financial considerations associated with agreements between Council and Developers.

2. Tenure Resolution - Heritage Estates, Worroing Heights

File 33363-07

Purpose of the Report:

To inform Council of the feedback received from the Commonwealth Director of National Parks and the NSW Department of Environment and Climate Change (DECC) regarding the option of government acquisition of the Heritage Estates. These approaches followed the recent refusal of the previously proposed rezoning under the Commonwealth Environment Protection & Biodiversity Conservation (EPBC) Act.

RECOMMENDED that Council advise landowners of the outcome of representations and meet with landowner representatives to discuss possible options.

Options:

1. Do nothing

As previously reported, the do nothing option is not considered to be an appropriate long term solution for all stakeholders. The forthcoming reduction in rates over the affected properties to a nominal amount is likely to mean that the vast majority of properties will stay in private ownership. It is likely that the land will continue to be degraded through trail bike use, unauthorised access, rubbish dumping etc. These impacts will be difficult for Council and the landowners to manage through time.

2. Continue to pursue a joint Government acquisition solution

Neither the NSW nor Commonwealth Governments appear to be enthusiastic about acquiring the land at this point in time. This appears to be due to the area of land, the number of property owners, the potential cost and inconsistency with priorities for expansion of the National Reserve System. An avenue that could be explored further in regard to this option is to seek a staged acquisition program over a number of years.

3. Investigate other options to resolve land tenure

There could be a range of other options to resolve the land tenure and these could include:

- Carry out an indicative assessment using the BioBanking Assessment Methodology of the credits that could be generated by establishing a biobank over the land.
- Write to relevant non-government organisations that could potentially have an interest in acquiring and managing the land for conservation purposes.

There are obvious issues with these two examples and the practicality of other options would need to be assessed as part of any investigations and separately considered by Council and the landowners.

Details/Issue:

Council resolved on 24th March 2009 to:

- a) Acknowledge the refusal of the Heritage Estates rezoning proposal under the EPBC Act by the Federal Minister for the Environment on 13th March 2009.*
- b) Urgently seek discussions with the Commonwealth Director of National Parks and the NSW Department of Environment and Climate Change (DECC) to discuss the option of Government acquisition of the Heritage Estates.*

The following is a summary of the outcome of the approaches to the Commonwealth and State Governments in accordance with part (b) of the resolution.

Representations to NSW DECC and Federal National Parks

Council representatives met with Mr Peter Cochrane, Commonwealth Director of National Parks, on 20th March 2009. Council also sought a meeting with the Hon. Carmel Tebbutt MP, the NSW Minister for the Environment, but was advised that the Minister was not available. Council representatives met instead with Ms. Sally Barnes, Deputy Director General of DECC on 20th April 2009, to discuss the possibility of joint government acquisition of the Heritage Estates. Submissions were prepared by Council for these meetings outlining the case for Government acquisition. Copies of the submissions are provided in the Councillors information folder for today's meeting.

Following the meetings, the Mayor, Councillor Paul Green sent a letter to Sally Barnes (see Attachment "A"). The General Manager also sent follow-up emails requesting a response. The subsequent responses from Sally Barnes and Peter Cochrane are summarised below.

Sally Barnes, Deputy Director General, DECC:

In a letter dated 11 June 2009, Sally Barnes wrote:

"...the Department is unlikely to be able to fund the acquisition of these properties. Any purchase program of such a large nature would probably need financial support under the National Reserve System. Coastal lands such as those on the Heritage Estate are

already well represented in the reserve system and therefore are not a priority under the current program.

If any other avenues arise in the future, I have asked our local manager, Diane Garrod to contact your staff immediately.”

Comment - Any prospect of the government acquisition option proceeding would appear to hinge on the willingness of the Commonwealth Government to provide a significant portion of the total funding required.

Peter Cochrane, Federal Director of National Parks, DEWHA:

In an email dated 20 May 2009, Peter Cochrane indicated that the Australian Government’s priorities for the acquisition of lands for inclusion in the National Reserve System through the Caring for Our Country program are focussed on regions that have very low levels of protection in reserves, and these are generally in western parts of Queensland, the Northern Territory and northern Western Australia.

Mr Cochrane stated that the priorities of non-government organisations such as Bush Heritage and the Australian Wildlife Conservancy also tend to focus on more remote and untouched regions.

Mr Cochrane went on to indicate that he did not know of any other source of funds within government programs for this type of activity.

It was however indicated that at times there are wealthy individuals with a strong interest in conservation and sometimes in investing in the acquisition of specific properties - these usually work (as donors) through organisations such as Bush Heritage.

Comment - It appears that there is currently little opportunity for Commonwealth funding assistance for acquisition as their priorities lie elsewhere.

It is also understood that there was some discussion between the State and Federal Parks Services before the above responses were provided

Representations to the Federal Opposition’s Environment Spokesperson, Greg Hunt MP

The Federal Opposition’s spokesperson, Mr Greg Hunt, MP, visited the Heritage Estates on 28 April 2009 with Member for Gilmore, Mrs Joanna Gash, MP. Several Heritage Estates landowners attended as well as members of the Vincentia Ratepayers Association. Mr Hunt indicated that it was unlikely that the EPBC Act decision would or could be overturned if there was a change in government and expressed support for the option of Government acquisition for the purpose of adding to the National Park system.

National Reserve System funding priorities

Funding can be sought under Caring for our Country from the Federal Government to buy land for new reserves. The Federal Government provides up to two-thirds of the cost of purchasing an approved property, which will then be owned and managed as part of the National Reserve System by the partner organisation. The National Reserve System consists of formally recognised parks, reserves and protected areas primarily dedicated to the protection of Australia’s biodiversity.

The main priority for funding is the protection of under-represented bioregions with less than 10 per cent protected in the National Reserve System. More than 30% of the bioregion of which the Shoalhaven LGA is part is already represented. Thus acquisition of the Heritage Estates is not consistent with this priority as indicated in the Federal Government response.

However, a secondary priority is to conserve:

- key habitats for nationally listed threatened species or migratory species and/or Ramsar sites or wetlands of national importance
- areas that contribute to whole-of-landscape conservation outcomes, such as places that offer refuge or contribute to the adaptation of biodiversity to changing climate.

The Heritage Estates land would appear to satisfy both of these secondary priorities.

Non-government organisations

It is acknowledged that a number of non-government organisations are active in raising funds to purchase and manage land with significant conservation values. An example is the Nature Conservation Trust of NSW which protects private land of high conservation value in NSW through Revolving Fund and Covenanting programs. Their interest in assisting with the acquisition of Heritage Estates is however unknown.

Economic, Social & Environmental (ESD) Consideration:

There appears to be a general consensus that adding the land to the National Park system would provide a range of ESD benefits over the 'do nothing option'. It would resolve the land tenure issue, provide closure for the landowners, and ensure that the land's environmental values are conserved and enhanced for the benefit of the broader community into the future

Financial Considerations:

The reduction of rates on the Heritage Estates properties to an average of \$50 per annum (previously \$383 + special rates if within the investigation area) reduces the immediate financial impacts on the landowners of the land tenure not being resolved.

3. Residential Development at Manyana - Development Contributions

File 39746, SF9787 & SF9747

Purpose of the Report: To advise Council on the status of the Department of Planning's Part 3A consent of the Malbec Properties and Manyana Estates Pty Ltd subdivision of Lot 172 DP 755923 and Lot 823 DP 247285 – Berringer Road, Cunjurong Point Pont Road and Sunset Strip, Manyana and to seek direction from Council on future development contributions at Manyana.

RECOMMENDED that:

- a) Council accept the additional development contributions as detailed in the consent issued by the Minister for Planning to Malbec Properties and**

Manyana Estates Pty Ltd subdivision of Lot 172 DP 755923 and Lot 823 DP 247285, and commence the process to enter a Voluntary Planning Agreement with Malbec Properties and Manyana Estates Pty Ltd;

- b) Council require Malbec Properties and Manyana Estates Pty Ltd to design and cost the intersection upgrade of Bendalong Road and Inyadda Drive, Manyana as a requirement of the Voluntary Planning Agreement;**
- c) Council negotiate with Vacenta (proposed developer of Lot 810 DP 247285, Lot 705 DP 613881 & Lot 682 DP 568678) on identical development contributions approved by Minister for Planning for Malbec Properties and Manyana Estates Pty Ltd (Lot 172 DP 755923 and Lot 823 DP 247285) on a pro-rata basis; and**
- d) Any Voluntary Planning Agreement be consistent with Council's Voluntary Planning Agreement Policy and template with costs of preparing Agreements borne by the Developer.**

Options:

Council may choose to:

- c) Accept the development contributions as detailed in the consent issued by the Minister for Planning to Malbec Properties and Manyana Estates Pty Ltd for Lot 172 DP 755923 and Lot 823 DP 247285, and enter a Voluntary Planning Agreement with Malbec Properties and Manyana Estates Pty Ltd, and negotiate these same conditions for the proposed Vacenta development.
- d) Not enter a Voluntary Planning Agreement with Malbec and continue negotiations with Malbec Properties and Manyana Estates Pty Ltd and Vacenta.

Details/Issue:

Background

- # Malbec Properties and Manyana Estates Pty Ltd (Malbec) was granted development consent on 8th July 2008 by the Minister for Planning (the Minister) for a 182 residential lot subdivision at Manyana (Council Subdivision Reference SF9787). A locality map showing the subdivision area is provided as Attachment 'A'.

Prior to this determination by the Department of Planning (the Department), Malbec (represented by Cowman Stoddart P/L) and Council had been negotiating development contributions to be paid by Malbec to Council. In addition to development contributions required under Council's 1993 Contributions Plan, the Department agreed that Malbec should make additional contributions.

- # Malbec and Council made separate submissions to the Department over the nature of these additional contributions, with the Department determining what the Minister should consider. These discussions have previously been reported to Council on 24th April 2007 (Attachment 'B').

The Minister's consent for the Malbec proposal did not fully capture Council's request for additional contributions, which has since been a source of on-going disagreement between Council and the Department. It should be noted that there is no disagreement over contributions required under Council's Contributions Plan. A description of the

additional contributions and the total amount to be paid by Malbec included in the consent for 182 residential lots is detailed below:

Item	Description	Amount
1	Extension of Community Hall, Yulunga Reserve	\$36,134
2	Upgrade Foreshore Facilities, including provision of car parking	\$15,265
3	Upgrade works to Bendalong Road and Inyadda Drive	\$56,160
4	Construction of a Rural Road Type B Intersection, Bendalong Road and Inyadda Drive	\$12,721
Total		\$120,280

The above additional contributions are to be applied via Council and Malbec entering into a Voluntary Planning Agreement (VPA).

Disagreement over Scope of Works

For the intersection treatment of Bendalong Road and Inyadda Drive (additional item No. 4), Council recommended to the Department a roundabout at an estimated cost of \$300,000. However, the Minister agreed with Malbec that a Type B intersection (i.e. wider road pavement area than the existing T intersection – shown as Attachment 'C') was sufficient, and assumed a cost of \$100,000, although some correspondence from the Department continues to refer to a roundabout treatment. As far as Council staff are aware, this estimate is not based on any design details, which should be provided by the applicant for negotiations to continue.

