

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 Tuesday, 7 June, 2016
Commencing at 4.00 pm.

1 June, 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 Tuesday, 7 June, 2016 commencing at 4.00 pm** for consideration of the following business.

R D Pigg
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. **Report of the Director Planning and Development**
8. **Notices of Motion**
9. **Addendum Reports**
10. **Confidential Report of the General Manager**
 Planning and Development

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, 3 MAY, 2016 IN THE COUNCIL CHAMBERS, CITY ADMINISTRATIVE CENTRE, BRIDGE ROAD, NOWRA COMMENCING AT 4.00 PM

The following members were present:

Clr White - Chairperson
Clr Kearney
Clr Anstiss
Clr Gash
Clr Wells
Clr Baptist – arrived 4.09pm
Clr Findley
Clr Guile
Clr Watson
Clr Kitchener
Russ Pigg – General Manager

Apologies:

Apologies were received from Clr Tribe, Clr Robertson

1. Confirmation of the Minutes of the Development Committee meeting held on Tuesday 5 April 2016 [Index](#)

MOTION:

Moved: Kearney / Second: Anstiss

(MIN16.339) RESOLVED that the Minutes of the Development Committee meeting held on Tuesday 5 April 2016 be confirmed.

CARRIED

2. Deputations [Index](#)

Penny Davidson addressed the Committee in relation to Item 7, Page 27 – Huskisson Foreshore Precinct Masterplan and Development Concepts – Proposed Public Exhibition of Masterplan Concepts

Note: Clr Baptist arrived – 4.09pm.

Mario Zanuttini addressed the Committee in relation to Item 8, Page 32 – Planning Proposal (Rezoning) – 5C Creston Grove, Bomaderry (Ride Australia)

Justin Sanders addressed the Committee in relation to Item 8, Page 32 – Planning Proposal (Rezoning) – 5C Creston Grove, Bomaderry (Ride Australia)

3. Procedural Motion – Bring Item Forward

[Index](#)

PROCEDURAL MOTION:

Moved: Wells / Second: Baptist

That the matter of the following items be brought forward for consideration.

- Item 7, Page 27 Huskisson Foreshore Precinct Masterplan and Development Concepts
- Item 8, Page 32 – Planning Proposal (Rezoning) – 5C Creston Grove, Bomaderry (Ride Australia)

CARRIED

4. Item 7 - Huskisson Foreshore Precinct Masterplan and Development Concepts – Proposed Public Exhibition of Masterplan Concepts File 50840E [Index](#)

MOTION:

Moved: Findley / Second: Baptist

(MIN16.340) RESOLVED that, in accordance with the Committee's delegated authority from Council, that the Committee:

- Publicly exhibit the Draft Huskisson Foreshore Masterplan, including the four potential Development Concepts, for a minimum period of 40 days;
- Notify the Community Reference Group members, relevant Community Consultative Bodies, Business Chambers and landowners within the precinct of this resolution and the exhibition arrangements;
- Receive a further report following the completion of the public exhibition which comments on a preferred Masterplan option.
- The information placed on public exhibition includes:
 - All images and models depicting the current street footprint of the existing development.
 - The full spectrum of views related to the Development Concepts.

CARRIED

FOR: Kearney, Anstiss, Gash, Wells, Baptist, Findley, Kitchener, White, Russ Pigg

AGAINST: Guile, Watson

5. Item 8 - Planning Proposal (Rezoning) - 5C Creston Grove, Bomaderry (Ride Australia) File 52920E(PDR) [Index](#)

MOTION:

Moved: Wells / Second: Watson

(MIN16.341) RESOLVED that, in accordance with the Committee's delegated authority from Council, that:

-
- a) Consideration of the Planning Proposal be deferred to allow:
- i) A further report being provided to Council on the Proponents amended proposal and approach regarding the use of Schedule 1 of the LEP
 - ii) Council to consult with Department of Planning regarding the use of schedule 1 for the proposed rezoning.
 - iii) Council to further consult with Roads and Maritime Services given the scale and activity of the proposed development
 - iv) Council and the proponent undertaking further consultation with the local residents
- b) That Council write to MP Gareth Ward to advise him of Councils decision in relation to the proposal.

CARRIED

FOR: Kearney, Anstiss, Gash, Wells, Baptist, Findley, Guile, Watson, Kitchener, White, Russ Pigg

AGAINST: Nil

REPORT OF THE GENERAL MANAGER

PLANNING AND DEVELOPMENT

6. Development Application - Stage 2 Subdivision of Dual Occupancy at Lot 2 DP539865 (no.28) The Wool Road, Vincentia. Applicant: Lee Carmichael Town Planning (LCTP). Owner: J Rawlins File DA15/2576(PDR) [Index](#)

MOTION:

Moved: Watson / Second: Wells

(MIN16.342) RESOLVED that 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.

CARRIED

FOR: Kearney, Anstiss, Gash, Wells, Baptist, Findley, Guile, Watson, Kitchener, White, Russ Pigg

AGAINST: Nil

-
7. Development Application - Proposed Community Title Subdivision of a Multi Dwelling Housing Development at Lot 201 DP 1173331 (No.54A) Hillcrest Avenue, South Nowra. Applicant: Lee Carmichael Town Planning. Owner: Blue Mantle Pty Ltd. File DA15/2588(PDR) [Index](#)
-

MOTION:

Moved: Gash / Second: Baptist

(MIN16.343) RESOLVED that, 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.

CARRIED

FOR: Kearney, Anstiss, Gash, Wells, Baptist, Findley, Guile, Watson, Kitchener, White, Russ Pigg

AGAINST: Nil

8. Variation to Shoalhaven Development Control Plan 2014, Chapter G9 Development on Flood Prone Land, to permit a two lot residential subdivision of flood free land in Lot 2 DP1196876, Bindaree Street, Greenwell Point. File SF10495(PDR) [Index](#)
-

MOTION:

Moved: Watson / Second: Baptist

(MIN16.344) RESOLVED that, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Support the variation to Chapter G9 to permit subdivision of flood free land within Lot 2 DP1196876, Bindaree Street, Greenwell Point.
- b) Application to be determined under delegated authority.

