

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, 18 January, 2016
Commencing at 4.00 pm.

13 January, 2016

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 the Council Chambers, City Administrative Centre, Bridge Road, Nowra on Monday, 18 January, 2016 commencing at 4.00 pm** for consideration of the following business.

C Krogh
Acting General Manager

Membership (Quorum – 5)

Clr White (Chairperson)
All Councillors
General Manager or nominee

BUSINESS OF MEETING

- 1. Apologies**
- 2. Adoption of Minutes of Previous Meeting**
- 3. Declarations of Interest**
- 4. Mayoral Minutes**
- 5. Deputations**
- 6. Report of the General Manager**
 Planning and Development
- 7. Notices of Motion**
- 8. Addendum Reports**

Delegation:

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

- i. The Committee cannot make a decision to make a local environmental plan to classify or reclassify public land under Division 1 of Part 2 of Chapter 6 of the LG Act;
- ii. The Committee cannot review a s82A or s96AB EPA Act determination made by the Council or by the Committee itself;
- iii. The Committee cannot exercise any function delegated to the Council which by the terms of that delegation cannot be sub-delegated;
- iv. The Committee cannot exercise any function which s377(1) of the LG Act provides cannot

be delegated by Council; and

- v. The Committee cannot exercise a function which is expressly required by the LG Act or any other Act to be exercised by resolution of the Council.

Schedule

1. All functions relating to the preparation, making, and review of local environmental plans (LEPs) and development control plans (DCPs) under Part 3 of the EPA Act.
2. All functions relating to the preparation, making, and review of contributions plans and the preparation, entry into, and review of voluntary planning agreements under Part 4 of the EPA Act.
3. The preparation, adoption, and review of policies and strategies of the Council in respect of town planning and environmental matters and the variation of such policies.
4. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which breaches a development standard by more than 10% and the application is accompanied by a request to vary the development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 or an objection to the application of the development standard under State Environmental Planning Policy No. 1 – Development Standards.
5. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the General Manager requires to be determined by the Committee
6. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
7. Review of all determinations of development applications under sections 82A and 96AB of the EP&A Act.
8. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.

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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**MINUTES OF THE DEVELOPMENT COMMITTEE MEETING HELD ON TUESDAY,
1 DECEMBER 2015 IN THE COUNCIL CHAMBERS, CITY ADMINISTRATIVE CENTRE,
BRIDGE ROAD, NOWRA COMMENCING AT 4.00 PM**

The following members were present:

Clr White - Chairperson
Clr Tribe – arrived 4.01pm
Clr Gash
Clr Robertson
Clr Kearney
Clr Baptist
Clr Wells
Clr Anstiss
Clr Findley
Clr Guile – arrived 4.11pm
Clr Watson
Clr Kitchener
General Manager – Russ Pigg – arrived 4.01pm

1. Confirmation of the Minutes of the Development Committee meeting held on Tuesday 3 November 2015
-

MOTION:

Moved: Wells / Second: Baptist

RESOLVED that the Minutes of the Development Committee meeting held on Tuesday 3 November 2015 be confirmed.

CARRIED

2. Declarations of Interest
-

Conflict of Interest Declaration - Clr Anstiss – Item 3, Page 17, Planning Proposal (Rezoning) - Warrah Road, North Nowra (Huntingdale Developments Pty Ltd and Southbank Land Pty Ltd) – less than significant non pecuniary interest – her parents own property on Coconut Drive which may or may not affect property values, there will be no appreciable gain or loss to her parents and no financial gain or benefit to herself – remained in the room.

MAYORAL MINUTE

3. Local Lands Services Board - Regional Weeds Committee File 52451E
-

Clr Tribe and Russ Pigg – 4.01pm

MOTION:

Moved: Gash / Second: Kearney

RESOLVED that Council nominate to be the LCA member of the Local Lands Services Board Regional Weeds Committee for the Illawarra Shoalhaven LGA area.

CARRIED

4. Deputations

Mr Peter Taranto (applicant) addressed the Committee in relation to item 3 - Planning Proposal (Rezoning) - Warrarah Road, North Nowra (Huntingdale Developments Pty Ltd and Southbank Land Pty Ltd)

Note: Clr Guile arrived – 4.11pm

Mr Darren Rae (resident) addressed the Committee in relation to item 3 - Planning Proposal (Rezoning) - Warrarah Road, North Nowra (Huntingdale Developments Pty Ltd and Southbank Land Pty Ltd)

5. Procedural Motion – Item 3 Page 17 be Brought Forward

Conflict of Interest Declaration - Clr Anstiss – less than significant non pecuniary interest – her parents own property on Coconut Drive which may or may not affect property values, there will be no appreciable gain or loss to her parents and no financial gain or benefit to herself – remained in the room.

MOTION:

Moved: Baptist / Second: Gash

That Item 3, Page 17 Planning Proposal (Rezoning) - Warrarah Road, North Nowra (Huntingdale Developments Pty Ltd and Southbank Land Pty Ltd) be brought forward

CARRIED

PLANNING AND DEVELOPMENT

6. Item 3 - Planning Proposal (Rezoning) - Warrarah Road, North Nowra (Huntingdale Developments Pty Ltd and Southbank Land Pty Ltd) File 49462e (PDR)

Conflict of Interest Declaration - Clr Anstiss – less than significant non pecuniary interest – her parents own property on Coconut Drive which may or may not affect property values, there will be no appreciable gain or loss to her parents and no financial gain or benefit to herself – remained in the room.

MOTION:

Moved: Baptist / Second: Kearney

RESOLVED that, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Prepare a Planning Proposal to rezone the non High Conservation Value areas on the site, as identified in the NGH Environmental Report, to an appropriate residential zone;
- b) Include an assessment of residential land supply in the Nowra-Bomaderry Structure Plan area, particularly north of the Shoalhaven River in the Planning Proposal;
- c) Submit the Planning Proposal for Gateway determination and request the NSW Department of Planning and Environment determine the appropriateness of further

biodiversity investigations over the site, to support the possible increase in residential zoned land; and

- d) Notify the proponent and adjoining landowners of this resolution.

CARRIED

FOR: White, Tribe, Gash, Robertson, Kearney, Baptist, Wells, Anstiss, Watson, Kitchener and Russ Pigg

AGAINST: Guile, Findley

7. Draft Planning Proposal (PP014) - Rezoning of 149 and 151 Larmer Avenue, Sanctuary Point – Public Exhibition Outcomes File 50556E (PDR)

MOTION: Moved: Wells / Second: Baptist

RESOLVED that, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Adopt the Planning Proposal as exhibited;
- b) Forward the Planning Proposal to Parliamentary Counsel to draft the amendment to Shoalhaven Local Environmental Plan 2014; and
- c) Advise the proponent and Community Consultative Body (Basin Villages Forum) of this resolution, and again when the LEP Amendment is notified.

CARRIED

8. Draft Amendment to Shoalhaven DCP 2014 Chapter S6 Town of Milton - Exhibition Outcomes File 51665e (PDR)

MOTION: Moved: Watson / Second: Guile

RESOLVED that, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Adopt the draft amendment to Shoalhaven Development Control Plan 2014 Chapter S6 Town of Milton (draft amendment);
- b) Notify adoption of the draft amendment in accordance with the *Environmental Planning and Assessment Regulation 2000*; and
- c) Write to submitters, owners of Nos. Nos. 29, 31, 35 and 37 Church Street Church Street, Milton and relevant CCBs to advise of this resolution.
- d) Include a note indicating that Council will consider the inclusion of a condition of consent requiring the regular maintenance of private carparks at standard equal to the approved construction plans and any other condition of consent as well as the interconnection of adjoining carparks where possible as part of the assessment process

CARRIED

-
9. Planning Proposal (Rezoning) - Warrah Road, North Nowra (Huntingdale Developments Pty Ltd and Southbank Land Pty Ltd) File 49462e (PDR)

Note: this item was dealt with earlier in the meeting.

10. Development Application - Proposed Community Title Subdivision (11 Residential Lots and 1 Community Lot) of Lot 51 DP1011824 Tartarian Crescent Bomaderry. Applicant: Lee Carmichael Town Planning. Owner: Sputnik Pty Ltd. File: SF10429 (PDR)

MOTION:

Moved: Wells / Second: Baptist

RESOLVED that, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Confirm that it supports the proposed exceptions to the 4,000m² minimum lot size, to a minimum area of approximately 3000m².
- b) The application be determined under delegated authority.

CARRIED

There being no further business, the meeting concluded, the time being 5.03 pm.

Clr White
CHAIRPERSON

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

MONDAY, 18TH JANUARY 2016

PLANNING AND DEVELOPMENT

ITEMS TO BE DEALT WITH UNDER DELEGATED AUTHORITY

1. **Illawarra-Shoalhaven Regional Plan - Release** **File 29118e**
-

SECTION MANAGER: Gordon Clark.

PURPOSE:

To advise of the release of the Illawarra-Shoalhaven Regional Plan (the plan) by the NSW Government and detail the content that is directly relevant to Shoalhaven.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the report on the release of the Illawarra-Shoalhaven Regional Plan be received for information.

OPTIONS

1. Accept the recommendation and receive the report for information, noting that future reports will be provided as required as the new Regional Plan is implemented.
2. Request a detailed briefing on the new Regional Plan from Council staff and/or staff from the NSW Department of Planning and Environment (DP&E). This may be considered necessary or appropriate given the scope and detailed contents of the new Regional Plan.
3. Adopt an alternative recommendation.

DETAILS

1. Background/Overview

The NSW Government released the new Regional Plan for the Illawarra-Shoalhaven on 24th November 2015. Councillors and staff also attended a local government briefing session on the plan in Kiama on 8 December 2015.

The Illawarra-Shoalhaven Regional Plan will guide strategic planning for region over the next 20 years and aims to deliver:

- Greater housing choice in both existing urban areas and planned new communities
- Stronger, diversified economy and more jobs
- Revitalised centres for shopping, entertainment and dining

-
- Better urban design of housing and neighbourhoods
 - Healthy environment capable of adapting to challenges such as natural hazards and climate change
 - Security for agricultural and resource lands
 - Protection for Aboriginal and non-Aboriginal heritage.

The plan and supporting material and studies related to it can be accessed on the internet at: www.planning.nsw.gov.au/llawarra . Hard copies of the plan will be provided to Councillor's ahead of the meeting.

The new plan is the culmination of a process that commenced in mid 2013 with the release of a Discussion Paper. At that point Shoalhaven was not part of the Illawarra Region, however the Discussion Paper acknowledged the connection between the region and Shoalhaven. The role played by the Nowra-Bomaderry area in regard to housing and employment was also specifically acknowledged.