Disagreement Over Cost Apportionment

The Department has advised Council that the costs of the additional works should be apportioned between:

- Council, representing the demand generated by existing development; and
- Malbec, representing the demand generated by future demand of their development.

Council has advised the Department that this apportionment was inappropriate for at least some of the works, including the Bendalong Road and Inyadda Drive intersection upgrade, on the basis that the existing intersection is satisfactory for the current demand. Therefore, Council should not have to subsidise development for infrastructure that is not otherwise required.

The Department's position on this matter was determined "...with a view to the amount the proponent volunteered to pay". However, the Department also noted that "Any increase in the amount over time can be included as a term of the VPA". Whilst further negotiations with Malbec may be possible, it is unlikely Malbec will agree to payments to Council outside their conditions of consent.

Requirement to Enter a VPA

The Minister has required Malbec to enter a VPA with Council, as this is the only power available to Council to require such contributions. Two key issues arise from this requirement, being:

1. *Terms of the agreement are not as Council proposed*

Should Council reject this request on the basis that it has not entered an agreement voluntarily, it is not clear how Malbec can act on their consent. The Minister's power to direct Council in regard to development contributions should also be noted. Whilst the Department has indicated "If Council is reluctant to enter into a VPA, the Department will consider whatever mechanism is suggested to deliver the works ...", it would require Malbec to agree to a greater level of contributions than in their consent, and this is unlikely.

Consequently, in the interests of advancing the development in accordance with the Minister's consent, it is recommended Council accept this offer, despite the additional costs to Council this will incur, and Council's capital works program will need to consider the additional works in future planning.

2. *A VPA requires public notice before it can be finalised*

Prior to Council agreeing to enter into a VPA it must be made available for public inspection together with an explanatory note. Normally this occurs upon public exhibition of the proposed subdivision/development application. When this occurs after subdivision consent, there is no opportunity for public comment to be considered, which may reduce public confidence in the process.

Relationship to Other Development Applications

The Department is now considering a Part 3A development application for Vacenta (Lot 810 DP 247285, Lot 705 DP 613881 & Lot 682 DP 568678 - Manyana Drive, Manyana) for public exhibition and is requiring the applicant to negotiate with Council over additional development contributions. The applicant is represented by Watkinson Apperley Pty Limited (Council Subdivision Reference SF9747). A locality map showing the proposed subdivision area is provided in Attachment 'A'.

The applicant appears prepared to accept similar requirements as applied to Malbec on a pro rata basis. Should Council agree to entering a VPA with Malbec as per the 3A consent, it would be reasonable to apply identical conditions to the Vacenta development application and other applications in the Manyana area. Should Council reject the arrangements with Malbec, the Vacenta development application will be similarly affected.

Economic, Social & Environmental (ESD) Consideration:

Entering an agreement with Malbec and other developers will commit Council to infrastructure works of benefit to the wider community.

Financial Considerations:

Entering an Agreement with Malbec under the terms of their consent will commit Council to infrastructure works that are not yet included in Council's Capital Works program.

The amount of additional contributions is relatively low, but it should be noted that contributions under Council's Contributions Plan will be required in full.

4. **Shoalhaven Contributions Plan Amendments No 77.2 & No 77.4 - Planning Areas 2 & 4 Roads** **File 28709-02**

Purpose of the Report: To seek Council endorsement of draft Shoalhaven Contributions Plan Amendments No 77.2 & No 77.4 – Planning Areas 2 & 4 Roads for public exhibition.

RECOMMENDED that:

- a) **Council endorse draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 for public exhibition for a minimum period of 28 days;**
- b) **Notice of exhibition of draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 be placed in local newspapers;**
- c) **The draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 be placed on Council’s internet site with easy links to make the comments electronically;**
- d) **The draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 be forwarded to relevant Community Consultative Bodies and Department of Planning; and**
- e) **A further report on draft Shoalhaven Contributions Plan Amendments No 77.2 & No 77.4 be submitted to Council after the public exhibition period.**

Options:

Council may choose to:

- a) Endorse draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 for public exhibition.
- b) Seek further amendments to the draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 prior to public exhibition.
- c) Not adopt the draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 for public exhibition.

Details/Issue:

Background

Council is in the process of preparing a new Citywide Contributions Plan to meet legislative requirements as per a previous report to the Council meeting of 14th April 2009.

It is intended that the draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 will be reviewed and incorporated as an amendment into the current 1993 Contributions Plan (1993 Plan). These amendments, along with other recent amendments to the 1993 Plan will then be incorporated into the new Citywide Plan.

This report outlines amendments recommended following the review of the Planning Areas 2 and 4 Roads component of the 1993 Plan.

A copy of the draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 will be available to view in the Councillor's Room prior to this Development Committee meeting.

Planning Areas 2 Roads

The 1993 Plan contains eight road projects in Planning Area 2. The draft Amendment proposes 5 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 over the last ten years; and
- Current need for road projects in the Planning Area.

The draft Amendment proposes to:

- Delete four Area 2 road projects from the 1993 Contributions Plan.
- Retain and update one project from the 1993 Contributions Plan.
- Create one new Area 2 road project.
- Retain three recoupment projects for the cost of road projects that Council has undertaken in anticipation of new development.

Note: The projects and reasons for inclusion are detailed in Attachment "A".

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

Table 1: Planning Area 2 Proposed roads Projects

Project	Project Cost	Development Share	Contribution Rate Per ET	Council Share
02ROAD2001 Culburra Rd/ Prince Edward Ave	\$740,940	\$264,593	\$197.90	\$476,347
02ROAD2002 Currarong Rd	\$229,150	\$19,576	\$383.84	\$209,574
02ROAD2005 Currarong Bridge and Approaches	\$180,390	\$14,297	\$304.20	\$166,093
02ROAD2007 DCP 41 Roads, Callala Bay	\$1,194,316	\$1,194,316	\$13,270.17	\$0
02ROAD0011	\$1,847,315	\$1,790,034	\$14,320.27	\$57,281

Project	Project Cost	Development Share	Contribution Rate Per ET	Council Share
East and West Cr, Culburra Beach				
Total	\$4,192,111	\$3,282,816	N/A	\$909,295

Planning Areas 4 Roads

The 1993 Plan contains road projects in Planning Area 4. The draft Amendment proposes 4 projects for inclusion into the Contributions Plan and for funding consideration in Council's Capital Works planning.

The draft Amendment proposes to:

- Retain and update one road project from the 1993 Plan; and
- Retain three recoupment road projects for the cost of construction that Council has incurred in anticipation of new development.

It is noted that no projects are proposed to be deleted from the 1993 Plan and no additional projects have at this time been identified for inclusion in the 1993 Plan.

The apportionment and contribution rates for roads projects to be included in the amendment are detailed in Table 2:

Table 2: Planning Area 4 Proposed Road Projects

Project	Project Cost	Development Share	Contribution Rate	Council Share
04ROAD2001 Sussex Inlet Rd Network – Benefit Area 1	\$1,293,925	\$184,229	\$440.74	\$836,084
04ROAD2001 Sussex Inlet Rd Network – Benefit Area 2		\$46,824	\$282.07	\$226,787
04ROAD2002 Old Berrara Road – Benefit Area 1	\$210, 410	\$196,613	\$7,281.95	\$0
04ROAD2002 Old Berrara Road – Benefit Area 2		\$3,449	\$3,449.34	\$10,348
04ROAD0003 Medlyn Ave	\$123,980	\$32,471	\$2,951.90	\$91,509
04ROAD0004 Badgee Bridge	\$1,166,330	\$417,575	\$2,057.02	\$748,755
Total	\$2,794,645	\$833,850	N/A	\$1,960,795

Further amendment to this Plan may be required should additional development associated with the One Tree Bay and other proposals proceed.

Economic, Social & Environmental (ESD) Consideration:

The proposed works identified in the draft Shoalhaven Contributions Plan Amendments No. 77.2 & No. 77.4 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 areas 2 & 4. The draft Amendment identifies a total of 9 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 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.

5. Review of Nowra CBD Strategy and Development Control Plan No 95

File 17377 & 2537-09 PDR

Purpose of the Report: Following a previous report (16th December 2008) on the status of the review of the Nowra CBD Strategy, it was resolved that a walk by Councillors around the Nowra CBD be organised, followed by a briefing of the issues relating to the CBD Strategy and the DCP. The walk and briefing occurred on the 4th February 2009 and the purpose of this report is to identify a course of action which completes the strategic review and creates a draft DCP for the Nowra CBD.

#

RECOMMENDED that in regard to the review of the Nowra CBD Strategy and DCP No 95:

- a) **Expressions of Interest be invited from suitably qualified consultants to prepare a Masterplan for the CBD for the next 25 years to address the planning issues, principles and objectives outlined in attachment "A" and from which a Draft DCP and a Draft Contributions Plan could be developed; and**
- b) **The Masterplanning process include:**
 - i. **Two workshops, including community, business, Councillor and Council staff involvement, with a view to providing a desired future character statement and feedback on the draft Masterplan;**

-
- ii. **A financial analysis to quantify costs associated with implementing key outcomes of the Masterplan in the short, medium and long term life of the Plan; and**
 - iii. **The preparations of urban design and architecture based development concept plans for key development sites.**
- c) **Council call for expressions of interest for membership of a Nowra CBD Liaison Committee.**

Options:

The last major review of the Nowra CBD occurred approximately 10 years ago and it is timely that the current strategy be reviewed. This is a major planning exercise for the most important retail centre in the Shoalhaven. The project should have a clear and uninterrupted focus and employ resources that have innovative and visionary skills in City Centre planning and urban design.

Options include:

1. **To prepare the CBD Master Plan in house** - whilst feasible, current work projects would most likely delay the review due to interruptions from day to day commitments and other priorities.
2. **To invite expressions of interest from suitably qualified consultants** - This is the preferred option and could augment the current Masterplan exercise being prepared to activate the Shoalhaven River (Scenic Drive Precinct). It is also consistent with Council's view, expressed during the briefing, and the views of sectors of the business and wider community, that a new vision for the Nowra CBD be developed and implemented.
3. **To not create a Masterplan** - This would potentially result in ad-hoc development throughout the CBD.

Details/Issue:

Background

The current strategy was prepared in 1999/2000 by Melbourne based Planning and Urban Design Consultants 'Ratio Consultants Ltd'. Previous to this work, Sydney based firm 'Conybeare Morrison and Partners' prepared a conceptual study (1990) for the CBD shopping centre site, including a development concept plan for a Department store over Stewart Place car park and streetscape improvement plans for Junction and Kinghorne Streets.

Additional retailing and traffic studies have been completed to investigate expansion of retailing east of the highway and traffic modelling throughout the CBD:

- Economic Impact Assessment- Proposed Expansion of Retailing in Nowra CBD (Leyshon Consulting, 2002, revised in 2005)
- Nowra CBD Transport Strategy (Eppell Olsen, 2003)
- Stockland Expansion Traffic Modelling (Eppell Olsen, 2005)

These culminated in the adoption of a LEP which considerably increased the amount of zoned retail land in the CBD.

