

SHOALHAVEN CITY COUNCIL
D E V E L O P M E N T C O M M I T T E E

To be held on Monday, 23rd February, 2009
Commencing at 5.00pm.

18th February, 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 Monday, 23rd February, 2009 commencing at 5.00pm** for consideration of the following business.

R D Pigg
General Manager

Membership (Quorum – A majority of members)

Clr Ward – Chairperson
Clr Young
Clr Findley
Clr Bennett
Clr Fergusson
Clr Brumerskyj
Available Councillors

BUSINESS OF MEETING

1. Apologies
2. **Report of the General Manager**
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

MONDAY, 23 FEBRUARY 2009

DEVELOPMENT AND ENVIRONMENTAL SERVICES

1. Part 3A Major Projects - Minister for Planning Approvals

File 3167-06

PURPOSE OF THE REPORT:

To inform Council of the approval of certain Part 3A major Projects in January 2009.

RECOMMENDED that the report be received for information.

DETAILS/ISSUE:

The Minister for Planning has approved the following Part 3A Major Projects in January 2009;

1. Vincentia District Centre - Stockland - MP08_0096 - Approved 7 January 2009 (Council file 3A08/1006).

Council raised a number of issues concerning traffic within the car park, loading areas and access along Moona Creek Road. The issues have generally been addressed. Within the centre there is provision for a library and this has been the subject of separate reporting and contractual arrangements between Stockland and Council.

2. Vincentia Bayswood Retirement Living Village - Stockland - MP08_1006 - Approved 28 January 2009 (Council file 3A08/1005).

Council had raised issues about pedestrian connections with the adjacent District Centre; landscaping proposals; appropriate S94 contributions, these have been adequately addressed in the terms of the approval.

3. Shoalhaven Starches, Bomaderry - Upgrade of ethanol production and associated works - MP06_0228 - Approved 28 January 2009 (Council file 3A07/1008).

Council raised a number of issues in its submission including achieving compliance with earlier Consents and significant works within Bolong Road. The approval requires the earlier Consents to be surrendered within 12 months so the new Major Project approval will become the single approval for this development and operations. There are milestone conditions to be met before the expansion of ethanol production increases from the current approved 126,000L to 200,000L and then up to 300,000L. These include satisfactory implementation and operations plus submissions of various

reports and monitoring records to the Department of Planning; issues include odour mitigation.

Council's requests have been met within the approval conditions, except the provision of a pedestrian footpath on the northern side of Bolong Road.

The details of each application and determination may be viewed on the Department of Planning website at www.planning.nsw.gov.au, from the heading 'Development Assessments', click on the link 'Major Project Assessments'.

The approvals include a combination of specific conditions and adoption of the applicant's commitments.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

There are no specific economic, social and environmental (ESD) considerations associated with this report. Such matters would have been considered by the State Government in their assessment of the Part 3A Major Projects, which can be viewed via the web link above.

FINANCIAL CONSIDERATIONS:

There are no financial considerations associated with this report.

2. Procedure for dealing with DAs lodged by Council staff or Councillors

File 3621-03, POL08/458

PURPOSE OF THE REPORT:

The purpose of this report is to seek Council's endorsement of the draft "Procedure for dealing with Development Applications lodged by Council staff or Councillors".

RECOMMENDED that Council adopt the draft Procedure for dealing with Development Applications lodged by Council staff or Councillors.

OPTIONS:

- a) Council adopt draft Procedure for dealing with Development Applications lodged by Council staff or Councillors; or
- b) Council make amendments as necessary to the draft Procedure before adopting it.

DETAILS/ISSUE:

Development and Environmental Services (DES) Group receives numerous Development Applications (DA) from various customers. Council staff and Councillors are amongst those customers and may be owner/s of land to which those DAs apply. There needs to be transparency in assessing such DAs as there is often a public

perception that staff with the DES Group or Councillors can exercise undue influence on assessment staff such that their own applications are treated differently from those lodged by the general public.

Given this situation, it is prudent that an adopted Council procedure is followed to ensure that when a DA is lodged, if the applicant and/or land owner is a Council staff member or Councillor, that DA must be appropriately dealt with and its assessment and consideration are undertaken in an open and transparent manner free from any undue influence or conflicts of interest.

Accordingly, a "Procedure for dealing with Development Applications lodged by Council staff or Councillors" has been drafted for Council's consideration and endorsement.

A copy of the draft procedure is included in the Councillors' Information Folder for Council's consideration.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

No issues relating to specific economic and environmental consideration exist for this report.

No specific social consideration exists for this report other than Council's social obligation in maintaining transparency when dealing with DAs where the applicant and/or land owner is a Council staff member or Councillor.

FINANCIAL CONSIDERATIONS:

No specific financial consideration exists for this report.