CARRIED

FOR: Kearney, Anstiss, Gash, Wells, Baptist, Guile, Watson, Kitchener, White, Russ Pigg

AGAINST: Findley

9. Shoalhaven Local Heritage Assistance Fund Program 2015/2016 File 1110E [Index](#)
-

MOTION:

Moved: Findley / Second: Wells

(MIN16.345) RESOLVED that, in accordance with the Committee's delegated authority from Council, that the Committee receive the outcome of the Shoalhaven Local Heritage Assistance Fund Program 2015-2016 for information.

CARRIED

10. Stage 2 Housekeeping Amendments - Shoalhaven Development Control Plan 2014
File 50013e(PDR) [Index](#)

MOTION:

Moved: Watson / Second: Baptist

(MIN16.346) RESOLVED that, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Adopt the draft Stage 2 Housekeeping Amendments to Shoalhaven Development Control Plan 2014 which includes proposed amendments to the Development Control Plan dictionary and the following existing Shoalhaven Development Control Plan 2014 Chapters as detailed in Attachment "A":
 - Chapter G6 – Coastal Management Areas
 - Chapter G9 – Development on Flood Prone Land
 - Chapter G10 – Caravan Parks in Flood Prone Areas
 - Chapter G17 – Business, Commercial and Retail Activities
 - Chapter G20 – Industrial Development
 - Chapter NB1 – Mundamia Urban Release Area
- b) Exhibit the draft amendments for a minimum period 28 days in accordance with legislation; and
- c) Consider a further report after public exhibition of the draft amendments to:
 - Consider any submissions received,
 - Rescind POL 12/118 – Flinders Estate – Zincalume Roofs
 - Adopt the Stage 2 Housekeeping Amendments for finalisation

CARRIED

FOR: Kearney, Anstiss, Gash, Wells, Baptist, Findley, Guile, Watson, Kitchener, White, Russ Pigg

AGAINST: Nil

11. Proposed submission - State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 - New Controls for rural and regional NSW
File 31157E(PDR) [Index](#)

MOTION:

Moved: Guile / Second: Wells

(MIN16.347) RESOLVED that, in accordance with the Committee's delegated authority from Council, that the comments contained within this report form the basis of Council's submission on the proposed amendments to the State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008 - New exempt and complying development controls for rural and regional NSW.

CARRIED

FOR: Kearney, Anstiss, Gash, Wells, Baptist, Findley, Guile, Watson, Kitchener, White, Russ Pigg

AGAINST: Nil

12. Huskisson Foreshore Precinct Masterplan and Development Concepts – Proposed Public Exhibition of Masterplan Concepts File 50840E [Index](#)
-

Note: This matter was dealt with earlier in the meeting.

13. Planning Proposal (Rezoning) - 5C Creston Grove, Bomaderry (Ride Australia) File 52920E(PDR) [Index](#)
-

Note: This matter was dealt with earlier in the meeting.

There being no further business, the meeting concluded, the time being 5.30 pm.

Clr White
CHAIRPERSON

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 7 JUNE 2016

PLANNING AND DEVELOPMENT

ITEMS TO BE DEALT WITH UNDER DELEGATED AUTHORITY

1. **Development Application for proposed Men's Shed at Lot 2625 DP 235029 Clifton St, Sanctuary Point. Applicant: Sanctuary Point Men's Shed Incorporated. Owner: Shoalhaven City Council. File DA15/2646 (PDR) [Index](#)**

SECTION MANAGER: Cathy Bern.

PURPOSE:

The land is designated as Community Land and as a building is being constructed that is not an exempt building Section 47E of the Local Government Act 1993 states that Council cannot delegate its powers of determination. The purpose of the report is to seek the Development Committees recommendation prior to the matter being reported to Council for determination of the development application.

- # RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee resolve to support the application for a proposed men's shed in accordance with the conditions detailed in Attachment "A".**

OPTIONS

1. Resolve that the Development Application (DA) be supported as recommended in the attached section 79C assessment report.

This option allows the development to proceed as proposed.

2. Resolve to not support the DA and state the reasons for not supporting the application based on planning grounds.

This option would be inconsistent with the adopted Sanctuary Point Action Plan which identified a future men's shed in this location.

3. Adopt an alternative recommendation and provide direction to staff.

DETAILS

Proposal

The DA seeks approval for the construction of community facility to be used as a men's shed in Clifton Park, Sanctuary Point. The building measures 30m x 15m and is 5.6m to the ridge line. Car parking is proposed to be provided along the road reserve at 90° to the road in accordance with Council's overall plan for the development of the park.

See **Attachment "B"** for a copy of the DA plans.

The Site

The subject site is a public reserve (Clifton Park) that until recently had no buildings or particular defined uses. Over the last 12-24 months or so, a children's learn to ride cycling area and community garden was constructed and an area allocated for a future men's shed. The subject land is zoned RE1 Public Recreation in which community facilities are listed as being permissible with consent under the Shoalhaven Local Environmental Plan 2014 (SLEP2014).

FINANCIAL IMPLICATIONS:

In the event that Council decides to refuse the development, the applicant has the right to lodge an appeal with the Land and Environment Court. This litigation has cost implications for Council. Further, the objectors could also seek to challenge Council's decision if approved. Again, this has potential cost implications for Council.

COMMUNITY ENGAGEMENT:

In accordance with Council's "Community Consultation Policy" the application was notified to surrounding property owners (25m buffer) during the period 23/12/15 – 21/1/16. A request was received from the Basin Villages Forum to extend the notification period due to the Christmas holiday period and that they had not had a meeting to discuss the application. Council granted an extension to the forum until the 19th February to allow time for them to have a meeting on the 15th February and make a submission.

A total of 20 submissions were received, 17 supporting the proposal and 3 objecting. A submission from the Basin Villages Forum was not received. The key issues raised objecting to the proposal were:

- Conflict of use from noise, parking, emissions – shed should be located in an industrial area not a residential area.
- Excessive noise from use of equipment; health and safety risk from chemicals, dust, industrial gases;
- Increased traffic from member's cars, trucks, trailers, forklifts, etc creating danger to other users of the park.
- Negative visual amenity

-
- Why should this community group get to use the park and not others?
 - Lights from vehicles leaving the carpark will shine directly into property opposite.