A number of current activities are linked to the recommendations in this report.

Council has considered a DCP for the Hotel site adjoining the Shoalhaven Entertainment Centre and is preparing a brief for a Masterplan for the Shoalhaven River precinct. Council has recently considered a report focusing on the appropriate future development of the Egans Lane car park site and its links to the wider CBD. Council has also recently endorsed investigations into the creation of a cultural/community hub located in the Berry Street/Collins Way precinct. This report includes, expands on and integrates these investigations into a whole-of-CBD approach.

Need for the Review.

The current strategy was last reviewed nearly 10 years ago. The requirement to review CBD land use activities in accordance with the NSW Department of Planning new LEP template needs to be aligned with a revised strategy. It is noted that the Nowra Bomaderry Structure Plan focuses primarily on new residential release areas and does not thoroughly consider the CBD and immediate environs. With increasing concerns on environmental issues including climate change, updated sustainable development measures need to be addressed in the Masterplan. In economic terms, threats from competing and expanding retail centres such as Shellharbour Square and Vincentia District Centre need to be addressed to stem potential for escape expenditure.

Councillor Workshop/Issues Discussion

A Councillor workshop and walk around the town was held on the 4th February 2009. Discussion revolved around a number of issues presented by the staff and those identified on the town walk.

Those that were of concern to Councillors on the walk included:

- The need for a fresh vision for the town
- Beautification issues and maintenance
- The reactivation of shopfronts to Junction Court;
- Creating an activated frontage where the Art Gallery adjoins Egans Lane car park
- Increased opportunities for mixed use developments particularly to Harry Sawkins Park
- Encouraging redevelopment opportunities over existing public car parks with long stay car parks being located on the fringe of the CBD.

Issues raised by staff included the need to:

- Resolve vehicle access to the Shoalhaven River front and flood management
- Rationalise land use zones in the CBD to maintain a compact and accessible retail core
- Integrate retailing to the east of the highway with the existing Town Centre
- Create a community focal point for the Town Centre – reaffirm the green/civic heart as agreed to in the 2000 Charrette

-
- Encourage mixed uses and residential living opportunities in and around the CBD
 - Protect the character of the residential precinct to the west of Osborne Street
 - Review the role of Junction Court but ensure pedestrian priority
 - Integrate the Town Centre with approved retail developments to the east

At the briefing, Councillors emphasised the importance of getting the vision right, reducing the carbon footprint in the town and ensuring that the DCP is not so prescriptive as to undermine the planning principles and objectives of the Masterplan.

Benefits of a Masterplan

A Masterplan gives all those involved in the regeneration of a place the opportunity to think about physical change on a large scale, and is 'one of the best ways of delivering sustainable communities' as it brings out the best in an area in terms of its landscape, topography, and ecology ('Creating Successful Masterplans', CABE, 2008). Masterplans are particularly successful in articulating a clear and precise vision which in turn attracts private sector investment. It is for this reason that a comprehensive Masterplan is suggested for the CBD as a prelude to a revised DCP and a Development Contributions Plan.

Scope of the Project

The Masterplan would need to address the issues raised in discussion with Councillors and develop a visionary plan which builds upon the best attributes of past strategic planning, and should include:

- i. two workshops, including community, business, Councillor and Council staff involvement, with a view to providing a desired future character statement and feedback on the draft Masterplan
- ii. A financial analysis which would quantify costs associated with implementing key outcomes of the Masterplan in the short, medium and long term life of the Plan
- iii. The preparation of urban design and architecture based development concept plans with the delivery strategy for key development sites.

Council has received correspondence from the Shoalhaven Business Chamber following the co-hosting of a community forum to look at options to improve the Nowra Central Business District (Attachment "B"). The correspondence supports establishment of a liaison committee and involvement in the process and development of a high quality plan for the revitalisation of the Nowra CBD.

It is envisaged that the Masterplan would take in the vicinity of 5-6 months to complete including the facilitation of two workshops by the consultant.

Economic, Social & Environmental (ESD) Consideration:

Masterplanning is seen as a cohesive and comprehensive process, developing a clear strategy for the physical, social, economic and environmental transformation of the Nowra CBD. Therefore, through the masterplanning process, the economic, social and environmental sustainability issues will be adequately addressed and good planning principles will be exercised to deliver enhanced ESD outcomes.

Financial Considerations:

Funding for consultants to prepare a Masterplan for the Nowra CBD could be financed from the vote for Nowra CBD Streetscape adopted in the 09/10 budget.

6. Draft Ulladulla Town Centre Contributions Plan**File 38142-02 PDR**

Purpose of the Report: To seek Council endorsement of the draft Ulladulla Town Centre Contributions Plan for exhibition.

RECOMMENDED that:

- a) **Council endorse the draft Ulladulla Town Centre Contributions Plan for public exhibition for a minimum period of 28 days;**
- b) **Notice of exhibition be placed in relevant local newspapers;**
- c) **The draft Ulladulla Town Centre Contributions Plan be placed on Council's internet site with easy links to make the comments electronically;**
- d) **The draft Ulladulla Town Centre Contributions Plan be forwarded to the relevant Community Consultative Bodies and the Department of Planning; and**
- e) **A further report on the draft Ulladulla Town Centre Contributions Plan be submitted to Council after the public exhibition period.**

Options:

Council may choose to:

- a) Endorse the draft Ulladulla Town Centre Contributions Plan for public exhibition for a minimum of 28 days;
- b) Seek amendments of the draft Ulladulla Town Centre Contributions Plan prior to public exhibition; or
- c) Not endorse the draft Ulladulla Town Centre Contributions Plan.

Details/Issue:

Council resolved on 10th June 2008 (Min 08.808) that in relation to a draft Ulladulla Town Centre Contributions Plan that:

- a) *A draft Contributions Plan be prepared based on the principles described in this report with Council funding the cost share attributable to existing development;*
- b) *The principles of the Draft Plan be considered by the Ulladulla DCP Working Party; and*
- c) *The draft Plan be exhibited for 28 days.*

The Council report pertaining to the above resolution is provided as Attachment 'A' and a presentation was made to the DCP Working Party.

Council resolved on 29th July 2008 (MIN 08.1105) to adopt Development Control Plan 56 Amendment No. 4 for Ulladulla Town Centre. A concept plan of the proposed infrastructure improvements for the Ulladulla Town Centre is shown as Attachment 'B'.

Preparation of the draft Contributions Plan (CP) has been informed by the *Ulladulla CBD Development Control Plan Review* (prepared by MacDonald International) which details future public infrastructure requirements and cost estimates to facilitate the implementation of the Development Control Plan.

Council resolved on 9th June 2009 to consider a report on the Ulladulla CBD Traffic Strategy and subsequently resolved (MIN 09.729) that:

- a) *Two-way traffic flow be maintained in Boree St and traffic calming and additional pedestrian facilities be provided;*
- b) *The 1996 traffic management strategy for the Ulladulla CBD be reviewed;*
- c) *Where necessary, the infrastructure requirements resulting from the traffic management strategy review be considered in the current review of DCP 56 and the draft Section 94 Contribution Plan.*

In response to adopting the Development Control Plan, the draft CP details a number of traffic improvement projects in the Ulladulla Town Centre which includes a roundabout at the intersection of Boree Street and South Street and traffic lights at the intersection of Princess Highway and South Street. Should a review of the Traffic Management Strategy require it, the scope of works in the Contribution Plan can be amended.

Draft Ulladulla Town Centre Contributions Plan

The purpose of the draft CP is to seek contributions for demand created by development for the provision of essential community infrastructure in the vicinity of the Ulladulla Town Centre. A copy of the draft CP will be available to view in the Councillor's Room prior to this Development Committee meeting.

The Scope of Works in the draft CP is based on Development Control Plan 56 Amendment No. 4 for Ulladulla Town Centre. The proposed works are detailed in Section 5.1 and location maps shown in Appendix B of the draft CP and provided as Attachment 'C'.

At this stage the draft Plan does not contain the Ulladulla boardwalk, however this can be reconsidered once the project is better defined and the nexus situation closely evaluated.

The draft CP is based on the premise that new development will fund 100% of the provision of essential community infrastructure in the vicinity of the Ulladulla Town Centre. However, as detailed in Attachment 'A' (Council report of 10 June 2008), a principle included in the draft CP is that new development in the Ulladulla Town Centre will contribute 30% of the total cost for facilities and services (i.e. not including traffic management, service lanes, plan preparation and management). Therefore, the remaining 70% proportion will be funded by Council's General Revenue Funds for some projects.

The proposed projects cost, Development/Council share and priority are outlined in Table 1 for each defined project. The 'Schedule of Works' and associated priority for each

project is shown in Attachment 'C'. Given the nature of the work required to complete these priority projects, it is envisaged that project delivery may overlap.

Table 1: Proposed Projects and Cost Apportionment

Project	Total Project Cost	Development Share	Council Share
Roads and traffic management (05 ROAD 0062)	\$2,639,128	\$791,738	\$1,847,390
Road environment improvement (05 ROAD 0063)	\$4,038,037	\$1,211,411	\$2,826,626
Service Lanes (05 ROAD 0064)	\$9,150,286	\$9,150,286	N/A (100% Development Funded)
Bus Terminal (05 ROAD 0065)	\$677,614	\$203,284	\$474,330
Plan preparation and management (05 MGMT 0001)	\$130,336	\$130,336	N/A (100% Development Funded)
Totals	\$16,635,400	\$11,487,055	\$5,148,346

Project Contribution Rates, with the exception of Service Lanes (05 ROAD 0064), is divided by total Equivalent Tenements (ETs) projected for the Ulladulla Town Centre during the term of the Plan. As detailed in Table 2, this is projected to be 991 ETs.

Table 2: Expected Future Development, Ulladulla Town Centre

Development Type	Projected additional development	Associated ET (Based on Council's existing 1993 CP)	Projected ETs
Residential			
Single Dwelling	0	Per dwelling (1.00 ET)	0
Multi-unit:1 b/room	22 (5%)	Per dwelling (0.40 ET)	9
Multi-unit:2 b/room	261 (60%)	Per dwelling (0.60 ET)	151
Multi-unit:3 b/room	130 (30%)	Per dwelling (0.80 ET)	104
Multi-unit:4 b/room	22 (5%)	Per dwelling (1.00 ET)	22
Retail	9,890m ²	Per m ² GLFA (0.06 ET)	549
Tourism	2,111m ²	Per m ² GLFA (0.07 ET)	141
Commercial	873m ²	Per m ² GLFA (0.01 ET)	10
Total Additional ETs			991

The proposed contribution rates for each of the above projects are detailed in Table 3.