Following the release of the Discussion Paper, Council made representations to be included in the Illawarra region for growth planning purposes and also later to have the title of the region revised to specifically acknowledge the inclusion of Shoalhaven. Council made detailed submissions to the original Discussion Paper and the draft Regional Growth and Infrastructure plan (as it was then called). Council staff also continued to provide information and feedback to the NSW DP&E (the Department) as part of the plans finalisation.

The plan has been developed from a strong evidence base and with comprehensive community engagement. It presents key issues that are relevant to the region and contains narratives that emerged from the plan preparation process. Importantly it focuses on what the NSW Government can do to support or achieve the required outcomes.

Overall the plan focusses on (by 2036) planning for 60,400 additional people and 35,400 new homes in the region, within demographics that will see the population aging and an increase in lone person and couple only households.

The plan is structured around the following five goals:

Goal 1 – A prosperous Illawarra - Shoalhaven

Goal 2 – A variety of housing choices, with homes that meet needs and lifestyles

Goal 3 – A region with communities that are strong, healthy and well connected

Goal 4 – A region that makes appropriate use of agricultural and resource lands

Goal 5 – A region that protects and enhances the natural environment

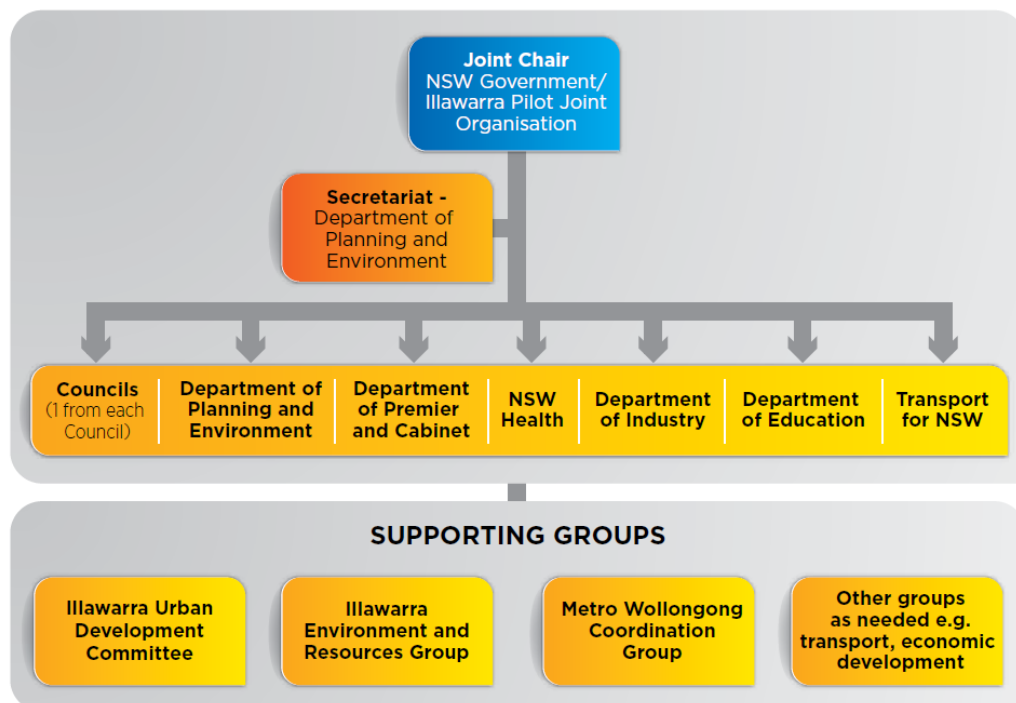
Attachment “A” is the strategy map that encapsulates the plan’s vision and goals. This map identifies Nowra Centre (taken to be Nowra-Bomaderry) as a “major regional centre” and Vincentia (taken to be Jervis Bay-St. Georges Basin) and Ulladulla (taken to be Milton-Ulladulla) as “regional centres”.

Sitting under the “goals” are a series of “directions” (19) and “actions” (41). For each of the “actions” there is a lead agency and key stakeholders are also identified. The timing of the actions is identified as short-term (0-5 years), medium term (5-10 years) or long term (10+ years). **Attachment “B”** presents the list of actions from the plan.

The delivery of the plan will be overseen by a Coordinating & Monitoring Committee to be jointly chaired by the Department and the Illawarra Pilot Joint Organisation (JO). The committee will contain representatives from the four local Councils (Note: this may change as a result of the subsequent local government merger announcement) and key agencies responsible for delivering the major outcomes of the plan. The committee will be supported by a range of outcome specific groups and an annual monitoring report will be prepared. The plan will be reviewed in 5 years or as necessary to update/revise it.

The following diagram (from the plan) provides an overview of the coordinating structure.

FIGURE 4: COORDINATING AND MONITORING COMMITTEE



As noted in the previous Mayoral Minute on this matter, given that it is essentially an operational committee, Council will be represented on it by the Director of Planning and Development (or his nominee). The Department has since been advised of this.

2. Content Relevant to Shoalhaven

Following Councils representations, the plan that was finally released considers and includes Shoalhaven. The following is a summary of the “headline” inclusions relevant to Shoalhaven, noting that the plan contains a wide range of other detail that is also applicable to our city:

Nowra Centre

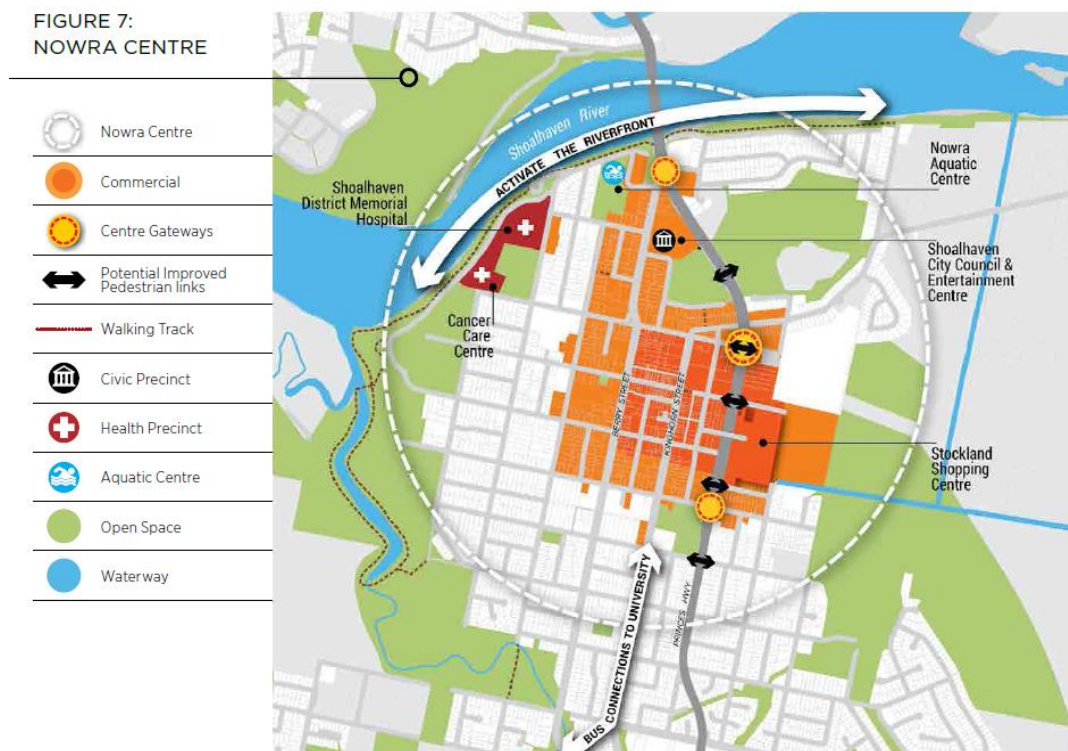
The plan notes that the centre is the business, retail and services hub of Shoalhaven. It supports 9,200 jobs concentrated in health (2,600 jobs), retail (1,650) and public administration (1,100).

The work that Council is already committed to in terms for the Nowra CBD Revitalisation Strategy and other planning work is recognised.

The NSW Government will:

- Coordinate NSW State agency input into precinct planning activities.
- Identify Shoalhaven Hospital's capacity for growth and opportunities for expansion.
- Shoalhaven is projected to grow by an additional 60,400 people by 2036, requiring an additional 8,600 dwellings.

The plan includes the following figure regarding the Nowra Centre:



Albatross Aviation Technology Park

The existing defence sector in Shoalhaven employs more than 2,500 people and contributes \$295 million to the economy of the City. The Aviation Technology Park at HMAS Albatross houses a range of defence businesses and has the potential to provide 1,500 jobs when fully developed.

Continuing to grow the defence sector will help further diversify the economy, spread the benefits and help revitalise Nowra Centre. The NSW Government will work with Council to:

- Review zoning and development controls at the technology park to facilitate high tech development.
- Continue to protect the air space around HMAS Albatross.

Housing

The plan generally aims to provide housing choice through a mix of new land releases and also urban renewal in appropriate locations. Under the plan Shoalhaven is projected to grow by an additional 10,150 people by 2036, requiring an additional 8,600 dwellings.

The major regional residential release areas in Nowra-Bomaderry will continue to be the long term focus for greenfield release (up to 6,400 additional lots) in Shoalhaven. The plan also acknowledges that existing smaller release areas at Culburra Beach (to be resolved), Vincentia, Sussex Inlet, Manyana and Milton-Ulladulla will also contribute to ongoing supply.

To support the Nowra-Bomaderry release areas the NSW Government will:

- Coordinate delivery of infrastructure required to support the release areas, and
- Extend the Illawarra Urban Development Program (IUDP) to include urban areas in Shoalhaven

The plan also supports additional housing opportunities close to existing services, jobs and infrastructure in relevant centres. The plan specifically identifies the following Shoalhaven centres as the focus for increased housing activity in this regard – Berry, Nowra-Bomaderry, Huskisson and Ulladulla. It is also noted that there is the potential for additional homes in Berry and Huskisson via dual occupancies. The background analysis of current planning controls shows that the region has a capacity for 24,100 new homes within existing urban areas.

The NSW Government will:

- Investigate any barriers (infrastructure, planning policies and urban design), and
- Work with Council to review planning controls in existing urban areas to identify opportunities to increase housing diversity

The plan contains some commentary on housing affordability, in which it is noted that housing stress is an issue and that the NSW Government aims to develop a comprehensive approach to this issue that involves all stakeholders, including Councils. However, there is no direction or action in the plan related to this important issue.