Further details on the above issues raised are provided in the section 79C Assessment Report.

ASSESSMENT

- # The application was assessed under the provisions of section 79C of the *Environmental Planning and Assessment Act 1979*. The assessment is provided as **Attachment 'C'** to this report.

CONCLUSION

The assessment of the application concluded that the proposed men's shed is permissible in the zone, is consistent with the adopted Sanctuary Point Placemaking Action Plan, has proposed adequate car parking spaces, can be constructed and operated to manage noise emissions so as not to cause amenity issues to nearby properties, and is capable of complying with the Building Code of Australia and the RFS Planning for Bushfire Protection 2006.

2. **Development Application - Proposed Strata Subdivision of Multi Dwelling Housing Development (3 units) at Lot 41 DP807870 (no.57) Argyle Street, Vincentia. Applicant: Rygate & West. Owner: Sandygate Pty Ltd. File SF10500 (PDR) [Index](#)**

SECTION MANAGER: Cathy Bern.

PURPOSE:

The purpose of this report is to seek Council direction with respect to a policy variation regarding a proposed Strata Title subdivision. The variation is with respect 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 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 located <1km west away from the Vincentia shops. (**Attachment A**). The lot has a total area of 1,111m². The land is zoned R1 – General Residential, with a minimum lot size overlay of 500m² (**Attachment B**).

The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To identify land suitable for future urban expansion*

- # The application is for a Strata Title subdivision of an approved and constructed (OC14/1449) multi dwelling housing development (as approved under DA14/1449). (**Attachment C**).

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(4):

Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing,

(4) development consent may be granted to the subdivision of land in Zone R1 General Residential or Zone R3 Medium Density Residential on which development of the purpose of multi dwelling housing has been carried out if the area of each resulting lot will be equal to or greater than 350 square metres.

The proponent proposes to subdivide the multi dwelling housing development by way of a Strata Title Subdivision. In this particular case, the proposed lots for the dwellings are proposed to be 218m², 238m², 286m².

The proposal complies with the essential requirements of Shoalhaven Development Control Plan 2014 (SDCP 14) Chapter G11 Section 5.15 *Strata and Community Title Subdivision*.

Table 1 – Lot Sizes

Lot number	Lot size m ²	% variation from 350m ² standard
1	218m ²	38%
2	238m ²	32%
3	286m ²	19%
Common property	Not stated (1,111m ² – 742m ² = 369m ²)	complies

This application seeks to vary the 350m² minimum lot size development standard under Clause 4.1A (4) of the SLEP 2014 for the proposed dwelling lots, lots 1-3.

The subdivision of the multi dwelling 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. These developments will provide an additional type of housing, i.e. multi dwelling housing developments that achieves the relevant objectives of the R1 zone, which is compatible with the low density residential environment.

Clause 4.6 – Exception 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 D**.

As per the Department of Planning and Environment (DPE) *Varying development standards: A Guide* 2011 (The Guide), any development application that proposes a variation under clause 4.6 greater than 10% of the development standard must be determined by the Development Committee or full Council, not the General Manager, or nominated staff. This application includes 2 lots both 33.5% less than the development standard.

Clause 4.6(3) provides for exceptions to a development standard subject to a written request that adequately justifies the exception (variation) from that standard by demonstrating that:

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

Further, according to Clause 4.6(4) 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 objectives for development within the zone in which the development is proposed to be carried out."*

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 DP&E can be assumed, with regard to the DP&E publication – Varying development standards:

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.

FINANCIAL IMPLICATIONS:

Should the application be determined by way of refusal, there is the possibility of a challenge 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 application, was not notified because it is considered that subdivision of an approved multi dwelling housing development or existing dual occupancy is unlikely to adversely affect other property owners.

CONCLUSION

In summary:

- All of the proposed dwelling lots would be <350m², with variations of approximately 38%, 32% & 19%. Strict compliance with the development standard will hinder attainment of the objects of the Environmental Planning and Assessment Act 1979 and objectives of the R2 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.

3. **Development Application - Proposed Community Title Subdivision of Multi Dwelling Housing Development (3 units) at Lot 8 DP2886 Sec 22 (no.15) Karowa Street, Bomaderry. Applicant: Allen Price & Scarratts. Owner: SE Milligan.**
File SF10503 (PDR) [Index](#)
-

SECTION MANAGER: Cathy Bern.

PURPOSE:

The purpose of this report is to seek Council direction with respect to a policy regarding a proposed Community 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 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 located <500 west of Bomaderry Railway Station. (**Attachment A**). The lot currently has a total area of 1,011m². The land is zoned R1 – General Residential, with a minimum lot size overlay of 500m² (**Attachment B**).

The objectives of the R1 zone are:

- To provide for the housing needs of the community.
 - To provide for a variety of housing types and densities.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To identify land suitable for future urban expansion
- # The application is for a Community Title Subdivision of an approved multi dwelling housing development (as approved under DA15/2392). (**Attachment C**).

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(4) *Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing*,

(4) development consent may be granted to the subdivision of land in Zone R1 General Residential or Zone R3 Medium Density Residential on which development of the purpose of multi dwelling housing has been carried out if the area of each resulting lot will be equal to or greater than 350 square metres.

The proponent proposes to subdivide the multi dwelling housing development by way of a Community Title Subdivision. In this particular case, the proposed lots for the dwellings are proposed to be 326m², 225m², 259m² and Common Property 200m².

The proposal complies with the essential requirements of Shoalhaven Development Control Plan 2014 (SDCP 14) Chapter G11 Section 5.15 *Strata and Community Title Subdivision*.

Table 1 – Lot Sizes

Lot number	Lot size m ²	% variation from 350m ² standard
1 (Common Property)	200m ²	42.8%
2	225m ²	35.7%
3	326m ²	6.8%
4	259m ²	26%

This application seeks to vary the 350m² minimum lot size development standard under Clause 4.1A (4) of the Shoalhaven Local Environmental Plan 2014 for the proposed dwelling lots, lots 1-3.

The subdivision of the multi dwelling 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. These developments will provide an additional type of housing, i.e. multi dwelling housing developments that achieves the relevant objectives of the R1 zone, which is compatible with the low density residential environment.