Table 3: Proposed Contribution Rates

Project	Proposed Contribution Rate per ET
Roads and Traffic Management Facilities (05 ROAD 0062)	\$798.66
Road Environment Improvements (05 ROAD 0063)	\$1,221.01
Local Bus Facilities (05 ROAD 0065)	\$205.06
Plan Preparation and Studies (05 MGMT 0001)	\$131.48

Service Lanes (05 ROAD 0064)

The formula for the calculation of the contribution rate for service lanes is detailed in Appendix 'D' and as detailed above, it is proposed that development will fund 100% of proposed service lanes.

Whilst the capital works projects in the draft CP are identified separately for administrative purposes, the draft Plan allows for contributions to be pooled and progressively applied to the projects of highest priority as development occurs, offering greater flexibility for Council to respond to the infrastructure demands of development.

Economic, Social & Environmental (ESD) Consideration:

The proposed works identified in the draft CP 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. An objective of the draft CP is to ensure equitable sharing of costs for essential community infrastructure.

Financial Considerations:

The draft CP allows Council to collect Development Contributions to assist in the funding of Community Infrastructure within the Ulladulla Town Centre. The draft CP identifies 20 projects in the 'Schedule of Works' which Council will be able to collect contributions. The contribution rates are detailed in this report and sections 13, 14 and 15 of the draft CP. Council funding required to match Development Contributions will need to be considered in future capital works planning.

E J Royston
DIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE

R D Pigg
GENERAL MANAGER

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 7 JULY 2009

DEVELOPMENT AND ENVIRONMENTAL SERVICES

7. **Development application for a two lot residential subdivision and demolition of outbuilding/weatherboard garage - Lot 26 DP 19900 - 13 Catherine Street, Myola. Applicant: Allen Price and Associates. Owner: Cape Leveque Investments Pty Ltd and Sterling Works Investments Pty Ltd. File SF10052**
-

PURPOSE OF THE REPORT:

The subject application is reported to Council for information in accordance with the Council's resolution of 24/06/8 that recommended that *Development Applications relating to Heritage items not determined within three (3) months of the date of the application being lodged are to have heritage issues reported to the Development Committee for consideration.*

RECOMMENDED that this report on the development application for a two lot residential subdivision and demolition of outbuilding/weatherboard garage on Lot 26 DP 19900, 13 Catherine Street, Myola, be received for information and the Development Application be determined under delegated authority.

OPTIONS:

- a) The report on the development application for a two lot residential subdivision and demolition of outbuilding/weatherboard garage on Lot 26 DP 19900, 13 Catherine Street, Myola, be accepted by Council and the application be determined under delegated authority; or
- b) A 79C assessment of the proposal for a two lot residential subdivision and demolition of outbuilding/weatherboard garage on Lot 26 DP 19900, 13 Catherine Street, Myola be prepared and submitted for the further consideration of Council.

DETAILS/ISSUE:

Proposal

- # The applicant is seeking the subdivision into two residential lots of the subject property and the demolition of the heritage listed outbuilding/weatherboard garage located within the proposed access handle to proposed Lot 262 (**Attachment 'A'**).
- # The property is listed in Schedule 7 Heritage Conservation of the Shoalhaven Local Environmental Plan 1985 as a heritage item having local significance, i.e. *Weatherboard Holiday Cottage and Outbuildings* (**Attachment 'B'**).

The initial application requiring the demolition of the cottage was accompanied by a Heritage Impact Statement (HIS) (Borst and Conacher Architects, dated 1 August 2008). The HIS was referred to Council's Heritage Advisor and comments were received, on 7 November 2008.

Subdivision of the existing lot in accordance with DCP 100 can only be achieved by way of a battleaxe lot to the rear of the existing heritage structures. Access to this lot can only be obtained by demolishing or relocating either the cottage or the outbuilding/garage.

In response to concerns raised by the Heritage Advisor and through other referrals a revised plan was provided (19 May 2009) on which the access handle has been relocated to the southern side of the lot thereby requiring the demolition of the outbuilding/garage instead of the cottage.

Council's Heritage advisor reviewed the revised plans and does not support the demolition of either the outbuildings/garage or the dwelling and would prefer that either of the structures be relocated to accommodate the access handle, i.e. *"the removal of the cabin/garage will have significant and detrimental impact on the significance of the place as a group."* The heritage advisor also states that the *"proposed location of the boundaries relative to the existing cottage will compromise and limit the options for viable retention of the cottage in the future."* However, the outbuildings/garage is in poor condition and relocation of either structure is problematic.

The constraints imposed on the proposed lots by retaining the cottage in its current location close to the common boundary are not insignificant, i.e. potential overshadowing, privacy issues and limitations on the ability to provide ancillary structures to Lot 261. These matters are subject of assessment in accordance with Council's DCP 100 Subdivision Code.

The revised plan was re-referred and responses have been received. A number of additional matters of concern have been identified, i.e. flooding, drainage and proximity of the site to a SEPP 14 wetland. Consideration of these matters is being undertaken in the 79C assessment currently underway.

A number policy issues have been identified for consideration in the 79C assessment, i.e.: with respect to Development Control Plan 100 - Subdivision Code:

- a) Part of Lot 262 is too low to drain by gravity into Council's sewerage system;
- b) Lot 262 is unable to drain to the road;
- c) Lot 262 has an ex handle area of 620m², 30m² less than the 650m² Acceptable Solution;
- d) The 1% AEP flood event of 2.3m AHD on Lot 262, limits the area available above the flood level for provision of a dwelling, ancillary structures and outdoor facilities associated with coastal living;
- e) The limited building area available on Lot 262 and the close proximity of the existing heritage dwelling on Lot 261 to the common boundary create the potential for overshadowing and privacy issues; and

-
- f) The location of the existing heritage building close to the rear of Lot 261 limits to opportunity to provide ancillary structures to this lot.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

This proposal will have implications for the heritage value of the site, either by loss of a heritage item or creation of an atypical layout of the buildings as a result of the relocation of the outbuilding/garage.

FINANCIAL CONSIDERATIONS:

The application is integrated development, as such, there is not right of review under Section 82A of the Environmental Planning and Assessment Act, 1979.

8. **Subdivision Application - 2 Lot Residential Subdivision - Lot 6 Section H DP27358, 2 Sir Henry Crescent, Callala Beach. Applicant: Allen Price and Associates. Owner: Slater. File SF10053**
-

PURPOSE OF THE REPORT:

- # This application was reported to the Development Committee on 5 May 2009 (see **Attachment 'A'**), at which time it was resolved that the site be inspected prior to the making of a policy decision on the submissions made.

The purpose of this report is to confirm that an on-site inspection was held on Thursday 18 June 2009, notwithstanding only one councillor was available to attend.

RECOMMENDED that:

- a) **The applicant be advised the alternative solutions to DCP 100 and DCP 91, as outlined in this report for this application as proposed on the subject land, are unacceptable, in that the cumulative impact will have an adverse effect on surrounding residential amenity and therefore be contrary to the public interest; and**
- b) **The applicant, on behalf of the landholder, be invited to prepare a dual occupancy application for Council's consideration, to be assessed in accordance with Development Control Plan 57 - Dual Occupancy Code and Shoalhaven Planning Policy 5 - Subdivision of Dual Occupancy.**

OPTIONS:

Following the on-site inspection and the previous report of 5 May 2009, there are two options for Council to consider:

- a) Determine that the alternative solutions to DCP 100 and DCP 91, as outlined in this report for this application are acceptable for the reasons outlined in the applicant's submission; or
- b) Determine that the alternative solutions to DCP 100 and DCP 91, as outlined in this report for this application, are unacceptable in that the cumulative impact will

have an adverse effect on surrounding residential amenity and therefore be contrary to the public interest.

Creation of a separate torrens title lot, as stated in the applicants own SEE, could result in a building the size of the existing dwelling on proposed Lot 61, being duplicated on proposed Lot 62. An alternative to this option does exist. Further to option b. as outlined above, it is possible that the applicant on behalf of the landholder could be invited to prepare a dual occupancy application for Council's consideration, to be assessed in accordance with Development Control Plan 57 - Dual Occupancy Code and Shoalhaven Planning Policy 5 - Subdivision of Dual Occupancy. Such application could then be assessed on its merits, with a greater understanding of likely impacts of a future dwelling on the land and surrounding properties.

DETAILS/ISSUE:

- # The site inspection was an opportunity for available Councillors to meet with staff on the site. The applicant had the proposed building envelope pegged to assist those inspecting the site. Refer to photographs taken on that date (**Attachment 'B'**).
- # The proposed alternative solutions are discussed in detail in the previous report (**Attachment 'A'**). In summary, the applicant is proposing two (2) torrens title lots, as described in the following table:

Design criteria	Proposed Lot 61	Proposed Lot 62
Area	500m ²	468m ²
Width x depth	30.7m x 15.2m	27.6 - 31.4m x 15.2m
Building envelope (15m x 15m, total 225m ²)	21m x 10m, total 210m ²	20m x 9m, total 180m ²
Front setback	Front for Lot 61, which has existing dwelling could be either m to Sir Henry Cres, or 5m to Quay Road	5m to Quay Road
Rear setback	Existing dwelling has 40+m setback to northern setback or 1.5m to western setback	Nominated BE denotes rear setback to match existing dwelling - i.e. 1.5m

- # The applicant's position has been stated in their submission (attached to previous report - **Attachment 'A'**). Previous acceptance of alternative solutions for other applications has been shown as a sign of support for on-going support for acceptance of alternative solutions. The applicant has proposed a "no building" area to provide a viewing corridor between the existing dwelling and proposed building envelope.

At face value this is a simple two (2) lot subdivision. However, the complexity of this application lies in the potential development that could result from creation of the two lots. As stated in the submitted SEE, the size of the existing dwelling on proposed Lot 61 could be duplicated on proposed Lot 62. Following the site inspection the conclusion reached was that potential for such a large dwelling is unacceptable in terms of bulk, scale, impact on streetscape (5m front setback), possible overlooking and likely overshadowing of open space areas for both proposed lots.

The possibility of a dual occupancy application to be assessed on the merit, was discussed as a more acceptable alternative approach. Such an application would enable an assessment to be undertaken that has regard for many of the design issues of concern. Additionally, such course of action would ensure a resultant reduced floor space ratio of 0.4:1 (DCP 57), as opposed to a floor space ratio of 0.5:1 (DCP 91), and would ensure a maximum result of 2 dwellings from the existing Lot 6. Thus, further reducing possible impact on amenity for existing and proposed residents. The dual occupancy could be subdivided in accordance with the provisions of Council policy (SPPNo.5).

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

Since the matter was considered at the Development Committee, Council has received a further submission, again, from the Callala Beach Progress Association (CBPA). The CBPA were surprised to find that "Council had not as yet found formally against the proposed subdivision". Their objections include:

- CBPA consistently against approval of lots less than 500m²;
- The proposed subdivision does not comply with Council regulations, for area, and minimum square width dimensions.

FINANCIAL CONSIDERATIONS:

There are several options available to the applicant/landholder, with respect to the future of development of this lot. Submission of a subdivision application for two (2) torrens title lots, as is currently the case, is one option. Another option that is available, that has not yet been pursued to date, is the preparation and consideration of a dual occupancy proposal. Such proposal would however, lead to additional cost for the landholder.