3. Review of Development and Environmental Services Group Policies 2008 - Round 2. File 31515, 31514, 3621-02, 1444, 10007 & 31853

PURPOSE OF THE REPORT:

The purpose of this report is to seek Council's direction on current Development and Environmental Services (DES) Group Policies, as reviewed in this report.

Council has a requirement to review all existing policies within twelve (12) months of election. The first round of DES policy review was reported to Council at the January 2009 Development Committee, which is the subject of a Councillor Briefing on 19 March 2009.

This report constitutes Round 2 of the DES Group's Policy Review.

Copies of the Policies have been included in the Councillors' Information Folder.

RECOMMENDED that:

- a) **Council rescind the Policy - Dwellings Stormwater Drainage Control - “Slab on Ground” Construction (File No: 31515, POL08/177);**
- b) **Council rescind the Policy - Garages on Vacant Allotments of Land (File No: 31514, POL08/182), and amend DCP No 91 - Single Dwellings and Ancillary Structures to include as an acceptable solution the requirement that any approval is subject to the owner furnishing Council with a written undertaking that a garage on vacant land will not be used for residential purposes;**
- c) **Council amend the Policy - Subdivisions Rural Dwellings and Tourist Facilities - Leebold Hill Road, Parish of Cambewarra (File No: 3621-02, DA88/1302, POL08/194) to be consistent with SLEP 1985, but retain the intent of the Policy that Council discourages subdivisions, rural dwellings or tourist facilities on land the Policy applies to; and**
- d) **Council reaffirm the following Policies:**
 - **Burrill Lake Foreshore Development Guidelines/Policy (File No: 1444, POL08/168);**
 - **Local Approvals Policy - Standards for Temporary Moveable Dwellings for Aged or Disabled Persons (File No: 10007, POL08/192);**
 - **Security Grilles and Gates on Shopfronts and Arcades in the Nowra CBD (File No: 31853, 78/3038, POL08/199); and**
 - **Council Support for SEPP No 1 Applications - Lots in DP 27575 Woollamia Road, Woollamia (File No: 3621-02, DA91/3110, DA92/1863, POL08/171)**

OPTIONS:

Council may:

1. Resolve to adopt the recommendation(s) in the report; or
2. Resolve to make amendments to individual policies and specify such amendments; or
3. Resolve to require a further report or briefing on all or particular policies.

DETAILS/ISSUE:

This second round of DES Group’s reporting on public policy review focuses on the following seven (7) public policies:

- 1. Dwellings Stormwater Drainage Control - “Slab on Ground” Construction (File No: 31515, POL08/177)**

This policy was originally adopted on 1 June 1993 following Council’s resolution relating to the construction of residential dwelling at ground level, it requires that full site drainage details and retaining wall details be submitted to Council with all building applications for

“slab on ground” dwellings. The purpose of this Policy is to control stormwater drainage and infiltration problems associated with utilising “slab on ground” construction.

Council’s Development Control Plan (DCP) 91 currently has within it, provisions relating to site stability and excavation, which addresses stormwater infiltration and drainage issues and other possible problems resulting from those issues. The performance-based controls on site stability and excavation provide for, among others, cut and fill limitations for the construction of concrete slab building platform and associated requirements for structural retaining walls in order to reduce potential damage to properties (and adjoining properties).

In addition, DCP 91 also has provisions relating to stormwater management, which aims to ensure that stormwater is controlled in order to minimise nuisance to properties and to adjoining properties.

Furthermore, the Building Code of Australia (BCA) (Housing Provisions) contains provisions relating to height of slabs and keeping surface water out of buildings.

It is considered that the potential impacts from the use of “slab on ground” for construction is adequately controlled by provisions within DCP 91 as well as the BCA which in any case over-ride the subject Council policy. In this regard, it is recommended that Council’s Slab on Ground Policy be rescinded.

2. Garages on Vacant Allotments of Land (File No: 31514, POL08/182)

Generally, it has been a long-standing Council policy that the construction of non-habitable building structures on vacant residential or rural residential land are not permitted. This subject policy originated in June 1973 and was further amended in November 1975; it permits the construction of a garage on a vacant allotment of land where such allotment is adjacent to other land in the same ownership. Any approval is subject to the owner furnishing Council with a written guarantee that the garage will not be used for residential purposes.

Council’s DCP 91 currently has within it, a performance-based provision on the siting and construction of garages, sheds and like structures on vacant land. Where an applicant provides sufficient justification for such a structure, consideration may be given to the proposal, given that for rural zoned land, some structures on adjacent vacant land may be justified to enable maintenance of or operation of the land.