Clause 4.6 – Exception 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 D**.

As per the Department of Planning and Environment (DPE) *Varying development standards: A Guide* 2011 (The Guide), any development application that proposes a variation under clause 4.6 greater than 10% of the development standard must be determined by the Development Committee or full Council, not the General Manager, or nominated staff. This application includes 2 lots of 35.7 % and 26% less than the development standard.

Clause 4.6(3) provides for exceptions to a development standard subject to a written request that adequately justifies the exception (variation) from that standard by demonstrating that:

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

Further, according to Clause 4.6(4) 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 objectives*

for development within the zone in which the development is proposed to be carried out.”

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:

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

FINANCIAL IMPLICATIONS:

Should the application be determined by way of refusal, there is the possibility of a challenge 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 application, has been notified. However, at the time of writing the report the notification period has not yet

completed. If submissions are received, information will be provided at the Committee meeting.

CONCLUSION

In summary:

- All of the proposed dwelling lots would be <350m², with variations of approximately 35.7%, 6.8% & 26%. Strict compliance with the development standard will hinder attainment of the objects of the Environmental Planning and Assessment Act 1979 and objectives of the R2 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.

4. Huskisson Town Centre - Service Lanes Review

File 10132E (PDR) [Index](#)

SECTION MANAGER: Gordon Clark.

PURPOSE:

Obtain Council endorsement to amend the Shoalhaven Development Control Plan (DCP) 2014 and Shoalhaven Contributions Plan (CP) 2010 in relation to the proposed rear service lanes in the Huskisson town centre.

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

- a) **Amend Shoalhaven Development Control Plan Chapter N18, following the exhibition of the Huskisson Foreshore Masterplan, to incorporate the following changes:**
 - i) **Remove the proposed service vehicle link between the Currumbene Street Service Lane and Currumbene Street (through No. 12 Currumbene Street).**
 - ii) **Reduce the width of the Currumbene Street Service Lane to 8 metres wide, and show it as a 'desired' service access for properties with rear access to the lane way.**

-
- iii) **Reduce the width of the proposed Morton Street Service Lane to 8 metres wide and show it as a 'desired' service access for properties with rear access to the lane way.**
 - iv) **Maintain appropriate rear setbacks for properties fronting the laneways to ensure access can be achieved in the future.**
 - b) **Amend Shoalhaven Contributions Plan 2010 to remove the Currambene Street Service Lane from the Plan.**
 - c) **Report back to the Development Committee prior to exhibiting draft Amendments to Shoalhaven Development Control Plan Chapter N18 – Huskisson Town Centre and Shoalhaven Contributions Plan 2010.**
 - d) **Consider formalising the sections of the Morton Street Service Lane that are already owned by Council in future capital works planning.**
 - e) **Notify the affected landowners of Council's resolution.**

OPTIONS

1. Adopt the resolution - this option is preferred as it minimises the impact of the proposed service lanes on the affected landowners and limits the burden on Council to facilitate private development outcomes. However, it also requires servicing arrangements to be considered on a site by site basis as part of each individual Development Application and may result in a less coordinated outcome.
2. Resolve to not amend Shoalhaven DCP 2014 - while this option may provide a better long term outcome for the town centre as a whole, it potentially places an unfair burden on a number of landowners whose land would partially need to be acquired to facilitate the service lanes. This option also requires Council to provide the service lanes (through the CP and land acquisition) to facilitate the development of private land.
3. Resolve to remove the proposed service lanes from Shoalhaven DCP 2014 - this option is not preferred as it will potentially stifle development in the town centre and create a number of land locked parcels with no possible means of achieving access to their properties.

DETAILS

Background

Shoalhaven DCP 2014 Chapter N18 – Huskisson Town Centre currently identifies a number of proposed service lanes in the town centre to provide rear service and vehicular access to all commercial and tourist developments in the town centre. The proposed service lanes are aimed at removing service vehicles from the main commercial streets of Huskisson and also facilitating better development outcomes by providing rear access for vehicles, servicing and car parking. The proposed service lanes, known as Currambene Street Service Lane and Morton Street Service Lane are shown in Figure 1 below.