9. Proposed Attached Rural Dual Occupancy Development - Lot 16 DP 1129347 - 151 Golden Flats Lane, Conjola. Applicant: Cowman Stoddart. Owner: B and E Willett. File DA09/1123

PURPOSE OF THE REPORT:

A development application has been submitted to Council for an attached rural dual occupancy which tests the definition of "attached dual occupancy" in Shoalhaven Local Environmental Plan (SLEP) 1985 and therefore is a planning policy issue that requires direction from Council.

The proposal is also non-compliant with Council's Dual Occupancy Guidelines (DCP 57) as the proposal does not comply with one of the Rural Dual Occupancy requirements that, "*No further clearing is required for the provision of services or bushfire prevention*".

It should also be noted that substantial works on the proposed dual occupancy were commenced without Council approval and only stopped when Council threatened to institute legal action. There has also been unauthorised works undertaken by the owner in the past.

RECOMMENDED that with respect to Development Application DA09/1123 for a proposed Attached Rural Dual Occupancy on Lot 16 DP 1129347 - 151 Golden Flats Lane, Conjola:

- a) **The application is consistent with the definition of “attached dual occupancy” in Shoalhaven Local Environmental Plan 1985;**
- b) **The variation to the rural dual occupancy provisions in relation to tree removal be supported; and**
- c) **The application be determined under delegated authority.**

OPTIONS:

The following options are available to Council when considering the proposal:

- a) Not support that the proposal is consistent with the definition in SLEP 1985 and the variation to the rural dual occupancy requirements of DCP 57.
The proposal is not considered to meet the intent of the definition. This position will require legal action potentially to have unauthorised building demolished.
- b) Support the proposal as meeting the definition of “attached dual occupancy” in SLEP 1985 and the minor variations to the rural dual occupancy requirements of DCP 57.

DETAILS/ISSUE:

Background

The subject property is zoned rural, part 1(a) (Agricultural Production), part 1(b) (Arterial and Main road Protection) and part 1(d) (General Rural) with the proposal being located in the rural 1(a) zone. The property has an area of 52.67Ha. Plans showing the location and zoning are attached as **Attachment ‘A’ and ‘B’** respectively.

The dual occupancy application has been submitted to incorporate the existing dwelling and studio together with building works partially completed without prior consent to create a dual occupancy to meet the family’s needs for accommodation on the land.

The Proposal

The applicant proposes to create an attached dual occupancy development by completing and connecting the unauthorised works and the existing buildings with a covered deck, corridor and study. The plans indicate the development will result in a rambling group of single and two storey buildings linked together with a continuous roof profile.

Plans of the proposal are included as **Attachment ‘C’**.

Policy Matters

a) Provisions of Shoalhaven Local Environmental Plan 1985

The definition of “attached dual occupancy” in SLEP 1985 states;

“attached dual occupancy - two dwellings which are physically attached and characterised by a continuous roof profile with identical pitch resulting in the appearance of a single dwelling-house.”

- # While the proposal does have a continuous roof profile with an identical pitch (other than the variations in pitch that are currently present with the buildings on the site) the question is whether the design results in the appearance of a single dwelling house. As evidenced in the plans in **Attachment ‘C’** the design will result in a mixture of single and two storey buildings linked together in a rambling fashion with an attached existing tall garage/rural shed with a flat roof. While it is difficult to conclude that this configuration of buildings has the appearance of a conventional single dwelling in an urban context, larger buildings or a cluster of smaller buildings are more common in a rural setting.

Applicant’s Position

- # The applicant’s submission in support of the current proposal is included as **Attachment ‘D’** and it concludes:

“The modifications will ensure that the proposed dual occupancy development will better meet the definition of an attached dual occupancy development within Shoalhaven Local Environmental Plan 1985 by providing two dwellings which are physically attached and characterised by a continuous roof profile with identical pitch resulting in the appearance of a single dwelling house.”

As stated, the design would not be considered to have the appearance of a single dwelling from an urban perspective, but in a rural location on a large lot the expansive nature of the proposal could be viewed somewhat differently. It is not that uncommon for rural dwellings to be laid out in such a rambling manner and it is considered that the collection of interlinked buildings may be viewed as having the appearance of a large rural homestead with outbuildings (i.e. dwelling). Council does have examples of substantial dwellings approved on larger rural properties which are characterised by separate buildings linked together to form a single dwelling.

b) DCP 57 Dual Occupancy Guidelines

Rural dual occupancy developments are not subject to the specific guidelines in the DCP but are required to comply with Part 2.4.3 of the Policy. The proposal complies with all but one of these requirements which requires that;

“No further clearing is required for the provision of services or bushfire prevention.”

Some tree clearing was required for the proposal for asset protection zones, both on the subject property and the adjoining property to the south, however, this clearing has now been carried out as consent is not required in this circumstance for tree removal on rural 1(a) land.

The objectives of DCP 57 - Dual Occupancy Guidelines are:

- *To ensure a high standard of dual occupancy development throughout the city.*
- *To preserve and enhance the amenity and environmental character of the area.*
- *To ensure that scale and design of dual occupancy development is compatible with existing environmental character and adjoining development.*
- *To minimise visual prominence and impact of development.*
- *To preserve and compliment any natural or heritage characteristics of the area.*

The need for tree removal is not a substantive planning issue for this proposal as the extent of tree removal was minimal and does not impact on the amenity of adjoining development nor the visual prominence and impact of the development.

Although tree clearing was required for the proposal the application meets the objectives of the DCP.

Community Consultation and Submissions

The proposal was notified with only one submission being received to date.

The single submission asked for an extension of time to complete a further submission and to enquire about other DA proposals that had been submitted to Council for the subject property. To date a no additional written submissions have been received.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

The proposal is located on a large property (52.67Ha) with existing development and cleared areas, the proposal will not significantly alter the current built and natural environment of the site.

FINANCIAL CONSIDERATIONS:

There are no financial considerations for Council other than the potential costs in relation to any appeal of Council's decision.

CONCLUSION:

The proposal tests the definition of "attached dual occupancy", however, in the circumstances the proposal meets the intent of the definition and in the rural context will have the appearance of a large, fragmented cluster of building that could constitute a homestead and in this respect resemble a single dwelling. On this basis the application can be supported.

10. Council Nominations to the Shoalhaven Joint Regional Planning Panel and Operational Arrangements for Assessing Regional Development Applications.

File 39782

PURPOSE OF THE REPORT:

The purpose of this report is to inform Council that the Joint Regional Planning Panels (JRPPs) will commence on 1 July 2009 and to recommend that Council consider its nomination of members to the JRPPs. The report also recommends operational arrangements to deal with development applications lodged that will be determined by the JRPPs.

Council considered a report at its meeting of 9 June 2009 at a time when there were issues about the JRPPs that had not been disseminated. The Department of Planning has now issued the draft Code of Conduct for members of the JRPPs and the Operating Procedures that will apply to applications to be submitted to the JRPPs for determination.

Some parts of the 9 June 2009 report are repeated in this report to assist consideration of the issues.

RECOMMENDED that:

- a) **Council nominate two Councillors (one of whom has the required expertise) as its two nominees and one alternate nominee to be members of the Shoalhaven Joint Regional Planning Panel, and inform the Minister for Planning of the decision;**
- b) **The nomination be for a period up to three (3) years;**
- c) **Council endorse the operational procedures contained in the report as interim measures, with a further report being presented on draft amendments to the current Policy, "Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies" subject to the amendments to the *Environmental Planning and Assessment Act, 1979*, and the *Environmental Planning and Assessment Regulation 2000*; and**
- d) **Council establish a Regional Development Committee and delegate authority to the committee to consider staff briefings on regional development applications and provide comment and make representation when necessary to the Joint Regional Planning Panel, independently of the Section 79C Assessment Report, as required under the provisions for Regional Development applications. (Note: Membership needs to be determined but NOT include either of the Councillors or alternate who are members of the Joint Regional Planning Panel to avoid any conflicts of interest. Council might also consider appointing the General Manager to this committee.)**

OPTIONS:

- a) That Council adopt the recommendation; or
- b) That Council not adopt the recommendation and provide direction to the General Manager on the issues covered in the recommendation.

DETAILS/ISSUE:

Introduction

The Minister for Planning, by letter dated 5 May 2009, invited nominations from Council of two members to the JRPP for the Shoalhaven. Council considered a report at its meeting of 9 June 2009 and resolved:

(a) That Council not nominate representatives to the Joint Regional Planning Panels until such times as guidelines and codes are made available to Councils and issues relating to conflicts of interest have been resolved.

b) That Council seek an extension of time for Council nominations and the commencement of the Joint Regional Planning Panels, to ensure all issues such as guidelines and codes; conflicts of interest and cost sharing arrangements are resolved.

- # A letter was sent to the Minister about Council's resolution. For a copy of the report considered at the 9 June 2009 see **Attachment 'A'**. Since the resolution, the Department of Planning has issued further drafts of the Panel Members Code of Conduct and the Panel Operating Procedures and these are included in **Attachment 'B'**.

A workshop was held by the Department of Planning in Wollongong on 16 June 2009 and this was attended by the Mayor and two (2) Development and Environmental Services staff. Councils that have not nominated two members to the JRPPs were again invited to do so.

The information from the Department of Planning at the recent workshop is that the nomination of a development planning staff member including a Director may not be appropriate due to the likelihood that there will be perceived conflicts of interest or duties by community members.

It is intended that the introduction of the JRPPs will be accompanied by amendments to the State Environmental Planning Policy (SEPP) Major Projects, the *Environmental Planning and Assessment (EP&A) Act 1979* and the *EP&A Regulation 2000*. This will result in the transfer of certain classes of DAs currently under Part 3A of the EP&A Act (now lodged with and assessed by the Department of Planning, and determined by the Minister) and a number of DA types under Part 4 (lodged with and assessed by Council but to be determined by the Panels) of the Act. These DAs will be called regional development. The remaining categories of local development under Part 4 will be determined by the Council.

As a consequence, the arrangements that will apply to the regional development applications that will be processed at Council and referred to the JRPP for determination are being reviewed.

Functions of the Joint Regional Planning Panels

The principle functions of the JRPPs are twofold, they are:

- a) to exercise certain consent authority functions in regard to regional development; and
- b) where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect of the JRPP's region.

As a consequence, the functions will require the Panel to:

- a) exercise any functions that are conferred to it under the *EP&A Act 1979* (e.g., the powers of a Planning Administrator or Planning Assessment Panel);
- b) advise the Minister of Planning on planning or development matters in respect of the JRPP's region or any related matters as requested by the Minister;
- c) review a planning proposal at the request of the Minister or be appointed as the relevant planning authority to make an instrument;
- d) act as a statutory body representing the Crown; and
- e) act as the review body for a limited class of third party objector reviews from persons within 1 km of a certain proposal where State Environmental Planning Policy (SEPP) 1 has been used to vary height and floor space ratio controls by more than 25%.