Agricultural & Resource Lands

The value of the Sydney Drinking Water Catchment and regionally important agricultural lands is acknowledged in the plan and as such their protection is a feature. The

landscape/tourism value of the agricultural lands around Berry and in Kangaroo Valley is specifically noted.

The plan includes an action to identify regionally important agricultural lands and reflect the outcomes in the local planning controls. In this regard the NSW Government will:

- Map land that is highly suitable for agriculture and industries to better inform strategic and local planning processes, and
- Develop profiles of leading agricultural industries to guide future investment decisions

There is also a direction in the plan to manage and protect the Sydney Drinking Water Catchment which is relevant to the northern part of Shoalhaven.

Natural Environment

The regions 'high environmental value' lands have been mapped (**Attachment "C"**) and this includes the Illawarra Escarpment, land at Seven Mile Beach and the network of biodiversity corridors that link high value lands. Given the scale of this map, a request has been made to access the data that sits behind it.

The NSW Government will:

- Require Councils and development proponents to apply high environmental value mapping and criteria to rezoning decisions

Another relevant direction in the plan is the intent to secure the health of coastal landscapes by managing land uses and water quality and an action to "protect sensitive estuaries and coastal lakes". The plan identifies the following estuaries in Shoalhaven as being "sensitive":

Lake Wollumboola, Shoalhaven river, Durras Lake, Tabourie Lake, Wowly Gully, Willinga Lake, Swan Lake, Narrawallee Inlet, Captains Beach Lagoon, Butlers Creek, Nerrindillah Creek, St. Georges Basin, Moona Moona Creek, Berrara Creek, Meroo Lake, Termeil Lake and Currarong Creek.

The NSW Government will:

- Protect these sensitive estuaries from inappropriate development that affects water quality and ecological function.

There is detailed commentary in the plan regarding Lake Wollumboola and potential development in its catchment, within which it is highlighted that "the lake is considered an ecological jewel that must be protected".

3. Conclusions

This is a far reaching plan that will have a range of implications on Council moving forward, particularly in regard to future land use planning. The NSW State Government is generally to be congratulated on its release and also the integration of infrastructure planning into it.

There is the potential under the plan to see greater coordination of efforts and the involvement of the NSW Government in realising outcomes, for example in the Nowra-Bomaderry Urban Release Areas. There will be a range of tasks and outcomes from the plan that Council will have to undertake or be involved in, these will be reported for consideration as needed and will be factored into the new Strategic Planning Works Program that can now be finalised and reported to Council in due course for consideration.

FINANCIAL IMPLICATIONS:

There are currently no direct financial or budget implications for Council resulting from the release of the plan. However it is likely in the future that as individual tasks or projects commence that there will be resource implications for Council. These will be detailed as the individual matters are reported for consideration.

COMMUNITY ENGAGEMENT:

The Department carried out detailed community engagement and consultation on the new plan. Details in this regard are available on the Department's website at the link referred to earlier in this report.

2. Operational Review - Council's Planning Proposal Process. File 23426E & 31157E

SECTION MANAGER: Gordon Clark.

PURPOSE:

Consider the revised Planning Proposal (rezoning) Guidelines (the Guidelines) and how to ensure that the processing of Planning Proposals (PPs) is managed effectively.

RECOMMENDED in accordance with the Committee's delegated authority from Council, that the Committee:

- a) **Adopt the revised Planning Proposal (Rezoning) Guidelines; and**
- b) **Establish a panel of suitable planning consultants to help process planning proposals on behalf of Council when required due to staff workload and time constraints.**

OPTIONS

1. Adopt the revised Guidelines and establish a panel of suitable planning consultants to help process PP's on behalf of Council when required due to staff workload and time constraints. This is the preferred option as it will simplify and clarify the Guidelines to assist proponents, and will ensure that Council is easily able to access additional resources to process PPs when required.
2. Not adopt the resolution or adopt an alternative resolution. This is not recommended as this may prevent the implementation of the proposed improvements to the processing of PP's.

DETAILS

Council resolved on 6 October 2015 that a report be prepared on the operations review of Council's handling of PPs. This was also the subject of a similar recommendation from the Transformation Task Force. On reviewing the operation of how Council currently processes PPs, the main areas identified for improvement are:

- Guidelines;
- Fee structure; and
- Staff resourcing.

Review of Guidelines

The current guidelines were prepared and adopted by Council in 2013 to provide guidance to proponents on how PPs will be processed by Council, at which point in the process fees are required to be paid and to outline the inherent risks to the proponent in submitting a PP. On reviewing the guidelines, and considering the PPs that have been processed since they have been in place, the following changes need to be made:

- The PP process flow chart was overly complicated and has been simplified.
- Any duplication of material from the Department of Planning and Environment's (DP&E) guidelines has been removed and reference to the DP&E's guidelines included.
- Add requirement for the proponent to nominate at lodgement one contact person for all communication and correspondence with Council. This is to reduce staff time spent relaying updates and having multiple discussions on the same matters with consultants and landowners associated with a PP.
- Add a section to outline ownership of the process. This is to make it clear up front that the PP process is a Council process and that final outcomes may not align with the proponent's initial proposal, concept plans or expectations.
- Simplify the language and detail contained in the guidelines to make it a more user friendly document.
- Amend the Lodgement Form to add a requirement for the proponent to acknowledge that they have read and understood the guidelines.

The proposed revised guidelines are included as "**Attachment A**". The current guidelines can be viewed on Council's website at:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D13/105809>

Fee Structure

The current PP fees were also reviewed to ensure that they align with the process as shown in the new flow chart in terms of effective application and timing of payment. The fee structure needs to be simplified to combine some of the fees, as well as clarifying that all technical studies are to be prepared at the proponent's cost.

The proposed revised fees are set out in "**Attachment B**". The proposed changes to the fees will also be included in the overall reporting of Council's Fees and Charges later this year.

Processing of Planning Proposals

Given the nature of PP's, they are often instigated by external parties which makes it difficult to factor their numbers and processing into Strategic Planning's Planning Works Program. While there are no statutory timeframes for the processing of PPs, if Council does not provide a response to a proponent within 90 days, the proponent can ask DP&E to review the PP and determine if it should go ahead. The decision is then taken out of Council's hands.

There is a significant work load involved in just getting a PP reported to Council for the initial decision to support or refuse a proposal including:

- Carrying out a detailed review of the submitted documentation and any technical studies to determine if they are adequate and meet the DP&E requirements for PP's,
- Carrying out internal consultation with various sections of Council;
- Carrying out pre-consultation with the local community to gauge community support for the proposal (**Note: this is only done in some instances when the proposal may generate strong community interest**); and
- Undertaking a merit based assessment of the proposal, considering all of the information resulting from the above stages.

It is proposed that when it is determined that PPs are not able to be processed in a timely manner due to current workloads, that they be outsourced to planning consultants to minimise interruptions to Council's works program projects. Expressions of interest will be sought from suitably qualified consultants to be appointed to a panel of consultants that can then be called on to assist processing PPs when required. Ideally the cost of the consultant would be covered by the fees paid by the proponent.

FINANCIAL IMPLICATIONS:

It is important to have a simple fee structure so it is clear to proponents when fees are payable and also that those fees realistically reflect the cost to Council of processing PP's that will financially benefit a single landowner or a group of landowners. The ongoing cost of PP's will continue to be monitored so that fees can be adjusted if required.

COMMUNITY ENGAGEMENT:

Given that this a guideline to assist proponents, it is not proposed to undertake any public consultation. Once the revised guidelines are adopted, they will be made available on Council's website and local industry representatives will be advised.

3. **Planning Proposal (PP017) – Shoalhaven LEP 2014 – Shoalhaven Animal Shelter Relocation** **File 52000E (PDR)**

SECTION MANAGER: Gordon Clark.

PURPOSE:

Consider a Planning Proposal (PP) that seeks to amend the Shoalhaven Local Environmental Plan (LEP) 2014 to allow the construction and use of an animal shelter on an alternative site to replace the existing Shoalhaven Animal Shelter.

RECOMMENDED, in accordance with the Committee’s delegated authority from Council, the Planning Proposal (PP017) – Shoalhaven Animal Shelter be submitted to the NSW Department of Planning and Environment for initial Gateway determination.

OPTIONS

1. Adopt the recommendation. This is the preferred option as it would allow Council to seek a Gateway determination from the NSW Department of Planning and Environment (DP&E) to commence the rezoning process to facilitate a replacement animal shelter on the subject site.
2. Adopt an alternative recommendation. This may result in a location for the animal shelter that is not optimal or appropriate for the required needs. As a result there may be additional costs to Council in regard to infrastructure, development costs and further studies.
3. Not adopt the recommendation. This option would delay the relocation of the current animal shelter, and also the expansion of the West Nowra Recycling and Waste Facility until an appropriate location is confirmed.

DETAILS

Background

As a result of the proposed expansion of the West Nowra Recycling and Waste Facility, the existing animal shelter needs to relocate to a new site.

- # The report that was prepared for Council, Shoalhaven Animal Shelter Relocation Site Selection Report (Locale Consulting, July 2015) (**Attachment “A”**) identified Lot 1 DP 227233, 19 BTU Road, Nowra Hill as the most appropriate site for the relocation of the animal shelter.

Under Shoalhaven LEP 2014, the subject site is currently zoned SP2 Infrastructure - Sewerage System and is located within a broader area that is zoned RU2 Rural Landscape to the south of Nowra. The site is easily accessible, being approximately 1.3km from the Princes Highway, and is central to the main population base of Shoalhaven.

The site is located west of the Boral Sawmill on BTU Road. There are similar uses nearby with an animal boarding kennel to the south at 154 Woncor Avenue, and a veterinary hospital to the south east at 54 Woncor Avenue. There are also existing dwellings on nearby lots.

Overview

- # A Planning Proposal (PP) was submitted by Waste Services on 8 September 2015 (**Attachment “B”**). This PP proposed options for changes to the Shoalhaven LEP 2014 which would allow for the construction and use of the site as an Animal Shelter.

The PP completed by Strategic Planning (**Attachment “C”**) proposes to amend the Shoalhaven LEP 2014 Zone Map for the subject lot to include the use “Animal boarding and training establishments”. This option is the simplest way to amend the LEP to allow for the use and construction of the proposed animal shelter and also allows the continued use of the site for ‘sewerage systems’.