DCP 91 however does not require that any approval is subject to the owner furnishing Council with a written undertaking that a garage on vacant land will not be used for residential purposes. This specific requirement is provided within the subject Policy which has been a useful requirement in the past. Should the subject Policy be rescinded, DCP 91 should be amended to include a similar requirement.

It is considered that the provision relating to the construction of garages on vacant allotments of land is already covered within DCP 91, however the requirement that any approval is subject to the owner furnishing Council with a written undertaking that a garage on vacant land will not be used for residential purposes, needs to be included within DCP 91 should Council resolve to rescind the subject Policy. In this regard, it is recommended that the Garages on Vacant Allotment of Land Policy be rescinded and that DCP 91 be amended to include the requirement discussed above.

3. Subdivisions Rural Dwellings and Tourist Facilities - Leebold Hill Road, Parish of Cambewarra (File No: 3621-02, DA88/1302, POL08/194)

This Policy was originally adopted by Council on 20 March 1990, and delegates authority to staff, to refuse subdivisions, rural dwellings or tourist facilities applications within that part of the Parish of Cambewarra which obtains access via Leebold Hill Road. This prohibition was put in place within the subject Policy given the area it applies to is considered highly constrained due to:

- High bushfire risk (including risk to property and fire fighting personnel and means of escape);
- Access (Leebold Hill Road/Red Rocks Road does not provide all-weather two wheel drive access and most of the road is crown road reserve not maintained by Council);
- Traffic safety (standard of intersection with Moss Vale Road - increased use could result in demands for intersection upgrading); and
- Impact on Natural Environment (clearing for bushfire protection would diminish an important habitat for flora and fauna in proximity to Red Rocks Nature Reserve).

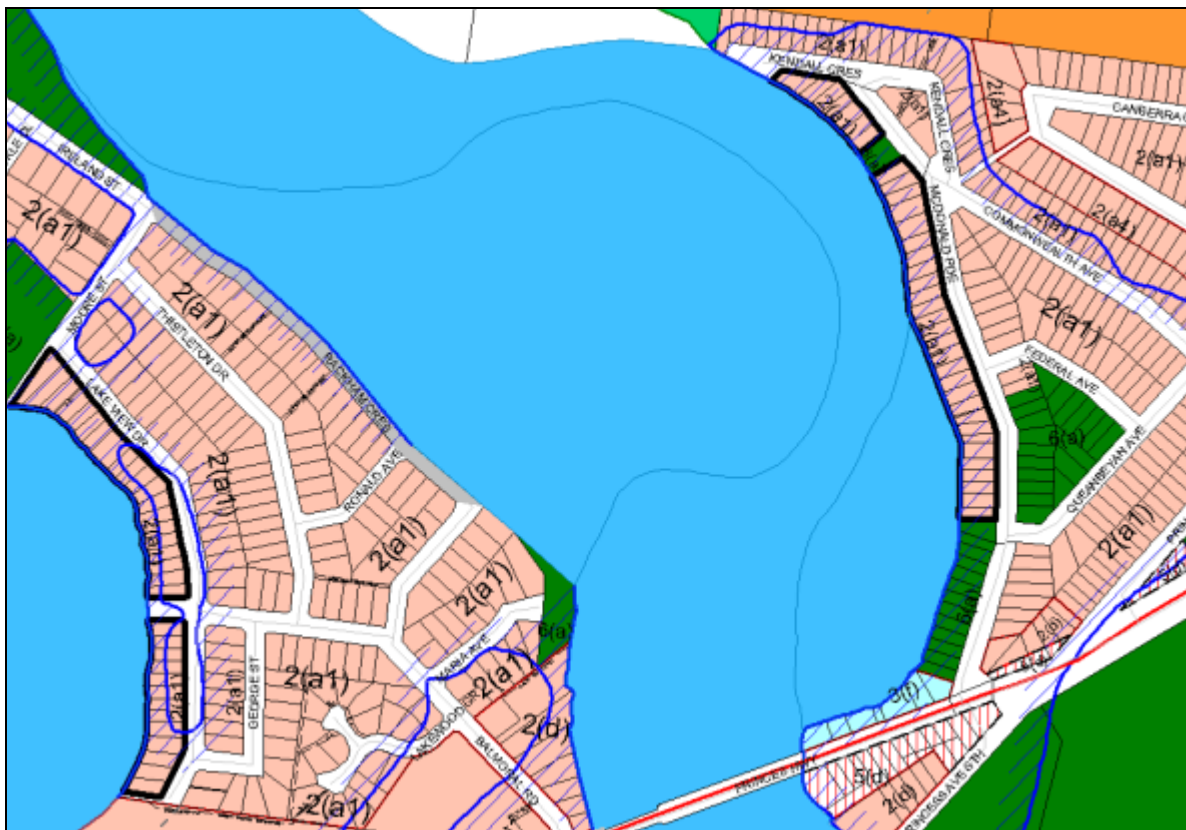
It is noted that most private properties in the locality with access to Leebold Hill Road (applicable to this Policy) are zoned either Environmental Protection 7(e) (Escarpment Zone) or Rural 1(d) (General Rural) under the Shoalhaven Local Environmental Plan (SLEP) 1985. Notwithstanding that development types such as subdivisions, rural dwellings or tourist facilities are permissible with consent within these zones as prescribed in SLEP 1985, the subject Policy is in conflict with the provisions of Section 79(c) of EPA Act, in that it requires that Council not approve such development types and that Council staff be delegated to refuse such applications. This direction is potentially pre-emptive of a proper assessment process and should be reworded to clarify its intent.