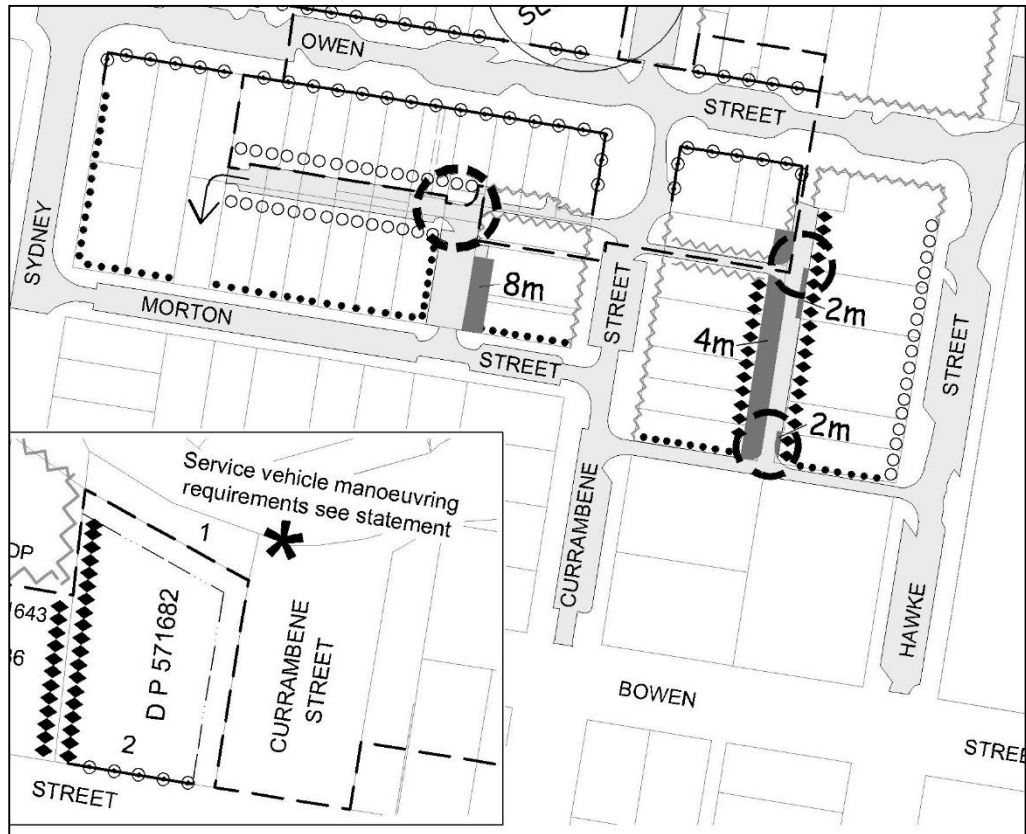


Figure 1 - Extract from Shoalhaven DCP 2014, Proposed Service Lanes

In 2012, the proposed Currambene Street Service Lane was incorporated into Shoalhaven CP 2010, which enabled Council to levy contributions towards the acquisition of land and the construction of the proposed service lane. The proposed land acquisition is shown in Figure 2 below. At the time, Council resolved not to include the proposed Morton Street Service Lane in the CP, however the proposal is still identified in the Shoalhaven DCP 2014.



Figure 2 – Extract from Shoalhaven CP 2010 - Currambene Street Service Lane Land Acquisition

In 2014, Council was approached by the then owner of 12 Currumbene Street to acquire the part of their property affected by the proposed service lane (the link between Currumbene Service Lane and Currumbene Street). At the time, Council resolved not to acquire the land, and to review the proposed service lanes identified in Shoalhaven DCP 2014.

As a result this report seeks Council endorsement to formally amend the Shoalhaven DCP 2014 and Shoalhaven CP 2010 in relation to the rear service lanes in the Huskisson town centre.

Landowner Meetings

As part of the review process, Council staff facilitated two (2) meetings with the affected landowners, who were asked to outline their preferred outcome for the proposed service lanes. Following the meetings seven (7) landowners wrote to Council outlining their preferred approach to servicing in the Huskisson Town Centre, and their comments are discussed below.

Currumbene Street Service Lane

Council staff have identified three (3) separate options for this lane which were discussed with the affected landowners and are detailed below.

Option 1 – Remove the proposed service lane from Shoalhaven DCP 2014 and Shoalhaven CP 2010, and require each individual landowner to provide safe servicing areas located on each individual property.

While this does not require land acquisition, it requires each individual property to allow enough room on site for service vehicles to manoeuvre to allow trucks to enter and exit the laneway in a forward direction.

Four (4) written submissions were received from landowners supporting Option 1 as the preferred outcome.

Option 2 – Retain the service lane in Shoalhaven DCP 2014 in its current form.

This option would require significant land acquisition by Council (particularly in relation to 12 Currumbene Street) which was not supported by the landowners. While this option requires land acquisition from the rear of each property, it allowed for servicing to occur from the laneway, which potentially allows for a greater eventual development footprint and better development outcome for each property. However, this option requires Council to fund a portion of the cost of the land acquisition and construction of the laneway, for the benefit of only a small number of landowners.

Option 3 – Provide a turning circle at the end of the laneway to allow trucks to turn around safely.

Like option 2, this option would require significant land acquisition by Council which was not supported by the landowners. Similarly this option allowed for servicing to occur from the laneway, which potentially allows for a greater eventual development footprint and better development outcome for each property. However, this option again requires

Council to fund a portion of the cost of the land acquisition and construction of the laneway, for the benefit of only a small number of landowners.

Recommended approach

It is recommended that Council modify the proposed service lane in Shoalhaven DCP 2014 and remove from Shoalhaven CP 2010, and require each individual landowner to provide safe servicing areas located on each individual property. This will require each individual property, as part of a redevelopment proposal, to allow enough room on site for service vehicles to manoeuvre to allow trucks to enter and exit the laneway in a forward direction.

This option is preferred by the landowners and removes Council's financial liability to fund a portion of the cost of providing the service lanes. It is recommended that Shoalhaven DCP 2014 be amended to show the service lane as a 'desirable' service access and to incorporate appropriate rear setbacks to ensure servicing can be achieved on each individual property.

Morton Street Service Lane

Council staff have identified three (3) separate options for this lane which were discussed with the affected landowners and are detailed below.

Three (3) written submissions were received in relation to this lane. Two (2) submissions recommended that Council acquire a 1 metre strip of land from 11 Currumbene Street (existing bakery) to facilitate better access to the adjoining driveway for 9 Currumbene Street. One (1) submission recommended that Council not proceed with the laneway in any form.

Option 1 – Maintain the service lane in Shoalhaven DCP 2014 in its current form, and incorporate the project into Shoalhaven CP 2010.

The current service lane proposal is for a 14 metre wide road reserve that would allow servicing to occur from the laneway, with some car parking and safe pedestrian access on either side of the laneway. The current proposal would require significant land acquisition and is considered somewhat excessive; and is therefore not a preferred option.

Option 2 – Reduce the width of the proposed service lane in Shoalhaven DCP 2014 and incorporate the project into Shoalhaven CP 2010.

Reducing the width of the proposed service lane would facilitate rear access to all of the properties on Morton Street and Owen Street, however it would still require Council to undertake significant land acquisition from private landowners. By incorporating the project into Shoalhaven CP 2010, Council could levy contributions towards the cost of the service lane, however, Council would still be required to fund a portion of the cost for the benefit of only a small number of owners.

Option 3 - Amend Shoalhaven DCP 2014 to show the service lane as a 'desirable' service access and not include the project in Shoalhaven CP 2010. This option requires no land acquisition, and removes the financial liability to Council, however, the proposed service lane was intended to provide vehicular access to a number of parcels that currently have no practical access. If Council does not provide the laneways, individual landowners would

be required to negotiate access with their adjoining owners as part of any future development proposals.

If option 3 is supported, it is recommended that appropriate rear setbacks be included to provide a 'corridor' for a future service lane.