The subject lot is currently identified as potentially contaminated land. An assessment of the site was completed which *“did not identify any evidence of gross ground contamination”*. It also stated that *“the site does not pose an unacceptable risk to human health or to the environment and is suitable for the proposed ‘commercial and industrial landuse (NEPM D)”*.

- # The PP that is proposed to be submitted for Gateway determination is provided as **Attachment “C”**.

CONCLUSION:

Should the recommendation be adopted, the PP will be submitted to the DP&E for Gateway determination. Should Gateway approval be given, the PP will then be publicly exhibited for the community to view and make comment on. Further reports will be provided as this matter progresses through the PP process.

FINANCIAL IMPLICATIONS:

The PP will be resourced through the existing Waste Services and Strategic Planning budgets.

COMMUNITY ENGAGEMENT:

Council’s Waste Services conducted a pre-lodgement mail out to surrounding residents consisting of a flyer outlining the proposing and inviting comments and feedback. One (1) written response was received citing noise, traffic and pest issues that would impact nearby residents.

Should the PP be granted Gateway approval, it will be exhibited for comment in accordance with Council’s Community Engagement Policy at Level 1 to ‘inform’ and ‘consult’, and in accordance with the relevant legislative requirements. The Gateway approval will specify the minimum exhibition period and any government agencies with whom Council must consult. The community will be able to provide formal comment on the PP at that time.

Should the PP be granted Gateway approval, it will be exhibited for comment in accordance with Council's Community Engagement Policy at Level 1 to 'inform' and 'consult', and in accordance with the relevant legislative requirements. The Gateway approval will specify the minimum exhibition period and any government agencies with whom Council must consult.

4. Shoalhaven LEP 2014 Housekeeping Amendment Stage 3A - Consideration of submissions post exhibition **File 51735e (PDR)**

SECTION MANAGER: Gordon Clark.

PURPOSE:

- Consider submissions received during the exhibition of the Shoalhaven Local Environmental Plan (LEP) 2014 Housekeeping Amendment – Stage 3A Planning Proposal (the PP); and
- Progress the finalisation of the PP and resulting amendment to Shoalhaven LEP 2014.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee

- a) **Adopt the Planning Proposal with the minor wording change outlined in this report; and**
- b) **Forward the Planning Proposal to the NSW Department of Planning & Environment requesting that they make the resulting amendment to Shoalhaven LEP 2014.**

OPTIONS

1. Consider the submissions made during the exhibition period and adopt the PP for finalisation – this is the preferred option as it will ensure the relevant matters in Shoalhaven LEP 2014 are corrected and the LEP operates as intended.
2. Adopt an alternative recommendation – depending on its nature, this could delay the finalisation of the PP and the resulting amendment of Shoalhaven LEP 2014.

DETAILS

Shoalhaven LEP 2014 commenced on 22 April 2014, and is based on the State Government's Standard Instrument LEP, and was largely a 'best fit' transfer from Shoalhaven LEP 1985.

As with other newly adopted Standard Instrument LEPs in NSW, a number of matters need to be adjusted in the notified LEP through a series of housekeeping amendments to address/rectify unintended consequences which have been identified. This report relates to the LEP Housekeeping Amendment – Stage 3A and the PP seeks to clarify that:

-
- Creation of strata title lots is subject to the minimum lot sizes on the Minimum Lot Size Map except for the subdivision of an existing or approved use;
 - Creation of community title lots is subject to the minimum lot sizes on the Minimum Lot Size Map except for the subdivision of an existing or approved use;
 - Creation of vacant strata and community title lots is not permitted;
 - Community title subdivision complies with the Lot Size Map in certain zones; and
 - Dual occupancies (attached) are subject to the same provisions as dwelling houses in non-urban zones (i.e. rural and environmental protection zones) under Clause 4.2D *Erection of dwelling houses on land in certain rural, residential and environment protection zones.*

Gateway determination

The PP was granted Gateway approval from the NSW Department of Planning & Environment (DP&E) on 19 October 2015, subject to several conditions relating to public consultation and the timeframe for completion of the PP (9 months). It was also subject to the following specific condition:

Council is to revise the explanation of provisions in the planning proposal, prior to community consultation, to provide minimum lot size controls for the subdivision of community title schemes similar to the approach taken in the Bega Valley LEP 2013 – clause 4.1AA.

In response to this condition, the PP was revised to include a proposed clause 4.1AA which reads as follows:

4.1AA Minimum subdivision lot size for community title schemes

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide controls for the subdivision of community title schemes in order to achieve the objectives of the relevant zone.*
- (2) *This clause applies to a subdivision (being a subdivision that requires development consent) under the Community Land Development Act 1989 of land in any of the following zones:*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone RU2 Rural Landscape,*
 - (c) *Zone RU4 Primary Production Small Lots,*
 - (d) *Zone R5 Large Lot Residential,*
 - (e) *Zone E2 Environmental Conservation*
 - (f) *Zone E3 Environmental Management,*
 - (g) *Zone E4 Environmental Living.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the Community Land Development Act 1989) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

The clause is an 'optional' Standard Instrument LEP (SILEP) clause and has the effect of requiring that community title subdivision in rural and environmental zone meets the minimum lot size shown on the Lot Size Map. This ensures that community title subdivision is not used as a means to get around minimum lot size requirements that are required for

other forms of subdivision. This is particularly important in rural and environmental zoned areas as it protects against fragmentation of agricultural or environmentally sensitive land.

This will not affect community title subdivision of tourist and visitor accommodation or multiple occupancy developments as these are specifically permitted through clauses 4.1D and 4.2A of Shoalhaven LEP 2014.

Council was not given delegation to make this amendment so it will need to be forwarded to DP&E for finalisation once adopted.

Exhibition

The revised PP was exhibited for a period of 17 days from 4 November to 20 November, 2015. The exhibition included the formal display of the PP and associated material at the Nowra Administration Building. The exhibition material was also available for viewing on Council's website. Local development industry representatives were also directly advised of the exhibition arrangements.

Submissions

- # One submission was received during the exhibition period from a local consultancy firm (Allen Price & Scarratts Pty Ltd). A copy of the submission is provided in the **Councillors' Room**.

The submission issues are outlined in the table below:

Clause proposed to be amended	Issue	Staff comment
Clause 4.1 Minimum subdivision lot size	1. Opposes inclusion of a new objective in Clause 4.1 on the basis that Council has previously allowed the creation of vacant strata and community title lots to allow staging of development. The proposed amendment would be contrary to orderly development of land and effectively stall development.	<p>The proposed amendment will not prevent the creation of staged development lots where the proposed lots are part of an approved development. If a development application is submitted, for example, for multi dwelling housing and the application includes the initial creation of larger development lots to allow the development to proceed in a stage fashion, then the subdivision can be approved as creation of these lots is a temporary measure to achieve the overall development outcome.</p> <p>The amendment aims to prevent the creation of vacant strata plan and community title lots that are smaller than the minimum lot size</p>

Clause proposed to be amended	Issue	Staff comment
		<p>for land with no proposed use, where as a result Council is unable to assess the feasibility of future development on those lots. For example, an application for the creation of 200m² lots in a residential zone, without any associated application for future dwellings on the lots, makes it difficult for Council to determine if lots of that size will ultimately be suitable for residential purposes.</p> <p>Recommended that the inclusion of the new objective in Clause 4.1 be retained.</p>
	<p>2. The additional Clause 4.1(4A) should not be adopted but that Council should be consistent with the recent SLEP exhibition wording of 4.1(4) as it allows for the creation of vacant lots for staged development. Believes that it is the intention of DP&E to permit urban consolidation and vacant lots through the provision of strata and community title allotments.</p>	<p>The proposed amendments to the SLEP were released for public comment prior to the issue of the Gateway determination for this PP. On this basis, it can be assumed that DP&E considered Council's proposed amendment in the context of the proposed amendment to the SILEP and consider the intent of Council's amendment to be consistent.</p> <p>However, the proposed wording of Clause 4.4A should be amended to ensure the intent is clear in relation to the SLEP amendment and so that the intent is reflected in the actual amendment to the LEP.</p> <p>Recommended final wording for inclusion in the adopted PP:</p> <p><i>4.1(4A) Despite clause 4.1(4), subdivision to create lots in a strata plan or community title scheme may only be approved where the subdivision is of an existing or approved use.</i></p>

Clause proposed to be amended	Issue	Staff comment
Clause 4.1AA Minimum subdivision lot size for community title schemes	3. This clause to be at odds with the recent SLEP exhibition wording of 4.1(4) and will adversely impact on the existing LEP clauses 4.1D and 4.2A which permit the creation of community title lots for the creation of multiple occupancy lots and tourist and visitor accommodation lots.	<p>The proposed clause is an optional SLEP clause. It was not initially included in Shoalhaven LEP 2014 as it was a later amendment to the SLEP. Clauses 4.1D and 4.2A relate specifically to multiple occupancy lots and to tourist and visitor accommodation and so will continue to apply to those developments. Clause 4.1AA is less specific and so will apply to subdivisions other than those specified in Clause 4.1D and 4.2A.</p> <p>Further, the Gateway approval was conditional on the inclusion of this clause. Thus, it is recommended that Clause 4.1AA be retained in the final adopted PP.</p>

As mentioned in the table, the NSW Government have proposed minor changes to the SILEP, including an amendment to Clause 4.1 to clarify the interpretation of the Clause. These proposed changes have been taken into account in the proposed finalisation of the PP.

Conclusion

The PP should be amended to revise the wording of the proposed Clause 4.1(4A) to ensure that it reflects the intent of the amendment in light of the proposed changes to the SILEP that were recently exhibited.

- # It is recommended that the amended PP (**Attachment “A”**) be finally adopted and submitted to the DP&E with a request to make the required amendment to Shoalhaven LEP 2014.

FINANCIAL IMPLICATIONS:

The PP is being resourced within the existing Strategic Planning budget.

COMMUNITY ENGAGEMENT:

The exhibition of the Shoalhaven LEP 2014 Housekeeping Amendment - Stage 3A PP was conducted in accordance with Council’s Community Engagement Policy to ‘inform’ and ‘consult’, and also the relevant legislative requirements.

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5. **Development Application - Proposed Strata Title Subdivision of Attached Dual Occupancy Development at Lot 221 DP1185909 (No 53) Gordon Street, Milton.**
Applicant/Owner: Shane P Larsen **File DA14/1662 (PDR)**
-

SECTION MANAGER: Warwick Papworth.