It is established that a Policy does not have the effect of prohibiting development that is permissible within an LEP. Clearly the inconsistency between this Policy and Council's SLEP 1985 needs to be resolved.

It is acknowledged that the locality to which this Policy applies, is highly constrained and any development in this location (if approved), could lead to Council being burdened by increased maintenance costs as well as risks to lives and properties. The assessment of any DA in this locality under the provisions of Section 79C of the EPA Act 1979 and applicable DCPs should be balanced by the consideration of Council's position relating to the land constraints of this area and its risks to lives and properties. In this regard, it is recommended that the wording of this Policy be amended to be consistent with SLEP 1985, but at the same time retain the intent of this Policy on the issue of risks to lives and properties. This report recommends that the subject Policy "discourages" subdivisions, rural dwellings or tourist facilities rather than prohibit such development (see attached draft amendment to Policy).

This development guideline/Policy was originally adopted on 7 September 1999. The performance-based provisions within this guideline contains controls that enable flexibility and innovation in the siting and design of buildings while protecting reasonable amenity expectations and ensuring that development contributes positively towards the character of the area.

The subject guidelines/Policy prescribes in a performance-based format, the foreshore building line of 7.5m that applies to a number of Residential 2(a1) zoned properties as shown edged heavy black in the following map:



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5. Local Approvals Policy - Standards for Temporary Moveable Dwellings for Aged or Disabled Persons (File No: 10007, POL08/192)

This Policy was formulated as a Local Approvals Policy (LAP) in 1999, under the provisions of the *Local Government (LG) Act 1993*. It provides guidelines for the placement of moveable dwellings in association with existing dwelling houses to provide temporary moveable independent accommodation for aged and/or disabled persons.

Whilst the *LG Act 1993* and *LG (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* contain specific provisions to guide the installation of caravans on land other than caravan parks or camping grounds for use for habitation by the owner or members of the owner's household, Council's LAP specifically provides guidelines on the installation of such moveable dwellings for aged and disabled persons.

The subject Council's LAP is necessary to guide the installation of such moveable dwellings particularly for the aged and disabled in the Shoalhaven, as required. It is also argued that the provisions of this LAP would not be suitable to be included within provisions of Council's DCP 91 as DCP 91 provides controls for single dwellings and ancillary structures and not for moveable dwellings. In this regard, it is recommended that this LAP be reaffirmed.

6. Security Grilles and Gates on Shopfronts and Arcades in the Nowra CBD (File No: 31853, 78/3038, POL08/199)

This Policy originated from a Council resolution in 1994. The Policy provides guidelines to assist owners and tenants in the Nowra CBD in providing security to shopfronts and arcades yet maintaining an acceptable quality for the shopping centre outside normal trading hours.

This policy is considered to be unique to the Nowra CBD as it not only aims to provide for the security of businesses there, but also ensures that the appearance of shop frontages are not undermined by the use of materials that are not visually desirable. In this regard, it is recommended that the Security Grilles and Gates on Shopfronts and Arcades in the Nowra CBD Policy be reaffirmed.

7. Council Support for SEPP No 1 Applications - Lots in DP 27575 Woollamia Road, Woollamia (File No: 3621-02, DA91/3110, DA92/1863, POL08/171)

This Policy was originally adopted on 3 March 1992 and further amended in July of the same year. The Policy articulates Council's position with regard to its support for applications made under State Environmental Planning Policy (SEPP) No 1 for variation to the minimum 40 hectare development standard applicable to certain zones, to permit dwellings on certain lots in DP 27575 as "infill" development. Some minor modification to the existing wording has also been undertaken to clarify Council's intent.

It is recommended that this Policy be reaffirmed.

ECONOMIC, SOCIAL & ENVIRONMENTAL (ESD) CONSIDERATION:

ESD considerations are addressed within each individual policy document.

FINANCIAL CONSIDERATIONS:

Not applicable in the context of this report

Tim Fletcher

DIRECTOR, DEVELOPMENT AND ENVIRONMENTAL SERVICES

R.D Pigg

GENERAL MANAGER