Huskisson Foreshore Masterplan

Council is currently in the process of preparing a Masterplan for the Huskisson Foreshore Precinct that may lead to a more significant review of Shoalhaven DCP Chapter N18 – Huskisson Town Centre. It is anticipated that the Masterplan process will be completed shortly, and it is recommended that the amendment to the service lanes be undertaken as part of a broader review of the DCP Chapter, following the completion of the Foreshore Masterplan, rather than as two separate projects.

FINANCIAL IMPLICATIONS:

Under the Shoalhaven CP 2010, Council is currently required to fund a portion of the cost of providing the Currambene Street Service Lane. By removing the project from the CP, Council will no longer be required to contribute funding towards the project.

COMMUNITY ENGAGEMENT:

Council staff facilitated a number of meetings with affected landowners to discuss the proposed service lanes, and the recommendation of the report largely reflects the feedback received at the public meetings. It is anticipated that the formal amendments to Shoalhaven DCP 2014 and Shoalhaven CP 2010 will be publicly exhibited for a minimum period of 28 days and further landowner and broader community feedback will be reviewed at that point.

5. Aboriginal Land Claim's No's 25422, 25858 and 26700 - Ulladulla File 2214E [Index](#)

SECTION MANAGER: Gordon Clark.

PURPOSE:

Obtain Council direction in regard to Aboriginal Land Claims (ALC) No's 25422, 25858 and 26700 at Ulladulla.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee advise the NSW Department of Primary Industries – Lands that Council has no objection to Aboriginal Land Claims Nos. 25422, 25858 and 26700 at Ulladulla, subject to any agreements, easements or rights of way required by Council being excluded from the claims or being resolved as part of the resolution of the Claims.

OPTIONS

1. Notify the NSW Department of Primary Industries – Lands (DPI - Lands) that Council has no objection to ALC No's. 25422, 25858 and 26700 at Ulladulla, subject to any agreements, easements or rights of way required by Council being excluded from the claims or being resolved as part of the resolution of the Claims.

This is the preferred option as it enables Council to protect and maintain water and sewer infrastructure, access for Asset Protection Zone (APZ) maintenance and current foreshore access.

2. Do not respond to the DPI - Lands submission invitation for ALC No's. 25422, 25858 and 26700 at Ulladulla. (Not recommended)

DETAILS

Background

Council received advice from the DPI – Lands on 13 April 2016 that ALC No's. 25422, 25858 and 26700 had been lodged over Lot 234 DP 755967 and Lot 7003 DP 1059895 at Ulladulla. The land subject to the claims are shown in Figures 1 and 3 below.

Shoalhaven Water had initiated the acquisition of easements for water and sewer infrastructure over the subject land, however this is on hold due to the unresolved Land Claims. Thus Shoalhaven Water has requested the DPI - Lands to prioritise these claims so that the process of creating easements to protect the infrastructure can be initiated.

Council has now been asked to provide comments on the claims (**Attachment “A”**) and specifically whether, at the date of the claim, the subject land was:

- lawfully used and occupied;
- needed or likely to be needed for an essential public purpose.

Any comment, assertion or statement Council makes regarding the claims needs to relate to the initial date of the claim, (ALC 25422 – 3 June 2010, ALC 25858 – 8 June 2010 and ALC 26700 – 24 June 2010) and be supported by evidence.

The DPI - Lands has granted Council an extension of time to respond to the claims to allow for the matter to be reported for consideration. This report seeks direction in responding to the claims.

Existing Land Use

Lot 234 DP 755967 Ulladulla

On 3 June 2010 ALC No. 25422 was lodged over Crown land at Ulladulla, identified as Lot 234 DP 755967, and on 8 June 2010, a further ALC No. 25858 was lodged over the same parcel of land.

The land is currently zoned RE1 Public Recreation under Shoalhaven LEP 2014 and is located at the intersection of Kings Point Drive and the Princes Highway Ulladulla as outlined in red in Figure 1. The southern portion of the lot contains existing sewer infrastructure which was installed in 2005 and services the southern Ulladulla residential area.

Shoalhaven Water have advised that they require a 6 metre wide easement over the sewer infrastructure.



Figure 3 – Subject Land (orange and red dashed line indicates sewer infrastructure)



Figure 4 - Subject Land Zoning

Lot 7003 DP 1059895 Ulladulla

On 24 June 2010 Aboriginal Land Claim No. 26700 was lodged over Crown land at Ulladulla identified as Lot 7003 DP 1059895.

The land is currently zoned RE1 Public Recreation under Shoalhaven LEP 2014 and is located adjacent to and south east of the Princes Highway at Ulladulla. It is bounded to the east by Racecourse Creek, Racecourse Beach to the south and the Beach Haven Holiday Resort (Caravan Park) to the west. The subject land is outlined in red in Figure 3.

The north east corner of the lot contains existing sewer infrastructure which was installed in 2005, and services the southern Ulladulla residential area. Shoalhaven Water have advised that they require a 6 metre wide easement over the existing sewer infrastructure.

The subject land also contains public access to Racecourse Beach and standard reserve signage has recently been installed on the existing beach access ways. Maintenance of the grassed areas is undertaken by the adjoining Beach Haven Caravan Park and Council has undertaken weed control over the site for many years. Public access over the land to the foreshore needs to be maintained, not only for pedestrian use but for emergency services access, as the topography of Racecourse Beach is such that either end of the beach is too steep for vehicular access. The access ways to the beach will require at least a right of way 6 metres wide.

The Beach Haven Caravan Park currently uses the cleared land surrounding their property as their bush fire APZ. The APZ is currently maintained by the owners of the caravan park. The lot is mapped as bushfire prone and fire history mapping indicates that the lot was subject to bush fire in September 2006. In accordance with the Rural Fires Act 1997, if the claim is granted, the new owner would have the same legal obligation to continue the current maintenance regime of the APZ. It is considered a better outcome to allow the caravan park owners to continue to maintain their APZ and it would be appropriate for a 20 metre wide easement to be created to the benefit of the adjoining landowners.