PURPOSE:

The purpose of this report is to seek Council direction with respect to a policy issue that concerns a proposed strata title subdivision of a dual occupancy. The issue relates to a proposed exception (variation) to the minimum lot size specified in Shoalhaven Local Environmental Plan 2014 (SLEP 2014) and the policy position in relation to locations where subdivision of dual occupancy is permitted.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) **Confirm that it supports the proposed exception; and**
- b) **That Council's policy position on locations where subdivision of dual occupancy can be permitted be reviewed, and that this review include consideration of strata subdivision options where more appropriate; and**
- c) **The application be determined under delegated authority.**

OPTIONS:

1. Resolve to support the propose exception (variation) to the development standard: This would enable the proposed subdivision of the existing attached dual occupancy development subject to development consent;
2. Resolve **not** to support the proposed exception (variation) to the development standard. The result would be that the strata title subdivision could not proceed and the existing attached dual occupancy development would have to remain in one (1) land title.

DETAILS

Background

- # The subject land is zoned R1 General Residential (**Attachment 'A'**).
- # The development application is seeking approval for the strata subdivision of the attached dual occupancy development previously approved under the same application and completed in June 2015. Refer to **Attachment 'B'**.

The development is located on the southern end of Gordon Street between Wolseley Street and Princes Highway.

Minimum lot sizes - Shoalhaven Local Environmental Plan 2014 (SLEP2014)

The subject land is located in an area with a minimum lot size of 500m². However, in relation to the subdivision of dual occupancy Clause 4.1A(2) provides:

- (2) *Development consent may be granted to the subdivision of land on which development for the purpose of a dual occupancy has been carried out if the area of each resulting lot will be equal to or greater than:*
- (a) *if the land is identified as “Area 1” on the Lot Size Map—350 square metres,*
 - (b) *if the land is identified as “Area 2” on the Lot Size Map—400 square metres.*

In this particular case, the land is not identified on the Lot Size Map as either Area 1 or 2 and the size of the proposed strata unit lots are 193m² and 212m² with common property of 254.6m². The location of Areas 1 & 2 were taken from the previous DCP 57 – Dual Occupancy Development and included as development controls in SLEP 2014. The locations were originally chosen to limit speculation of dual occupancy development, particularly away from main centres or locations of unique amenity such as Milton and Berry. This extract from previous DCP 57 details where subdivision is currently permitted:

2.1.1. Residential 2(a1), 2(c) and 2(e) Zones (other than land that is flood liable and land affected by coastal instability)

The subdivision of dual occupancy development is only allowed in the zones Residential 2(a1), 2(c) and 2(e), within the following localities (also refer to DCP 100 – Subdivision Code), where the minimum resultant lot size after subdivision is 350m² each allotment, from a parent lot of a minimum 700m². The development shall meet the standards for all design elements prescribed in Part 1 of this DCP.

- Nowra
- Sussex Inlet
- Worrigea
- Bomaderry
- Vincentia
- Mollymook
- North Nowra
- Huskisson
- Mollymook Beach
- West Nowra
- Sanctuary Point
- Ulladulla
- South Nowra
- St Georges Basin

Council may wish to consider reviewing its policy position as to where subdivision of dual occupancy is permitted and whether strata title subdivision of dual occupancies may be appropriate in some circumstances. Should any change in policy be resolved on, this would necessitate a planning proposal to amend Shoalhaven LEP 2014.

Whilst the proposed development generally complies with the Performance Criteria of Shoalhaven DCP 2014 Chapter G11 Section 5.15, the proposed allotments do not have sufficient land to achieve the development standard minimum lot size of 500m².

This application seeks to vary the 500m² minimum lot size development standard under Clause 4.1 of the Shoalhaven Local Environmental Plan 2014 as shown in the following table:

Lot Number	Lot Size	% Variation from 500m ² standard
1	193m ²	61.4%
2	212m ²	57.6%
Common Property	254.6m ²	N/A

The applicant has indicated that he did not realise when the dual occupancy was approved that it did not include the strata subdivision that was included in the original application. The consent issued expressly indicates that the strata subdivision was not included in the consent, also discussions occurred between the assessing officer and the applicant prior to the issue of the consent, but this seems to have been misunderstood by the applicant. The applicant has indicated that he would not have proceeded with the development if he had realised that it could not be subdivided.

The subdivision of the development will not alter the appearance of the development or result in adverse amenity for future occupants. It will enable land title to be created and therefore the sale of the existing dual occupancy units separately. The type of housing in the immediate vicinity is predominately single dwellings with a B2 zone adjoining the development along the highway. This development is consistent with the objectives of the R2 zone:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.*

Clause 4.6 – Exception to Development Standard

The NSW planning system provides flexibility in planning controls by providing the ability for Council to vary development standards in certain circumstances. In this regard, the concurrence of the Secretary of the Department of Planning and Environment (DP&E) can be assumed, with regard to the DP&E publication – *Varying development standards: A Guide – August 2011* (the Guide). Clause 4.6 enables a development standard to be “contravened”, provided the applicant has submitted a written request that adequately justifies the exception (variation) from the development standard by demonstrating that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and*
- *There are sufficient environmental planning grounds to justify contravening a development standard.*

Further, the consent authority must be satisfied that:

- the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- the proposed development will be in the public interest because it is consistent*

with the objectives of the particular standard and the objective for development within the zone in which the development is proposed to be carried out,

The concurrence of the DP&E can be assumed for clause 4.6 variations, excluding certain situations. These situations relate to certain zones/circumstances and do not apply to this particular case which can be considered under clause 4.6.

Varying the development standards under clause 4.6 is addressed as part of the assessment of a development application, and includes the submission of a written request from the applicant to vary the development standard in accordance with clause 4.6(3) which is included in **Attachment B**.

In accordance with the DP&E requirements and guidelines, any development application that proposes a variation under clause 4.6 greater than ten percent (10%) of the development standard must to be determined by the Development Committee or full Council (rather than General Manager or nominated staff member). The DP&E requirements are designed as part of corruption risk management measures.

Applicants submission – request for exception (variation) to development standard

The applicant has made a submission pursuant to clause 4.6 of the SLEP 2014. The submission contends that compliance with this development standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *The dual occupancy development has been constructed and is completed and meets the objectives to provide the housing needs of the community within a low density residential environment. The dual occupancy development is compatible to the detached housing in the locality. The strata subdivision of the existing dual occupancy will not alter the compliance with these objectives.*
- *As the dual occupancy has already been assessed, approved and completed it is consistent with the character of the area and the existing subdivision pattern. The strata subdivision of the existing dual occupancy will not have any additional impact on the amenity of the neighbouring properties. As the development is already complete the lot sizes of the strata subdivision accommodate dual occupancy development controls. The strata subdivision of the dual occupancy encourage housing diversity and will allow separate ownership of the two units and will not alter the existing impact on the residential amenity.*
- *The strata subdivision of the dual occupancy cannot practically comply with the development standard as it is located on a lot of 675 sq metres and the strata subdivision proposes sub-division of the building rather than a torrens title subdivision intended by the development standard.*
- *The strata subdivision will assist in providing affordable housing in the locality.*

FINANCIAL IMPLICATIONS:

Should the application be determined by way of refusal, there is the possibility of action in the Land Environment Court by the applicant. Accordingly, there would be costs associated with such action.

COMMUNITY ENGAGEMENT:

In accordance with Council's Community Consultation Policy the development application was notified to potentially affected properties in a large radius from the development and in the local paper from 18 November to 2 December 2015. Two submissions were received from the same household concerned about the precedent that subdivision of dual occupancy will create in Milton and that the applicant was advised that subdivision was not permissible in the processing of the application and in the determination of the development consent.

CONCLUSION

In summary:

- The proposed variation exceed 10%;
- The strata subdivision of the land would not result in any change to the approved development. The subdivision enables separate land title to be created and would provide for a type of housing adding to the diversity of housing stock available in Milton;
- The subdivision of dual occupancy in Milton has not previously been permitted;
- The proposal has the potential to create a precedent for an alternative form of dual occupancy subdivision that has not previously been provided for in Milton and other areas not mapped under clause 4.1A in the current SLEP 2014.
- Variations to the minimum lot requirements are considered acceptable in the circumstances of this particular application.
- Council should review the application of restriction of dual occupancy subdivision, given the increased demand for greater variety of household types.

6. Development Application - Proposed Strata Title Subdivision of Approved Dual Occupancy at Lot 16 DP37996 (No.125) Camden Street, Ulladulla. Applicant: Rygate & West. Owner: Woden. File SF10485 (PDR)

SECTION MANAGER: Cathy Bern.

PURPOSE:

The purpose of this report is to seek Council direction with respect to a policy issue that concerns a proposed strata title subdivision. The issue relates to a proposed exception (variation) to the minimum lot size specified in Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Confirms support for the proposed exception; and**
- b) The application be determined under delegated authority.**

OPTIONS

1. Resolve to support the proposed exception (variation) to the development standard: This would enable the dual occupancy development to be subdivided, subject to development consent;
2. Resolve **not** to support the proposed exception (variation) to the development standard.

The result would be that the strata title subdivision could not proceed and the proposed dual occupancy development would have to remain in one (1) land title.

DETAILS

Background

- # The subject land is Lot 16 DP37996 (No.125) Camden Street, Ulladulla. It is located on the western side of Camden Street, between Green and South Streets. (**ATTACHMENT A**).
- # The application is for a strata subdivision of an approved and under construction dual occupancy development (as approved under DA14/1371). (**ATTACHMENT B**).

The land is within Area 1 of Clause 4.1A *Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing*. Area 1 permits subdivision of dual occupancy development to create allotments of 350m².

Minimum lot sizes - Shoalhaven Local Environmental Plan 2014 (SLEP2014)

The subject site is located within an area that has a minimum lot size of 500m². However, in accordance with Clause 4.1A (2):

Development consent may be granted to the subdivision of land on which development for the purpose of a dual occupancy has been carried out if the area of each resulting lot will be equal to or greater than:

(a) if the land is identified as "Area 1" on the Lot Size Map—350 square metres,

The proponent has elected to subdivide the dual occupancies by way of a strata title subdivision. In this particular case, the proposed lots for the dual occupancy dwellings are proposed to be 335m² and 333m², with a common lot that contains the shared driveway of 84m².

The proposal complies with the essential requirements and the performance criteria of Shoalhaven DCP 14 Chapter G11 Section 5.24 Dual Occupancy Subdivision. The proposed subdivision generally comply with the performance criteria of Shoalhaven DCP 14 Chapter G11 Section 5.15 *Strata and Community Title Subdivision*. The dwellings share a common driveway.