Regional Development

The classes of such "regional development" that will be matters for determination by the JRPPs include:

- a) commercial, residential, mixed use, retail and tourism development with capital investment value (CIV) between \$10 million and less than \$100 million;
- b) public and community infrastructure and ecotourism developments valued at more than \$5 million, both public and private - e.g., schools, community halls, child care facilities, places of worship, etc (e.g., the Shoalhaven Entertainment Centre);
- c) certain coastal developments within sensitive coastal locations of regional significance currently in Schedule 2 of the Major Projects SEPP (e.g., recreational or tourist facilities, buildings or structures greater than 13m in height, subdivision of land into two (2) or more lots that will lead to development that is not connected to an approved sewage system and others);
- d) designated development (development needing an Environmental Impact Statement (EIS)); and
- e) development with a CIV of more than \$5 million and where the Council is the proponent or has a conflict of interest.

The reference to a CIV includes additional costs associated with a development that have not previously been included by applicants in the costing of DAs for the purpose of lodging the applications.

The definition of **capital investment value** from the SEPP (Major Projects) 2005, is “*all costs necessary to establish and operate the development, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment (but excluding GST, as defined by A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth, and land costs).*”

Membership of the Joint Regional Planning Panels

It is proposed that the JRPPs comprise five (5) members as follows:

- Three (3) persons appointed by the Minister, each having expertise in at least one (1) of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration; and
- Two (2) Council nominees of an applicable Council area, at least one of whom has expertise in planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

In appointing the State members, it is proposed that the Minister for Planning would appoint the Chairperson of each JRPP. State members would hold office for a period [not exceeding three (3) years], as specified in the members instrument of appointment, but may be eligible for re-appointment. The Minister may, from time to time, appoint a person to be an alternate of a State member.

It is proposed that each Council will determine how it selects its nominees on the JRPP. The Department of Planning, in conjunction with the Department of Local Government (DLG), have provided guidance to Councils on how this is to be done. Council may also nominate an alternate member.

The selection criterion includes:

- senior high level experience in dealing with multiple stakeholders;
- high level communication skills;
- capability to drive high profile outcomes in a credible and authoritative manner;
- high level analytical skills; and
- knowledge of the assessment of complex developments and planning matters.

It is envisaged that there will be a sound mix of these skills amongst the five (5) panel members.

In this regard, this report recommends that Council nominates two (2) Councillors to sit on the proposed JRPP when the panel deals with matters within the Shoalhaven City Council area; at least one of the members must have expertise in planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

In the discussion papers, it is not essential that the two (2) Council nominees be either Councillors or staff. Council could proceed to call for expressions of interest from the community and make a selection from a wider field of candidates. There may be issues associated with the short timeframe for making nominations and the potential additional cost associated with community nominees, however there could be interim nominations and a review be made at a later time.

The Department of Planning will provide training which is mandatory. There will also be forums and information provided to stakeholders and the broader community.

Operating Procedures

The operating procedures provided by the Department were only available in draft form at the time of preparing this report. The amendments to the EP&A Act, Regulations and finalised guidelines will be provided for information once available.

It is understood there will be a pre-lodgement process so applicants can seek requirements from Council before lodging the DA.

An application will be lodged with Council and staff will undertake notification and referrals. The JRPP Secretariat will be advised of the application within seven (7) days of lodgement together with an estimated date of when the 79C assessment report will be submitted to the JRPP. If, during the assessment process, the estimated reporting timeframe changes, the JRPP will be informed.

Due to the likely complexities of regional development applications, a review will be made of documentation lodgement requirements to assist applicants and reduce delays that arise if insufficient information is presented by applicants.

A site visit by the JRPP may be requested by the proponent, Council or the community and in this case the JRPP chair will decide if this will be arranged. The JRPP will not engage in discussion at a site visit.

The JRPP Secretariat will make the arrangements for any site visit, as well as service the JRPP administration. Council will provide the administration of its part of the process.

There will be specified documents that are part of the regional development applications that will be made available on-line through the JRPP Secretariat via the Department of Planning website.

The 79C assessment report will be the objective planning report. Should Council wish to make representations on issues outside of the objective reporting, it must do so within fourteen (14) days of the ending of the notification period. In these cases reporting of issues to Council will have finite timing. This requirement makes informed briefing of Council very difficult and may be subject to final amendments to the Act and Regulations.

Upon completion of the assessment reporting, the report is forwarded to the JRPP secretariat. The JRPP will issue an agenda with seven (7) days notice of the meeting to the proponent, any persons making submissions and Council. The assessment officer or their supervisor and other Council technical staff as required will be required to attend the JRPP meetings. Council, a community member or the proponent may address the JRPP on its specific issues. The meetings will be open to the public and operations will be

transparent. There may be issues that require a confidential part of a determination meeting but this will be limited and processes similar the Council meeting procedures under the *Local Government Act 1993* will apply.

The JRPP determination will be forwarded to Council to issue the consent or refusal notice. Where an appeal arises, Council will be required to defend the appeal.

There is no “stop the clock” or equivalent Section 82A review process, and from the time of lodgement, there is a 90 day deemed refusal timeframe.

A diagram of the anticipated process is shown in **Attachment ‘C’**.

Review of Council DA process and Policy for Regional Development

The following changes to current process are proposed:

- a) Pre lodgement meetings will be encouraged to enable Council staff to discuss issues with applicants before lodgement. These may be mandated subject to amendments to the Act and Regulations;
- b) A default period for preparation of the assessment report of 70 days will be advised to the JRPP upon lodgement, with the assessment timeframe reviewed during the assessment step;
- c) Where additional information is requested from an applicant, one letter will be issued and a 14 day period provided so the assessment period is not treated as compromised;
- d) As Council is not the determining authority for the application but may make a representation separately to the JRPP at a determination meeting, a Council briefing or report mechanism will be put in place. Until the assessment report is prepared and finalised by the Director, all the issues may not be known. It is unlikely that every application will result in Council wishing to make separate representations, however this may arise where major or locally controversial proposals are being considered.

Due to the timeframes utilised by the JRPP, it is unlikely that there will be sufficient time to coincide with Councils meeting timeframes, it may therefore be appropriate for Council to establish a committee that can meet outside the Council meeting times at short notice and be delegated a responsibility so a “Council position” for any representation to the JRPP can be resolved. A formal process is suggested rather than an informal briefing as the current briefing process is not minuted and is not a decision making forum. Council would determine which officer or Councillor, other than a person involved in the assessment process or a member of the JRPP would attend the JRPP to make any direct representations on behalf of Council at the JRPP meeting. Council is requested to resolve a position on this mechanism in the recommendation;

- e) The current Policy, “Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies” will require amendment to detail the changes as a result of the regional development processes. This will include provisions relating to submissions, public meetings, resident briefing meetings and deputations due to the JRPP being the

determining authority rather than Council. A separate report on Policy changes will be presented to Council in due course.

- f) The regional development applications will be lodged with Council but the applications and certain documents will also be made available on a website of the Department of Planning. This will be similar to the way Part 3A applications are currently made available for on-line viewing. The type of documents to be displayed will be included in the amendments to the Regulations that were not available at the time of preparing this report. It will be necessary to review and coordinate the data interface currently used with local development through the DARTS and DA Tracking systems, once the requirements are available. A separate report on Policy and Procedure changes will be presented to Council

Code of Conduct

The Panel Members Code of Conduct is modelled on the Local Government Code with modifications to suit the Panel requirements. A copy is included as **Attachment 'B'**.

There are issues that may arise for Council's nominees and it will be necessary that either staff or Councillor nominees are aware of the Code provisions. Nominees may not be involved in the assessment of a development application that will be determined by the JRPP. Where a matter is before the Council on an issue outside the 79C assessment report, a member of Panel is not permitted under the Code to attend that meeting.

There are distinct provisions dealing with the relationship of JRPP members with the Council and staff in Section 5 of the Code. In considering its nominees, Council should identify where conflicts may arise and put in place measures to remove the potential conflicts.

Options for selecting Council Nominees

Council may nominate a staff member or Councillor who satisfies the selection criteria. Council may consider seeking Expressions of Interest from appropriately qualified members of the public by advertising and a selection process. Council may nominate an alternate member to serve on the JRPP. The term of a nominee is for up to three (3) years.

Council may make an interim decision to nominate two persons, staff and/or Councillors and review the nominations after a period as the JRPP operations are evaluated. Any nominees will require the appropriate training provided to JRPP members.

The nominees that are submitted will be confirmed by formal advice of the Department of Planning.

Council should note however, that the draft Code of Conduct clearly indicates that the Department of Planning believe that it will be very difficult for staff associated with the development assessment process to avoid a perception of a conflict of interest or duties.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

This report is for Council's information in preparation for legislative changes to enable the establishment of the JRPP. In this regard Council needs to consider cost implications associated with those legislative changes in order to maintain economic viability of the organisation.

This report does not identify any significant social and environmental (ESD) considerations.

FINANCIAL CONSIDERATIONS:

The costs of servicing the JRPP Secretariat and the State JRPP members will be resourced by the Department of Planning. Council will be responsible for the costs associated with its nominees attending to JRPP business. The costs are unknown at this stage but it is likely that utilisation of staff or Councillors as nominees would be less costly than seeking community representatives. There will be costs associated with the use of Council facilities for meetings.

It is prudent that Council considers the cost implications associated with its obligations with the introduction of the proposed JRPPs. As the applications proceed, a record of costs can be established for consideration in subsequent budgets. It is understood that there will be no changes to the development application fees at this stage, although a review of all such fees is currently underway by the Department of Planning and there may be amendments in the future.

- 11. Proposed Shopping Centre - Lot 1 DP 745326, Lot 2 DP 1057008, Lot Y DP 208594 and Lot X DP 208594 - 119 to 123 Princes Highway Ulladulla. Applicant: Planning Workshop Australia. Owner: Fabcot Pty Ltd. File DA08/2630**
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PURPOSE OF THE REPORT:

A development application has been submitted to Council for a shopping centre [Woolworths] at the north western corner of South Street and Princes Highway, Ulladulla. Given the considerable public interest in this application and its potential long term impact on the CBD of Ulladulla, this report is placed before Council for direction regarding relevant clauses of Development Control Plan DCP 56 and particularly whether Council supports direct vehicular access to the Princes Highway contrary to acceptable solutions in DCP 56.

RECOMMENDED that Council supports the concept of a shopping centre development in this location, however:

- a) Council not support direct vehicular access to the Princes Highway; and**
- b) The applicant be advised that the design fails to adequately meet the expectations of Council with regard to the aims and objectives, performance**

criteria and acceptable solutions of DCP 56 Ulladulla Town Centre and Harbour and Council would encourage a re-design which better addresses these issues.