Figure 5 - Subject Land (orange and red dashed line indicates sewerage infrastructure)

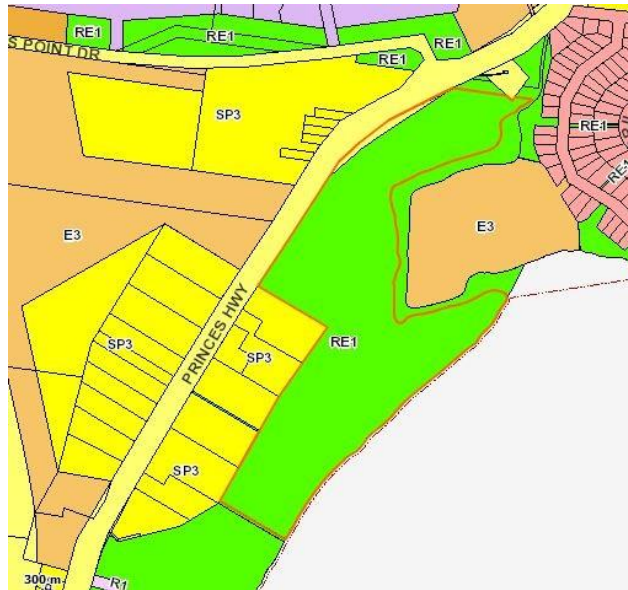


Figure 6 - Subject Land Zoning

CONCLUSION:

It is recommended that Council not object to Aboriginal Land Claims No's. 25422, 25858 and 26700 at Ulladulla, subject to any agreements, easements or rights of way outlined above to protect existing Council assets, APZs and public access being excluded from the claims or being resolved as part of the resolution of the Claims.

FINANCIAL IMPLICATIONS

It is anticipated that the cost of creating the appropriate easements and rights of way will be met by DPI - Lands. However, Shoalhaven Water have advised that the Section 88B Instruments for the sewer infrastructure have already been prepared and are awaiting finalisation subject to the outcome of the ALCs.

COMMUNITY ENGAGEMENT

Not applicable in the context of this report.

6. Shoalhaven DCP 2014 Chapter G4 Removal AND Amenity of Trees – Review File 51354E (PDR) [Index](#)

SECTION MANAGER: Gordon Clark.

PURPOSE:

Obtain agreement to exhibit a draft revised Chapter G4 Removal and Amenity of Trees for inclusion in Shoalhaven Development Control Plan (DCP) 2014 and to commence preparation of the associated Planning Proposal (PP) to amend the Clauses Map in Shoalhaven Local Environmental Plan (LEP) 2014 to be consistent with the DCP.

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

- a) **adopt the draft revised Shoalhaven DCP 2014 Chapter G4 Removal and Amenity of Trees for public exhibition and exhibit for a minimum period of 28 days; and**
- b) **commence the preparation of a Planning Proposal to amend Shoalhaven LEP 2014 Clause 5.9 mapping to ensure the Clause 5.9 mapping is consistent with the DCP Chapter G4 maps and submit to State Government for initial Gateway determination.**

OPTIONS

1. Adopt the draft revised DCP 2014 Chapter G4 for exhibition and prepare a PP to ensure the LEP and DCP mapping is ultimately consistent. This is the preferred option as it will ensure that the issues identified through recent court cases with the LEP and DCP are rectified.
2. Adopt an alternative recommendation – depending on its nature, this could delay the exhibition of the revised DCP chapter and the progression of the associated PP and leave the issues that have been identified unresolved.

DETAILS

Background

Through the Standard Instrument LEP process, the State Government introduced a standard clause for the management of tree removal (*Clause 5.9 Preservation of trees and vegetation*) to replace previous Tree Preservation Orders (TPO) as the mechanism to require consent for tree removal in certain circumstances. The clause requires that Council prepare a DCP to prescribe the kind of trees or vegetation to which the clause applies and for which the consent of Council is required. The Shoalhaven LEP 2014 contains Clause 5.9 and Shoalhaven DCP 2014 contains the corresponding chapter (Chapter G4 Removal and Amenity of Trees). This chapter was based on Council's previous TPO which required the consent of Council for the removal of trees in specified circumstances – generally for trees in urban areas and some limited instances in rural areas.

Chapter G4 Review

The review of Chapter G4 arose from a particular incident of illegal clearing of land at Griffin Street, Callala Bay. Council undertook successful legal action in the Land and Environment Court (LEC) (*Council of the City of Shoalhaven v Elachi* [2015] NSWLEC 85). However, the LEC decision highlighted issues in relation to inconsistencies between the LEP and DCP and the potential for misinterpretation of the current DCP controls.

As a result Locale Consulting Pty Ltd were engaged to undertake the following:

- planning review to:
 - Ensure a clear legal framework, particularly the relationship between Shoalhaven LEP 2014 and Shoalhaven DCP 2014;

-
- Simplify content, remove any inconsistencies and potential for misinterpretation; and
 - legal review taking into account the LEC decision.

Following the prepared draft revised DCP chapter, an appeal was lodged against the LEC decision. The appeal was unsuccessful but raised further issues with the LEP and DCP, resulting in a further legal review and further revisions to the draft chapter.

Draft Revised Chapter

- # The proposed amendments to the DCP Chapter do not change the extent of its application, and do not impose more onerous controls on landowners. The draft revised DCP Chapter is intended to clarify the content to improve interpretation and address issues raised in the LEC judgements. The draft revised Chapter is provided as **Attachment 'A'**.

The proposed amendments include:

- Renaming from “Removal and Amenity of Trees” to “Tree and Vegetation Management”.
- Clarifying the purpose of Chapter and simplifying its format.
- Making terminology consistent throughout.
- Clarifying arborist qualifications.
- Clarifying that a building must be ‘lawful’ building for 45 degree rule to apply.
- Removing the dual approval process – permit vs DA.
- Creating a new section on the approval process.
- Adding a requirement to identify “exempt” development for which tree or vegetation removal is a pre-cursor.
- Removing any duplicate controls e.g. bushfire, heritage.
- Add and/or clarify advisory notes.
- Removing references to Illawarra Regional Environmental Plan (no longer in force).
- Limiting the exemptions to those related to the species, size or location to link back to clause 5.9(2) of the LEP.
- Simplifying controls in Section 5.4 given that Clauses 5.9(5) and (6) of LEP state that the clause does not apply where:
 - Council is satisfied the tree or other vegetation is dying or dead and is not required as the habitat of native fauna; or
 - Council is satisfied that the tree or other vegetation is a risk to human life or property.
- Amending Map Sheet 14 to remove an area of developed urban land that was inadvertently mapped as a “paper subdivision”.