The acceptable solutions include:

- *Create separate sites for each dwelling with their own public street frontage;*
- *Limit communal land to driveways only;*
- *Design dwellings to minimise the need for corporate building management;*
- *Ensure cost-effective management of communal open space or shared facilities;*
- *Provide separate utility service metres to each dwelling and, if necessary, any common area;*
- *Attach all private open space areas to a dwelling unit;*
- *Meet all requirements of any development application which may apply to the building proposed to be subdivided.*
- *The street and lot layout clearly define the public, communal and private areas of a development, including the function, ownership and management of open spaces and communal area.*

All of the 3 proposed strata lots fall short of the minimum lot size of 350m².

Table 1 – Lot Sizes

Lot number	Lot size m²	% variation from 350m² standard
1	333	4.9%
2	335	4.3%
Common lot	84	N/A

This application seeks to vary the 350m² minimum lot size development standard under Clause 4.1A (2) of the Shoalhaven Local Environmental Plan 2014 for all 3 lots.

The subdivision of the dual occupancy developments will not alter the appearance of the development or adversely impact upon the amenity of future occupants or adjoining properties. It will enable land title to be created and therefore the sale of the proposed dwellings. These developments will provide an additional type of housing, i.e. dual occupancy that achieves the relevant objectives of the R1 zone

Clause 4.6 – Exception to Development Standard

The NSW planning system provides flexibility in planning controls by providing the ability for Council to vary development standards in certain circumstances. In this regard, the concurrence of the Secretary of the Department of Planning and Environment (DP&E) can be assumed, with regard to the DP&E publication – Varying development standards: A Guide – August 2011 (the Guide). Clause 4.6 enables a development standard to be “contravened”, provided the applicant has submitted a written request that adequately justifies the exception (variation) from the development standard by demonstrating that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and*
- *There are sufficient environmental planning grounds to justify contravening a development standard.*

Further, the consent authority must be satisfied that:

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objective for development within the zone in which the development is proposed to be carried out,*

The concurrence of the DP&E can be assumed for clause 4.6 variations, excluding certain situations. These situations relate to certain zones/circumstances and do not apply to this particular case which can be considered under clause 4.6.

Varying the development standards under clause 4.6 is addressed as part of the assessment of a development application, and includes the submission of a written request from the applicant to vary the development standard in accordance with clause 4.6(3). The extent of the proposed variations and the number of lots to be varied need to be considered.

In accordance with the DP&E requirements and guidelines, any development application that proposes a variation under clause 4.6 greater than ten percent (10%) of the development standard must to be determined by the Development Committee or full Council (rather than General Manager or nominated staff member). In this regard, the proposed lots for the dual occupancy lots are able to be approved by staff, but the common lot is only 84m², which represents a variation of approx. 76%. The DP&E requirements are designed as part of corruption risk management measures. The common lot is effectively a driveway.

Applicants submission – request for exception (variation) to development standard

- # The applicant has made a submission pursuant to clause 4.6 of the SLEP 2014. The submission contends that compliance with this development standard is considered to be unreasonable and unnecessary in the circumstances of this case, refer to **ATTACHMENT C**.

FINANCIAL IMPLICATIONS:

Should the application be determined by way of refusal, there is the possibility of action in the Land Environment Court by the applicant. Accordingly, there would be costs associated with such action.

Nil other budgetary concerns.

COMMUNITY ENGAGEMENT:

In accordance with Council's Community Consultation Policy the development application was not notified because it is considered that subdivision of an existing dual occupancy is unlikely to adversely affect other property owners. Variations from minimum lot size are relatively minor, except for common lot.

CONCLUSION

In summary:

- 2 of the proposed variations are < 10%, whereas the common lot has a variation of >10%, but is not to be used for habitable purposes;
- Strict compliance with the development standard will hinder attainment of the objects of the Environmental Planning and Assessment Act and objectives of the R1 and R2 zones that include provisions for a variety of housing types;
- A variation to the development standard is necessary to facilitate the orderly development of land and achieving the zone objectives. Further, the performance criteria of Council's SDCP14 with a variation to the minimum statutory lot size are satisfied;
- Maintenance of the minimum lot size development standard is unreasonable because it will not facilitate the neighbourhood title subdivision of dual occupancies that are in accordance with the objectives of the R1 zone; and
- The subdivision of the land would not result in any change to the approved development.
- The subdivision enables land title to be created and would provide for a type of housing adding to the diversity of housing stock available in an urban environment and as noted above satisfies the zone objectives.

7. NSW Government Inquiry into the Regulation of Brothels - Outcomes File 1379e

SECTION MANAGER: Gordon Clark.

PURPOSE:

Detail the outcomes of the NSW Government Inquiry into the Regulation of Brothels, to which Council provided a submission.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee receive the report on the NSW Government Inquiry into the Regulation of Brothels for information.

OPTIONS

1. Receive the report for information.
2. Adopt an alternative recommendation.

DETAILS

The NSW Government's Joint Select Committee on the Regulation of Brothels (the Committee) in NSW was tasked with delivering a comprehensive report with robust and practical recommendations to expose and remove the:

- exploitation of vulnerable sex workers;

-
- criminal elements within the industry; and
 - unapproved sex work premises in inappropriate locations across the State.

Council made a submission to the Inquiry on 19 August 2015 (**Attachment “A”**), outlining issues concerning ‘unlawful brothels’ operating without approval, and matters relating to enforcement and the gathering of evidence.

The Final Inquiry Report was released on 10 November 2015. The report:

- compares the NSW sex service industry with that of other jurisdictions;
- provides an analysis of planning issues;
- identifies problems relating to the protection of sex workers; and
- considers public health outcomes under current regulation.

The Inquiry Report outlines preferred options for the reform of the regulation of brothels in NSW. The Committee supports decriminalisation and does not propose to criminalise sex work or owning and operating sex services premises. The Committee also recommends a licencing system for the sex services industry as well as various legislative changes to solve identified problems.

In summary, the Committee has recommended:

- reform of legislation to create a ‘consolidated Act’ which would reduce confusion and create consistent definitions;
- maintaining the system of decriminalisation of the sex services industry in NSW;
- a licencing system to regulate the sex services industry in NSW by way of requiring licences for brothels, with provisions similar to the *Tattoo Parlours Act 2012*;
- that all owners, managers, and employees (other than sex workers), and their associates, be required to be “fit and proper persons” to be affiliated with a licenced brothel;
- Councils continue their current role of assessing the location of, and granting planning approvals for brothels;
- if the licencing system is not implemented, more resources be allocated to local Councils to continue to investigate and prosecute owners/operators of unauthorised brothels;
- better coordination between Local, State and Commonwealth agencies;
- a special unit be established within the NSW Police Force to coordinate responses from government agencies;
- a number of additional powers be given to NSW Police Force Officers and authorised officers relating to premises reasonably suspected of being brothels;
- that in proving sexual services at a suspected brothel:
 - circumstantial evidence continue to be admissible similar to s17A of the *Summary Offences Act 1988* and s124AB of the *Environmental Planning and Assessment Act 1979* without the need for direct evidence;
 - solicitation by a sex worker should be deemed to be evidence that actual sex work is taking place at the premises;
 - evidence of blogs or other social media reports of sex acts taking place at a premises should be an exception to the hearsay rule and admissible; and
- broader range of application of brothel closure orders determined by courts.

The final report (185 pages) is available on the Parliament of New South Wales website at: <http://www.parliament.nsw.gov.au>

The State Government is now required to provide a response by 10 May 2016. When a response to the recommendations is released by State Government, it will be further reported to Council, along with any implications on Council's operations.

FINANCIAL IMPLICATIONS:

There are currently no financial implications associated with this report.

COMMUNITY ENGAGEMENT:

No community engagement is currently required. This is an information report coming out of a State Government inquiry to which Council provided a submission.

8. Planning Proposal (Rezoning) - Lot 4 DP 834254 Beach Road, Berry **File 52163e (PDR)**

SECTION MANAGER: Gordon Clark.

PURPOSE:

Obtain direction on the Planning Proposal (PP) that has been submitted for Lot 4 DP 834254, Beach Road, Berry.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Give in principle support for the proposed rezoning of Lot 4 DP 834254, Beach Road, Berry and submit a revised Planning Proposal to the NSW Department of Planning and Environment for Gateway determination, subject to:**
 - i) Revision of the proposed minimum lot size to ensure the size of future lots is consistent with adjacent subdivisions and can adequately accommodate on site effluent disposal;**
 - ii) Revision of the proposed zoning to ensure continuation of the established buffer area to the wetland and appropriate protection of ecologically significant areas;**
 - iii) Development to be limited to the north of the ridgeline (i.e. no dwellings south of the ridge) to minimise any potential impact on Coomonderry Swamp, to maintain the integrity of the ridgeline, and to be consistent with the planning outcomes of the adjacent sites.**
 - iv) Resolution of the proposed transfer of land to National Parks and Wildlife Service, and the possible need for a Voluntary Planning Agreement.**

-
- b) Advise the proponent and those who submitted comments of this resolution, noting the opportunity for formal comment later in the process; and**
 - c) Receive a further report following the Gateway determination, if necessary.**

OPTIONS

1. Adopt the recommendation - this will enable a revised PP to be submitted for initial Gateway determination on the rezoning proposal and whether any further studies are required. The outcome of any further studies may require the PP to be further adjusted/revised at a later point in the process.
2. Not support the PP - the land would retain its current rural zone and there would be no potential for subdivision of the land or transfer of the Coomonderry Swamp to the State Government. This could also result in the proponent requesting a review of Council's decision by the Joint Regional Planning Panel.
3. Adopt an alternative or revised recommendation - this could delay the process and could also trigger a possible request for a review by the proponents.

DETAILS

Background

Council received a PP for land located at Lot 4 DP 834254, Beach Road, Berry on 13th October 2015. The PP was submitted by Michael Brown Planning Strategies on behalf of the current landowner (EN Hall). The land and its current zoning is shown in Figure 1 below.