OPTIONS:

- a) Council not support direct vehicular access to the Princes Highway and consider that in other respects the design meets the performance criteria of DCP 56 Ulladulla Town Centre and Harbour which will require a redesign of the parking areas;
- b) Council not support direct vehicular access to the Princes Highway and considers that the design fails to adequately meet the performance criteria of DCP 56 Ulladulla Town Centre and Harbour which will require a substantial redesign of the development;
- c) Council support direct vehicular access to the Princes Highway and consider that in other respects the design meets the performance criteria of DCP 56 Ulladulla Town Centre and Harbour; or
- d) Council support direct vehicular access to the Princes Highway however considers that the design fails to adequately meet the performance criteria of DCP 56 Ulladulla Town Centre and Harbour, which will require a redesign of the development.

DETAILS/ISSUE:

The Land

The subject property is zoned 3(a) (Business "A" (Retail) Zone under the Shoalhaven Local Environmental Plan 1985. Composed of 4 adjoining allotments, the subject property has an area of 5443m². Plans showing the site and zoning are included as **Attachment 'A' and 'B'** respectively.

The Proposal

The applicant proposes to demolish existing structures and construct a new shopping centre comprising of:

- Basement Level 1 - specialty shop with 117m² GFA, car parking for 113 spaces with direct access to Princes Highway and Boree Street, travelator, lift, amenities, stairs, storage areas and services and on street landscaping.
- Ground Floor Level 2 - Woolworths Supermarket, specialty retail, mall & WOW Liquor with 5167m² GFA with direct pedestrian access to Boree Street.
- Roof Level 3 - offices with 91m² GFA, staff amenities, lift and stair access to all levels, car parking for 107 spaces with partial shade sail, loading dock and plant area with shared patron/service access to South Street.

The revised plans of the proposal are included as **Attachment 'C'**.

Policy Matters - DCP 56 Ulladulla Town Centre and Harbour

Amendment 4 was adopted by Council on 29 July 2008 and came into effect on 28 August 2008. Council have recently held a workshop on the DCP which Strategic Planning will be reporting back to council with their recommendations for any review of the document.

Applicant's Design Justification

Council's Accelerated Growth Strategy indicates that the use of the site for a supermarket is consistent with, and indeed integral to, the desired future character of the retail precinct. In assessing the subject revisions, it needs to be considered that the site slopes such that provision of an entirely activated frontage to the Princes Highway would not only compromise its ability to host a large scale supermarket but is also physically impossible.

This is because retail requires level access from the street. The original proposal was designed to provide the requisite level floor area while catering to the topographical constraints of the land. The amendments, the subject of this addendum, seek to further maximise the capability of the site to provide a well articulated and interactive presentation to the Princes Highway, however, the amendments need to be viewed within the context of the various constraints relevant to the site itself.

As demonstrated by the drawings attached, Woolworths has responded to community and Council concerns by modifying the façade originally proposed through use of a more sophisticated treatment, presenting an appropriate degree of articulation that integrates positively with the general look and feel of surrounding development.

Characterised by flowing waves of deep blue with vertical plane interrupted by timber elements spaced along the length of the façade, the design undoubtedly speaks to the "maritime" image desired by Council and the community for the Ulladulla Town Centre. Simple, straight, cantilevered awnings compliment the wave feature and assist in the definition of a base, middle and top to the overall presentation. The minimalist simplicity of these is juxtaposed to the flowing feel of the remainder of the façade which ensures an element of classic design that has been intentionally included to maintain a contemporary feel to the building into the future. As has been discussed with Council, from a design perspective, these simple awnings appeal to a sense of design longevity for the façade and are therefore preferable to curved awnings.

In addition to this more dynamic and contemporary approach to the building articulation, the proposal has been modified to activate the street frontage through the addition of 117sqm of retail space to level one, as well as the existing proposed pedestrian access to the entire centre from the Princes Highway. The modification ensures the proposal has an overt address to the Highway guaranteeing a more "outward" presentation.

The overall concept is further enhances by landscaping along the entire Highway frontage which is to be complimented by street furniture placed to encourage active use of the area, creating a sense of a modern, safe, pedestrian friendly and visually attractive pedestrian promenade.

It has been suggested by Council that 'advertising panels' placed on the Princes Highway façade may assist in presenting a more active elevation. However, it is considered from an urban design perspective, that such advertising would detract and potentially 'dumb down' the design of the façade and potentially offer opportunity for vandalism. Moreover, such panels and the advertising material contained within them are prone to deterioration through sun and water damage which results in a poor and 'tatty' presentation to the street, to the detriment of the building and environment as a whole. It is considered preferable to allow the façade design, together with the landscaping, to enhance that part of the highway.

In conclusion, the design has been chosen in an effort to consciously integrate the proposal with both the fabric of the existing Ulladulla Town Centre as well as the desired future character of the area as a contemporary retail precinct as articulated in Council's controls.

Part 1: Aims and Objectives of the DCP

"Built Form and Character"- "To establish a clear identity and maritime image for the Ulladulla Town Centre as a working port, tourist centre and service centre incorporating diverse residential activities and an enhanced public domain through:

- *Providing improvements to streetscapes"*

Applicants Position

The proposal aims to contribute to the public domain through provision of an attractive façade incorporating a strong articulation which in turn seeks to reference a maritime theme through its use of colour and shape. Further, the proposal aims to activate what would otherwise be an inert frontage through the provision of additional retail uses, landscaping and street furniture.

Comment

The existing site is composed of vacant commercial land and a number of older shops [circa 1970s] fronting the Highway to the south end of the site.

The proponents have interpreted 'maritime image' to include facades of painted flowing waves of deep blue with the vertical plane interrupted by spaced timber elements and a timber feature screen at the south east corner of the development.

A mixture of curved and straight, cantilevered awnings projecting 2.0m over the footpath have been added to the highway façade to provide partial weather protection for pedestrians in the street that terminates 15.0m short of the south end of the building.

Some activation of the highway streetscape has been attempted with a small retail shopfront [117m²] located adjacent the pedestrian basement car park entrance and a small section of staff dining windows from the top floor. This represents an improvement on the original design.

Landscaping in the form of planter boxes with advanced tree and understorey plantings have been proposed along the Highway frontage with street furniture and decorative pavement finishes. No landscaping finishes have been indicated for the Boree Street frontage of the development.

While these plans are an improvement on the earlier versions, the proposed awnings are not wide enough to provide useful weather protection for pedestrians. The use of straight and curved awning elements provides a somewhat inconsistent awning theme to the highway. Staff suggested further relief such as incorporation of electronic sign boards [similar to LCD Screens] recessed within the walls of the façade to provide additional activation of the streetscape which was not included in the design by Woolworths.

“Accessibility” -

- *To manage the traffic and parking for the benefit of visitors, residents and businesses, ensuring that both elements are functional.*
- *To promote a public transport focus within the retail core.*

The proposal relies on removing existing on-street angle parking along the highway frontage to make way for a full left turn slip lane into the development. Council's Traffic Unit have recommended that a drop off/pick-up area be provided in Boree Street and indicated the need for a dedicated pedestrian access to the rooftop entry from South Street.

Given the small amount of street activation proposed and the slope constraints, the development does not invite or encourage pedestrian access from the highway particularly for older and/or disabled persons. The design is heavily weighted towards access via the proposed car parks and the lack of interconnectivity between parking levels is a poor design feature that could impact on customer satisfaction in accessing the development.

“Urban Design/Lifestyle” -

- *To encourage a well designed safe and active public domain that contributes to the well being of the community and visitors and promotes an overall maritime theme.*
- *To improve the quality and safety/accessibility of public places and their views to the harbour and other visual attractors.*
- *To promote a quality, built environment which is responsive to community values.*

The internal layout of the commercial floor space combined with minimal glazed areas and lack of significant openings to the Princes Highway elevation results in a somewhat introspective development. In terms of the objectives of the DCP there are few opportunities for members of the public visiting the site to obtain access to views from within the site across to the harbour. The small retail shopfront at street level eye line will not provide any view of the harbour and other visual attractors.

Part 2: Land Use Strategy

2.1.3 Commercial Core Precinct

Performance Criteria 4 To consider impacts of new and enlarged development on adjoining lands.

Acceptable Solution 4 Development is to minimise the visual impact of blank walls through acceptable building façade articulation and good urban design.”

Applicants Position

As discussed previously, the proposed use, within the context of the constraints of the site, require a degree of blank wall presentation. The amendments seek to minimise the impact of this consequential element through contemporary façade articulation complimented by landscaping and street furniture. It is proposed that the impact of the elevation is softened by the provision of an undercover walkway along the highway linking the site to other existing retail uses. This together with the proposed landscaping and façade articulation will minimise the impact of the blank walls.

Alternative suggestions such as providing 'advertising' panels or 'windows' is considered undesirable in that it would detract from the design of the façade and likely provide future opportunity for vandalism of said advertising. Such vandalism or even general wear and tear from the elements would likely present poor visual amenity to the highway.

Comment

The Commercial core precinct permits a zero building line setback for the development with a general height limit of four (4) stories and 13.0m with a FSR permitted up to 2:1. The application proposes a (3) storey tilt-up style concrete clad building up to 13.0m in height that steps down the slope of the site with a FSR of 0.97:1 which is well below the maximum density permitted.

The design proposes to articulate the external facades using paint finishes to define three waved levels running horizontally along the building with spaced vertical fins projecting from the façade that increase in depth above awning level. The base and mid levels of the façade are broken up by the placement of short cantilevered awnings that step down the site to maintain a consistent height above pavement level with corporate badging located in the mid and upper levels of the façade. An angled timber slatted feature screen projects over the footpath at the south eastern corner of the site.

Only 20m² of shopfront glazing has been provided to the highway façade which equates to less than 2.0% of the surface area of the façade. In contrast the Boree Street façade which is far less important in activating the street, than the highway facade provides for approximately 18% surface area dedicated to shopfront glazing.

Large expanses of blank walling are proposed along the boundary of the northern façade that would be ultimately concealed by future development of the adjoining site. The proposal and its supporting information have not adequately addressed the Objectives and Performance Criteria of DCP 56 and how they are met in regard to minimising impact on adjoining lands and the impacts of large blank walls. It is worth noting that in one submission from a local architect, an alternative design concept has been presented that provides much greater activation and visual relief to the highway.

Part 4 Development Guidelines

4(C).2 Building Form/Orientation

Performance Criteria 1 Buildings should be integrated harmoniously into the townscape and relate to one another through their architectural design quality, landscape or streetscape setting. They should optimise solar access to residential apartments and adjacent developments.

Acceptable Solution 1.1 Buildings and structures are to be appropriately modulated and articulated in their façade in order to provide well proportioned elevations and human scale when viewed along the street and from the centre.

Acceptable Solution 1.4 Large expanses of featureless walls and curtain walling are to be avoided.

Acceptable Solution 1.6 Buildings over two stories in height shall contain highly articulated façade elements to visually break down the scale of the street wall clearly expressing base, middle and top.

Applicants Position

The proposal seeks to respond to the streetscape by providing for articulated frontages that use colours and shapes that integrate with existing development and speak to the maritime theme promoted by Council.

The use of the ‘wave’ feature complemented by cantilevered awnings and punctuated by timber elements breaks down the scale of the wall and provides for expression of the levels of base, middle and top anticipated by the control.