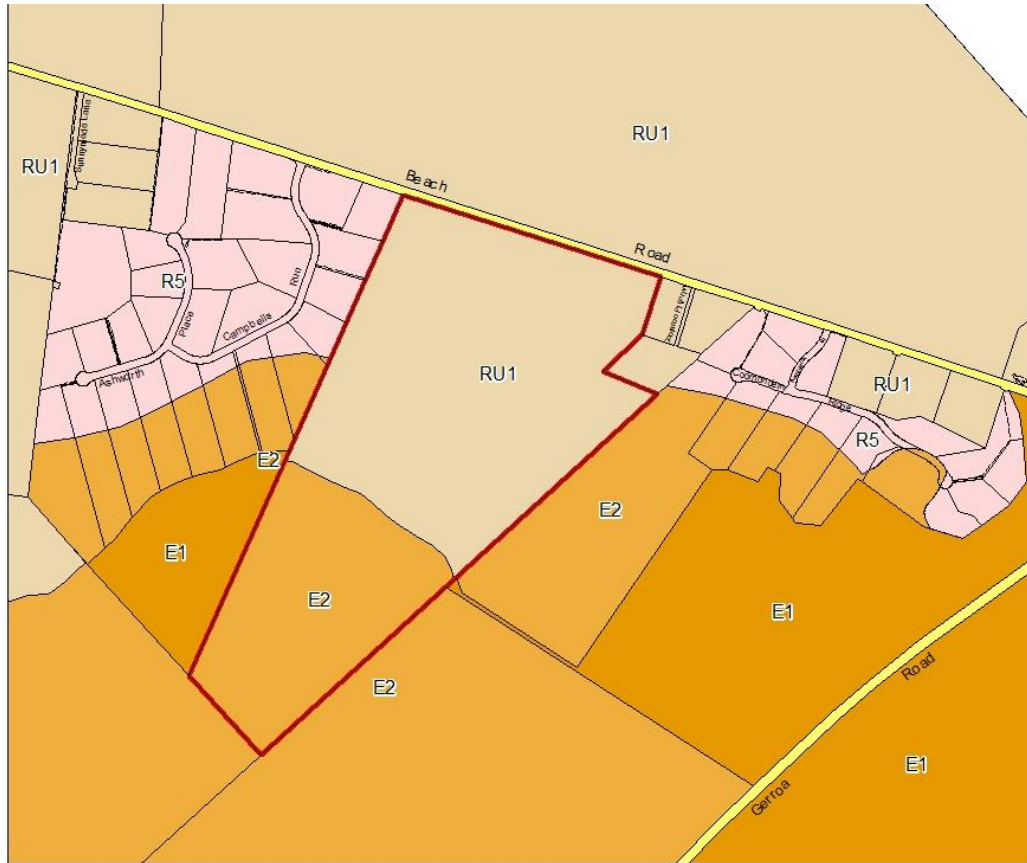


Figure 1: Subject land - current zoning - Shoalhaven Local Environmental Plan 2014

The PP seeks to rezone the land from RU1 Primary Production and E2 Environmental Conservation to R5 Large Lot Residential, E1 National Parks and Nature Reserves, and E2 Environmental Conservation. The proponents PP document includes a concept subdivision plan (Figure 2) to show how the land could be developed if rezoned. It is proposed that the part of the land within the Coomonderry Swamp would be dedicated to the State government and incorporated into the Seven Mile Beach National Park as an outcome of the rezoning.



Figure 2: Concept Subdivision Plan

The proponents PP document can be accessed on the internet at:

<http://shoalhaven.nsw.gov.au/My-Council/Public-exhibition/Documents-on-exhibition>

A hard copy of the proponents PP document will be available in the **Councillor's Room** prior to the meeting.

The adjacent land to the east and west of the subject land, was rezoned via an Amendment (No. 166) to the previous Shoalhaven LEP 1985 which was gazetted on 7 July 2000. The objectives of the rezoning were to permit rural smallholding subdivision on the land to facilitate public acquisition of Coomonderry Swamp, to protect landscape values and to preserve as much of the existing forest cover as possible. The subject land would have been included in the rezoning process, however, the landowner requested that their lot not be included.

Community Comment

To assist Council in making a decision on advancing this PP, community feedback on the proposal was sought through an informal consultation process. The PP was made publicly available on Council's website from 23 November to 7 December 2015 (inclusive), and adjoining landowners were notified in writing. A total of 25 written submissions were received including ones from the Berry Forum Committee, Berry Landcare, Gerroa Environment Protection Society and one representation from the Member for Kiama, Gareth Ward MP.

A summary of the submissions received is included as **Attachment "A"**. Copies of the actual submissions will also be available in the Councillor's Room prior to the meeting.

Of the 25 submissions received, one (1) submission supported the proposal, 10 submissions were against the proposal and 14 submissions opposed the PP in its current form but provided a number of suggestions as to how issues and concerns could be better addressed. Thus, 15 submissions provided general support for rezoning and subdivision of the land, provided that key issues are addressed.

The key issues raised in the submissions includes:

- Lot sizes – too small, density is too high, suggestions included a 1-2 hectare minimum lot size;
- Siting of lots - locate lots on the north east facing side only, not on the south west slopes that drain towards the swamp and ensure no lots encroach on the swamp or other ecologically significant areas;
- Rezoning – continue the established buffer to the wetland following the planning principles for the adjacent large lot subdivisions;
- Precedent – concerns that development of the land will create a precedent that results in further residential subdivision of the Beach Road, Berry area;
- Visual impacts – the proposed subdivision will have a negative effect on the visual amenity and character of the area, proposal does not suit the existing surrounding rural character of the area;
- Waste water/effluent management and drainage issues - effluent management and runoff is an issue, sufficient space on lots is required for efficient absorption from onsite sewage management systems. May create issue of runoff into neighbouring properties. Water quality and ecology of Coomonderry Swamp which may be impacted by runoff from development combined with overflowing natural springs on the subject and surrounding land;
- Coomonderry Swamp - need to protect the swamp, buffer areas, and ecologically significant flora and fauna from development; buffer area needed around wetland to protect vegetation;
- Traffic and road impacts – proposal will create increased traffic on Beach Road which requires an upgrade/repairs; concerns about impacts on safety and need for a footpath/cycleway;
- Additional consultant studies – undertake flora and fauna; cultural heritage assessment/studies and place on public exhibition;
- Tourism industry impacts – if visual amenity and surrounding rural character is negatively impacted by over development it would impact the local tourism industry;
- Inconsistencies with plans and strategies – inconsistencies of the proposal with completed plans and strategies such as the Shoalhaven LEP 2014 and Shoalhaven Growth Management Strategy and respecting the community consultation undertaken as part of these planning processes;
- Berry Wildlife Corridor – impacts on fauna and habitat, the subject land is within the wildlife corridor, funding was recently received from NSW Environment trust to Berry Landcare;
- Impacts on a patch of forest, known as “Jim’s Forest” on the land with environmental and community significance should be protected;
- Sustainability – house designs, water tanks; and
- Bush fire risk, flooding and other site constraints being addressed.

Key Issues

The PP was reviewed by Council staff and the key issues and inconsistencies identified with the PP that would need to be addressed or outlined in detail in the Gateway submission, should Council resolve to support the advancement of the PP. These are outlined in the following table:

Issue	Comment
Minimum lot size	The size and location of lots should be consistent with the established subdivision pattern adjoining the subject land. This includes increasing the minimum lot size of the proposed lots and ensuring the subdivision and any resulting dwellings do not extend onto land beyond the ridgeline, which drains into the Coomonderry Swamp.
Proposed Zoning	The proposed zoning should continue the established buffer to the swamp, protection of ecologically significant areas, and limit development south of the ridgeline.
Visual impacts	Larger lot sizes located on the north west slope would reduce visual impacts in conjunction with appropriate screening provided by planting of trees, together with specific development controls.
Waste water, soils, geology, runoff & drainage issues	Larger lot sizes located on the north west slope would better address drainage and waste water issues. Further study of the impacts of natural springs, water cycle management, assessment of the capability of lot sizes for efficient absorption of waste water, and protecting the swamp from run off is required. Clarification of water and sewage infrastructure is required.
Environmental issues & constraints	Appropriate environmental zoning would be required for the swamp and buffer area and other ecologically significant areas on the subject land including, but not limited to, protection of Coomonderry Swamp/SEPP 14 wetland and ecologically significant areas such as the patch of forest known as "Jim's Forest" and Berry Wildlife Corridor.
Traffic & road impacts	A traffic and transport study would need to be undertaken to address impacts on the road network and safety.
Consultant studies	Additional studies or revisions of existing preliminary studies may be identified if the PP is supported and submitted for Gateway determination. These studies may include flora and fauna, cultural heritage, traffic and transport, site contamination, water cycle, onsite effluent management, etc.
Strategic justification of the proposal	The subject land would have been included in the rezoning process for adjacent land to the west and east, had the landowner not requested in 1995 that their land not be included. The PP is inconsistent with the planning principles for the rezoning of the adjacent land and may also be inconsistent with aspects of regional plans and strategies. It is however considered to be an infill proposal.
Land transfer to National Parks and Wildlife Service	The equity of the NPWS land gifting proposal needs to be further justified regarding the value of the land to be transferred and the benefit that will be gained through the rezoning (ie the value of the land to be transferred vs the value of the development potential

	created). An independent valuation of the land and analysis is required. The transfer will need to be achieved through a Voluntary Planning Agreement (VPA).
Infrastructure provision	The provision of infrastructure and availability of services such as water and sewer needs to be clarified.
Consistency with Adjacent Subdivision	The PP for the subject land is inconsistent with the planning principles for the adjacent land which included: <ul style="list-style-type: none"> • Transfer into the ownership of the National Parks and Wildlife Service (NPWS) areas of Coomonderry Swamp and adjacent forest; • Rezone areas outside the Coomonderry Swamp catchment to a rural zone with a minimum lot size of 1 hectare; and • Rezone the balance of the area to an environmental and scenic protection zone. • Specify the maximum number of residential lots.

Recommended Studies

Consistent with the above comments, should the PP be supported by Council, the following studies are recommended to be undertaken following the Gateway determination:

- Independent valuation analysis of the equity of land dedication;
- Flora and fauna impact assessment;
- Agricultural assessment;
- Soils and geology assessment;
- Water cycle assessment;
- On-site effluent management assessment;
- Cultural heritage assessment; and
- Traffic and transport assessment.

The DP&E may also recommend additional studies as part of their Gateway determination.

Next Steps

If Council supports the PP with the recommended changes, staff will submit a revised PP to DP&E for Gateway determination.

As part of the advancement of the PP, should it be supported by Council and receive a favourable Gateway determination, a meeting will be arranged with the NSW Office of Environment and Heritage (OEH), DP&E, and the proponents to discuss the range of matters related to the PP, including the proposed transfer of land to the State Government and the need for a VPA.