Comment

Shadow diagrams prepared for the proposal indicate the adjoining residential properties will not be detrimentally impacted as the development will not reduce the sunlight received by the north-facing windows of living areas of neighbouring properties to less than 3 hours between 9am and 5pm at the winter solstice.

The comments in relation to Part 2 - Land Use Strategy are also relevant to these performance criteria and acceptable solutions.

4(C).5 Building Appearance Materials and Finishes

Performance Criteria 1 Development should make a positive contribution to generating a distinctive Australian contemporary, country maritime character and sense of place.

Acceptable Solution 1.1 Building materials colours textures and styles shall adopt design clues that reflect a distinctive Australian contemporary coastal maritime theme and character.

Applicants Position

As outlined above, the façade treatment proposed has been designed specifically with a maritime theme in mind with waves of “sapphire” punctuated on the vertical plane by timber elements and on the horizontal plane by simple, understated awnings.

Comment

The interpretation of this acceptable solution is value based and ultimately subjective. Although the applicant maintains that they have achieved compliance, many submissions have questioned whether the design supports a distinctive Australian contemporary coastal maritime theme and character.

Part 5 Infrastructure

5.1 Car parking and access

Performance Criteria 3 Car park entries and driveways are to be kept to a minimum and where practicable should not be located in pedestrian areas.

Acceptable Solution 3 Car parking entries and driveways are to be avoided onto the Princes Highway in favour of the provision of rear service access. Where alternative access via a secondary road or rear lane is available access to the primary road frontage is to be avoided.

Performance Criteria 4 The 30 metre wide road reserves should be utilised where possible for on street public car parking.

Acceptable Solution 4 On-street car parking to be maintained in the following streets:

- the Princes Highway between Deering Street and Millards Creek.

The proposal includes direct vehicular access to the highway from the basement car park in close proximity to pedestrian entry for the centre. Woolworths have requested a letter of support from Council for highway access to assist in their negotiations with the RTA. Council's Traffic Unit have advised:

*"The analysis submitted has **not** provided convincing results that could be used to justify retaining the access on the Princes Highway.*

Council's Traffic Unit would be prepared to continue to support the retention of the developments' proposed access to Princes Highway on the basis that this would allow network benefits in terms of broader distribution of traffic from the site and allow traffic with an alternative option than using the intersection of Boree Street and South Street which the analysis has shown has demonstrated safety issues.

Given that the outcome of the analysis has not provided a convincing technical case "for" the access to be retained on the Princes Highway, Council's Traffic Unit are not in a position to provide a letter of support at this stage, particularly considering that Council's DCP does not allow access."

Whilst Traffic Unit's comments are acknowledged, it should be noted that direct access to the highway is not prohibited by the DCP, it is however inconsistent with the acceptable solutions A3 and A4 and RTA recommendations. Refer to **Attachment 'D'** for RTA Regional Traffic Committee recommendations.

The applicant's submission in support of the current proposal is included as **Attachment 'E'** and it concludes:

"any proposal for the subject site will need to work within the constraints of the land in the provision of retail uses that correspond with Council's desired future character of the area. The topography of the site is such that further activation of the princes Highway elevation is difficult (if not impossible) and would compromise its ability to play host to a viable supermarket use and herein lies the planning challenge. In rising to this challenge, Woolworths has listened to the community, elected members and Council staff in their

consideration of the application. Woolworths and their architects has worked within the relevant controls articulated by council to present an innovative and attractive facade design as well as activate the frontage to the extent that it will become a pedestrian friendly, safe and attractive walkway that is punctuated by sympathetic landscaping and enlivened by retail uses.”

Strategic Planning and Infrastructure Comment

Generally, consistent application of DCP 56 (Amendment No. 4) is a priority, given the contemporary nature of the DCP and the subject site’s strategic importance as a key retail/ commercial site.

Traffic and Parking

Specifically, as per Acceptable Solution A3, Part 5 of DCP 56, the DCP encourages the avoidance of access onto the Princes Highway where alternative access is available. In this case alternative access is available and it is considered that the size and location of the subject site allows for a building configuration that could accommodate access to/from Boree Street.

Traffic Lights - South Street/ Princes Highway Intersection:

The Ulladulla Traffic Strategy provides for traffic lights at the South Street/ Princes Highway intersection and the RTA were previously committed to providing the lights. However, the RTA has not indicated continued commitment to the provision of the lights, and if so, the timing of construction. The applicant has proposed a monetary contribution towards the provision of traffic lights at the South Street/ Princes Highway intersection.

Highway Access:

The RTA previously allowed access to the Princes Highway for the Target/ Coles development proposal, based upon certain works being undertaken by the applicant. This was based partly upon the fact that the site (ex service station) had two existing access points (driveways) to the highway. The RTA has not offered the same level of conditional support for access to the highway in relation to this application. Providing access to the highway from the subject site (with or without traffic lights at the South Street/ Princes Highway intersection) would require the removal of approximately 21 on street car spaces, to meet design and construction traffic standards. If traffic lights are provided without access to the highway to the subject site, the removal of up to 5 on street car spaces would be required.

The Target/ Coles development proposal included a loss of parking on the highway and the applicant was conditioned to make a monetary contribution in relation to that loss of on street car spaces.

An assessment by Council’s traffic and transport unit shows an improved traffic situation should access to the highway from the subject site occur, however, that would not be a significant improvement and would most likely not be significant enough for the RTA to change its position.

Irrespective of the highway access issue, the subject development proposal should not proceed without the provision of traffic lights at the South Street/ Princes Highway intersection, preferably by the RTA or by the applicant in conjunction with the RTA.

The possible banning of right hand turns from the proposed highway access point and the South Street/ Princes Highway intersection, heading both east and west, may improve the traffic situation in the Ulladulla Town Centre, but this is not considered an appropriate treatment to mitigate impact in this case.

Princes Highway Façade

In relation to the Princes Highway facade of the building, it is appreciated that amended plans have been provided and that specific design requirements for supermarket footprints are required. However, a greater level of connectivity between the proposed development and the surrounding commercial area remains possible, particularly in relation to pedestrian links and through an engaged retail frontage. In this regard, the current plans still propose a relatively inactive and internalised elevation to the Princes Highway. Further, the current design of the building does not create opportunity for integration with future development on surrounding sites.

Improved utilisation of the north-eastern aspect could occur by locating the specialty shops on the Princes Highway side of the development. Not only would this be more consistent with the character of the existing street, it would allow for glassed areas opening onto this side providing greater opportunities for accessing natural light and cross ventilation.

Community Consultation and Submissions - Original Plans

The original development plans were notified in accordance with council's Community Consultation Policy in December 2008 which resulted in 16 submissions being received with the following themes:

- The proposal will appear bulky, will dominate the streetscape, lacks articulation and fails to create an active street frontage [lack of shopfronts] along the Princes Highway.
- The cube design is visually ugly, vehicle orientated and pedestrian unfriendly.
- The proposal is inward looking with back of house fronting the highway & presents massive blank walls with no vistas from within the building to the rest of the town or harbour.
- Blank wall facing the Target site could be left exposed for an extended period of time and could be the target of unsightly graffiti.
- The bulk & scale of the proposal does is out of character with the scale of community style developments in the surrounding area.
- Design not acceptable for a gateway site to the CBD & proposed colour palette does not reflect the coastal character of the area.
- No dedicated servicing area for small retail shops.
- Lack of maritime theme, modulation & articulation of the wall facades in the design.

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- No landscaping plans, lighting or awnings for pedestrians or shadow diagrams.
 - Loss of amenity for adjoining residents.
 - Design fails to encourage pedestrian access from the highway as access is only available through the basement car park.
 - Pedestrian movement corridors are not linked to the major car parks.
 - Car parking in the basement and on the roof top are not linked internally which will result in additional traffic demand surrounding the development.
 - Direct vehicular access to Princes Highway which is contrary to DCP 56.
 - Increased traffic impact in Boree Street, Boree/South Street intersection, South Street/Princes Highway intersections.
 - Loading dock delivery times and their impact on amenity to residents in South Street.
 - No independent economic impact assessment to consider whether the local population can support a new shopping centre.

Community Consultation and Submissions - Revised Plans

After a number of consultation meetings between the proponents, Council staff, Councillors the Ulladulla and District Forum and Business Community, the revised plans were renotified in May 2009 which resulted in (18) additional submissions being received with the following themes:

- The main concerns are the continued lack of any real active/interactive street frontage on the Princes Highway and the overall lack of interaction the building has with the surrounding built environment.
- The design acts as a barricade, effectively isolating this area from the harbour and the main hub of Ulladulla. It does not provide an open, welcoming approach that would be conducive to interaction with the local community and tourists.
- Lack of shop frontages to the highway.
- Activation should cover at least 50% of the highway facade and be spread evenly along the entire length of the wall.
- The building will physically divide the town and has no "sympathy" with anything surrounding it - either in structure or external appearance.
- Essentially inward looking & insular, the building has been designed to keep people inside and turns its back on the Highway and the harbour, failing to take advantage of the opportunity for valuable water views.
- The proposal is a significant underutilisation of the site & will further fragment the CBD into a third retail precinct.
- Maritime theme should encompass the total building design not just token paint finishes and some timber embellishments masquerading as a ship's bow.
- Blank north wall has no direct link to the CBD.

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- Suggestion of combining development with other parties to develop a key development site such as the car park in Boree Street.
 - Does not relate to the harbour.
 - Does not protect the impact to the urban environment by minimising apparent size of the buildings when viewed from street level.
 - No apparent provision for lighting onto footpaths.
 - The building does not relate to the streetscape or surrounding buildings or proposed Target buildings (e.g. connection, interaction, setbacks).
 - Lack of interconnectivity between parking levels will cause added congestion and force vehicles back onto adjoining streets in order to find a spot if one level is full.
 - Also the proposal to provide direct access to the Princes Highway is contrary to DCP56 and RTA policy.
 - Further congestion on Boree Street, South Street intersection with highway.
 - Accessibility of design difficult for the elderly or those without vehicle ownership as it is a significant distance up hill from the PO, financial institutions within the CBD.
 - One submitter [Belinda Scott & Associates Architects & Planners] has provided an example of an alternate design that could utilise the subject site more in compliance with the principles of the DCP which is included as **Attachment 'F'**.

ECONOMIC, SOCIAL & ENVIRONMENTAL (ESD) CONSIDERATION:

The report above details the impact on the built environment and social issues associated with the proposed development.

FINANCIAL CONSIDERATIONS:

There are no financial considerations for Council other than the potential costs in relation to an appeal of Council's decision.

CONCLUSION

The proposal tests the objectives of DCP 56 (Ulladulla Town Centre and Harbour) and in the circumstances the proposal does not adequately meet the intent of the DCP; specifically the performance criteria as detailed within this report. Given the fact that the DCP was adopted relatively recently the comments from Strategic Planning Group are particularly relevant. The current design should be reconsidered.

Tim Fletcher
**DIRECTOR, DEVELOPMENT AND
ENVIRONMENTAL SERVICES**

R.D Pigg
GENERAL MANAGER