CONCLUSION

The PP submitted by the proponents seeks to rezone Lot 4 DP 834254, Beach Road, Berry to enable its subdivision. There are a number of concerns with the submitted PP, particularly in relation to the density and extent of the concept subdivision. The PP should be revised to be consistent with adjacent subdivisions in terms of continuing a similar character of subdivision and the protection of the ecologically significant values of the land. The comments received from the community as a result of initial consultation indicates

there is some support for the PP on the land, provided that the issues raised in this report are adequately addressed in any revised PP.

FINANCIAL IMPLICATIONS

The proponent has paid the initial PP lodgement fee in accordance with Council's Fees and Charges. Fees for the remaining stages of the PP will be charged in accordance with Council's Fees and Charges should Council support the proposal advancing. The proponent is also required to fund any studies or staff resources required to progress the PP.

COMMUNITY ENGAGEMENT

Pre-consultation was undertaken from 23 November to 7 December 2015 (inclusive). Should the PP advance formal public exhibition (community consultation) occurs later in the process in accordance with any Gateway determination requirements, relevant legislation and Council's Community Consultation Policy. This will involve notifying all adjoining landowners, the local CCB, and other interested parties.

9. **Development Application - Proposed Neighbourhood Title Subdivision of Dual Occupancy Development at Lot 3 DP 38171, No. 60 Journal Street, Nowra. Applicant: Allen Price & Scarratts. Owner: David Lovett File SF10484 (PDR)**
-

SECTION MANAGER: Cathy Bern.

PURPOSE:

The purpose of this report is to seek Council direction with respect to a policy issue that concerns a proposed neighbourhood title subdivision. The issue relates to a proposed exception (variation) to the minimum lot size specified in Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) **Confirm that it supports the proposed exception; and**
- b) **The applications be determined under delegated authority.**

OPTIONS:

1. Resolve to support the proposed exception (variation) to the development standard:

This would enable the dual occupancy development to be subdivided, subject to development consent;

-
2. Resolve **not** to support the proposed exception (variation) to the development standard. The result would be that the neighbourhood title subdivision could not proceed and the proposed dual occupancy development would have to remain in one (1) land title.

DETAILS

Background

- # The land is zoned R1 General Residential (**ATTACHMENT A**). The development application is seeking approval for subdivision of the completed dual occupancy development comprising a 3 bedroom dwelling and a 2 bedroom dwelling. The original dwelling, forward on the lot, was constructed by the NSW Housing Commission in the late 1960's or early 1970. DA04/1952 (**ATTACHMENT B**) approved an additional dwelling creating the existing dual occupancy development.

The subject lot (828.34m²) is located on the eastern side of Journal Street midway between Jervis Street and St Anns Street. The lot was created in 1949 by subdivision SF237.

The land is within Area 1 of Clause 4.1A *Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing*. Area 1 permits subdivision of dual occupancy development to create allotments of 350m².

Minimum lot sizes - Shoalhaven Local Environmental Plan 2014 (SLEP2014)

The subject sites are located in an area with a minimum lot size of 500m². However, in accordance with Clause 4.1A (2):

Development consent may be granted to the subdivision of land on which development for the purpose of a dual occupancy has been carried out if the area of each resulting lot will be equal to or greater than:

(a) if the land is identified as "Area 1" on the Lot Size Map—350 square metres,

The proponent has elected to subdivide the Dual Occupancies by way of a neighbourhood title under the Community Land Development Act 1989. In this particular case, the neighbourhood property lot is 19.5m², Lot 2 is 322m² and Lot 3 is 487.3m² (415.93m² ex handle). The common or neighbourhood property is confined to the shared access.

The proposal complies with the essential requirements and the Performance Criteria of Shoalhaven Development Control Plan 2014 (SDCP14) Chapter G11 Section 5.24 Dual Occupancy Subdivision.

The proposed subdivision generally complies with the Performance Criteria of Shoalhaven DCP 14 Chapter G11 Section 5.15 *Strata and Community Title Subdivision*, except that the proposed lots share a common access over the first 5 metres of the driveway. Lot 3 does not have direct frontage to Journal Street, however, access to the street is over the common property and does not burden Lot 2. The existing dual occupancy has been functioning effectively since occupation in December 2004 and the proposed variation is unlikely to affect the continued use.

The acceptable solutions include:

- *Create separate sites for each dwelling with their own public street frontage;*
- *Limit communal land to driveways only;*
- *Design dwellings to minimise the need for corporate building management;*
- *Ensure cost-effective management of communal open space or shared facilities;*
- *Provide separate utility service metres to each dwelling and, if necessary, any common area;*
- *Attach all private open space areas to a dwelling unit;*
- *Meet all requirements of any development application which may apply to the building proposed to be subdivided.*
- *The street and lot layout clearly define the public, communal and private areas of a development, including the function, ownership and management of open spaces and communal area.*

Proposed Lot 3 achieves the minimum lot size of 350m². The Neighbourhood Property Lot 1 (19.5m²) and Lot 2 (322m²), do not achieve the development standard minimum lot size of 350m².

Subdivision	Lot number	Lot size M ²	% variation from 350m ² standard
SF10484	NP	19.5	N/A
	2	322	8%
	3	415.91	0

This application seeks to vary the 350m² minimum lot size development standard under Clause 4.1A (2) of the Shoalhaven Local Environmental Plan 2014 for the Neighbourhood Property Lot 1 and fro Lot 2.

The subdivision of the dual occupancy development will not alter the appearance of the development or adversely impact upon the amenity of future occupants or adjoining properties. It will enable land title to be created and therefore the sale of the proposed dwellings. The type of housing in the immediate vicinity of the dual occupancies is generally single dwellings with low density residential character. This development will provide an additional type of housing, i.e. dual occupancy that achieves the relevant objectives of R1 General Residential:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*

Clause 4.6 – Exception to Development Standard

The NSW planning system provides flexibility in planning controls by providing the ability for Council to vary development standards in certain circumstances. In this regard, the concurrence of the Secretary of the Department of Planning and Environment (DP&E) can

be assumed, with regard to the DP&E publication – *Varying development standards: A Guide – August 2011* (the Guide). Clause 4.6 enables a development standard to be “contravened”, provided the applicant has submitted a written request that adequately justifies the exception (variation) from the development standard by demonstrating that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and*
- *There are sufficient environmental planning grounds to justify contravening a development standard.*

Further, the consent authority must be satisfied that:

- (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objective for development within the zone in which the development is proposed to be carried out,*

The concurrence of the DP&E can be assumed for clause 4.6 variations, excluding certain situations. These situations relate to certain zones/circumstances and do not apply to this particular case which can be considered under clause 4.6.

Varying the development standards under clause 4.6 is addressed as part of the assessment of a development application, and includes the submission of a written request from the applicant to vary the development standard in accordance with clause 4.6(3).

The extent of the proposed variations and the number of lots to be varied need to be considered.

In accordance with the Department Planning & Environment (DP&E) requirements and guidelines, any development application that proposes a variation under clause 4.6 greater than ten percent (10%) of the development standard must to be determined by the Development Committee or full Council (rather than General Manager or nominated staff member). The DP&E requirements are designed as part of corruption risk management measures.

Applicants submission – request for exception (variation) to development standard

The applicant has made a submission pursuant to clause 4.6 of the SLEP 2014. The submission contends that compliance with this development standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *When the development was approved and constructed, Council did not have provisions which permitted the subdivision of dual occupancy development, therefore, the placement of the rear dwelling did not take into account the potential for 350m2 lot requirements in the future.*

-
- *The deficiency in area for Lot 2, containing the front dwelling, is approximately 8%, however as this is a neighbourhood title subdivision, it is necessary to create an allotment for the neighbourhood association. The neighbourhood association lot contains a common part of the driveway with an area of 19m². The creation of this lot is not for residential purposes and does not impact upon the development approved or proposed. If this were Torrens Title subdivision, this area would be within the rear lot with a right of carriageway for access to the front lot.*
 - *The subdivision does not increase the potential for future development on the land – the development is and always will be a dual occupancy and does not become two separate dwelling houses by virtue of the change in ownership, allowing further residential accommodation development.*
 - *The public interest is not compromised by this variation because there are no added adverse environmental or social implications arising from the neighbourhood title subdivision of the land. The initial development of a dual occupancy itself is what alters the streetscape or introduces amenity or traffic impacts into a residential environment and the subdivision of an existing development has no further impact.*
 - *Public interest has been addressed and assessed and considered to be acceptable in the approval of the original dual occupancy development application.*
 - *The public interest is not compromised because of the utilising a clause which provides flexibility in applying the development standards as the dual occupancy is existing and has been established without any known conflict or adverse amenity issues for over ten (10) years.*
 - *The proposal is consistent with the zone and clause objectives.*

FINANCIAL IMPLICATIONS:

Should the application be determined by way of refusal, there is the possibility of action in the Land Environment Court by the applicant. Accordingly, there would be costs associated with such action.

Nil other budgetary concerns.

COMMUNITY ENGAGEMENT:

In accordance with Council's Community Consultation Policy the development application was not notified because the proposed variation is relatively minor and it is considered that subdivision of an existing development (dual occupancy) is unlikely to adversely affect other property owners.

CONCLUSION

In summary:

- The proposed variation to Lot 1 exceeds 10%;
- Strict compliance with the development standard will hinder attainment of the objects of the Environmental Planning and Assessment Act and objectives of the R1 zone that include provisions for a variety of housing types;
- A variation to the development standard is necessary to facilitate the orderly development of land and achieving the zone objectives. Further, the performance criteria of Council's SDCP14 with a variation to the minimum statutory lot size are satisfied;
- Maintenance of the minimum lot size development standard is unreasonable because it will not facilitate the neighbourhood title subdivision of dual occupancies that are in accordance with the objectives of the R1 zone; and
- The subdivision of the land would not result in any change to the approved development. The subdivision enables land title to be created and would provide for a type of housing adding to the diversity of housing stock available in an urban environment and as noted above satisfies the zone objectives.

Tim Fletcher

DIRECTOR PLANNING AND DEVELOPMENT SERVICES

Carmel Krogh

ACTING GENERAL MANAGER

NOTICES OF MOTION
DEVELOPMENT COMMITTEE
MONDAY, 18 JANUARY, 2016

10. Development Application – 28 Gardner Road, Falls Creek – Micro Distillery Brewery & Machinery Shed **File DA15/2525**

The following Notice of Motion of which due notice has been given, is submitted for Council's consideration:

That DA15/2525 be called in for determination by Council.

Background:

The reason for call in is public interest.

Signed
Clr Watson
Clr White