Planning Proposal

The review also highlighted a discrepancy between the LEP and DCP maps in that rural roads and category 1 and 2 waterways are not mapped on the Clauses Map in the LEP but are shown in the DCP. The LEP maps need to be amended to ensure the consistent application of Clause 5.9 of the LEP and the DCP. The PP will only amend the Clauses Map in the LEP; it is not proposed to make any changes to Clause 5.9 (it is a mandated clause set by State Government that Council cannot change).

Conclusion

To ensure that the legal interpretation issues identified through the LEC decisions are addressed, the draft revised Chapter should be adopted for exhibition and a PP prepared to amend the LEP Clauses Map and submitted to State Government for initial Gateway determination.

Councillors were provided with detailed briefings on this matter on 28 January 2016 and 28 April 2016. The slides from these briefings were also made available on the Councillors SharePoint.

FINANCIAL IMPLICATIONS:

The review of the DCP chapter and the preparation of the PP will be managed within the existing budget of the Strategic Planning Section.

COMMUNITY ENGAGEMENT:

The exhibition of the draft revised DCP Chapter and the PP will be conducted in accordance with Council's Community Engagement Policy to 'inform' and 'consult', and also comply with relevant legislative requirements. The outcomes from the exhibition will be reported to Council for consideration.

Tim Fletcher

DIRECTOR PLANNING AND DEVELOPMENT SERVICES

R.D Pigg

GENERAL MANAGER

REPORT OF DIRECTOR PLANNING AND DEVELOPMENT SERVICES

DEVELOPMENT COMMITTEE

TUESDAY, 7 JUNE 2016

PLANNING AND DEVELOPMENT

ITEMS TO BE DEALT WITH UNDER DELEGATED AUTHORITY

7. **Development Application 16/1444 - Proposed alterations and additions at Lot 1 DP748780, 62 Basin View Parade, Basin View. Applicant: Freelance Home Improvements (North Nowra). Owner: R and N Pigg** **File DA16/1444** [Index](#)

The General Manager has declared a pecuniary interest in this matter being the landowner. The General Manager has taken no part in consideration of this report and the Mayor has referred this matter to the Director for Planning and Development to deal with.

SECTION MANAGER: Cathy Bern.

PURPOSE

The purpose of this report is to recommend Council's agreement to a variation to the building line to Basin View Parade in respect of the proposed garage, a variation to the side setback in respect of the proposed carport, and a variation to the side setback requirements of section 5.2.3 of Chapter G6 of Shoalhaven DCP 2014.

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

- a) **confirm support for the variation of the building line to Basin View Parade to 3.5m for the proposed garage, the side setback to 200mm for the proposed carport, and the variation of the side setback under section 5.2.3 of Chapter G6 of Shoalhaven DCP 2014;**
- b) **The application be determined under delegated authority.**

OPTIONS

- 1. Resolve to support the proposed variations to the building line and side setbacks. (This would enable the development, as submitted, to proceed subject to development consent being granted.)
- 2. Resolve not to support the proposed variations. (This would result in the applicant needing to reconsider the design of the proposal or possibly not proceeding with the garage and carport elements of the proposal.)

DETAILS

Background

- # The subject land is Lot 1 DP748780, 62 Basin View Parade, Basin View. It is a waterfront lot on the southern side of Basin View Parade between Mathie Street and the boat ramp area in Basin View Reserve. **(Attachment A)**

The application is for:

- Internal alterations and additions to existing living areas;
- Demolition of the existing carport;
- Addition of a new garage and carport;
- Removal of surplus garden sheds; and
- Installation of screen landscaping at the front of the property.

- # (Refer to **Attachment B**)

The site is subject to a building line of 7.5m (for allotments with a depth of 30.5m or more in existing subdivisions) and a side setback of 900mm to walls and 450mm from eaves and gutters, under Chapter G12 (Dwelling Houses et al) of Shoalhaven DCP 2014.

Additional side setback requirements are specified in section 5.2.3 of Chapter G6 (Coastal Management Areas) of the DCP as the lot lies between the public road and the waterfront. This section provides that one side setback of 10% of the width of the lot (in this case 10% of 21m = 2.1m) is provided so that opportunities are provided for intermittent views from the public road through to the water.

Applicant's submission – request for variation to acceptable solutions

- # The applicant has made a submission in support of the proposed variations. This is included in the Statement of Environmental Effects (refer to **Attachment C**).

FINANCIAL IMPLICATIONS:

Should the application be determined by way of refusal, the applicant is entitled to appeal to the Land and Environment Court. Council would incur costs in defending its decision in this event.

There are no other financial implications.

COMMUNITY ENGAGEMENT:

In accordance with Council's Community Consultation Policy the application was notified to adjoining and adjacent owners within a 25m radius of the property. One (1) submission was received. The submission commented that: *"if an additional storey is added to this home, our property at....would be affected."*

In response, a storey is not being added to the property. The development includes an attached car port, new garage and rear sunroom and deck extension at the rear.

CONSIDERATIONS:

The application as a whole has been assessed under section 79C of the Environmental Planning and Assessment Act 1979.

Front building line variation (proposed garage)

The applicant states that, by positioning the garage in front of the house, the following outcomes are achieved:

- A usable courtyard space is created
- Solar access to the living areas of the existing house is maintained
- There will be no loss of amenity to neighbouring properties with regard to overshadowing, privacy or views
- The proposed screening vegetation along the front boundary will maintain the existing streetscape quality
- Sight lines for traffic will be unaffected

The applicant notes that there are many examples of properties along the southern side of Basin View Parade where there are buildings within the 7.5m setback. The applicant considers that this is because the land on the water side of most existing dwellings slopes dramatically by more than 5m to the water's edge, resulting in unsuitability for building garages.

Assessment

It is agreed that there is no opportunity to locate the garage behind the existing dwelling as there is insufficient width for vehicles to pass the existing dwelling. The land beyond the dwelling is also, as the applicant states, steep and unsuitable for building the garage. It is further noted that many properties along this stretch of Basin View Parade have their "front yard" oriented to the water and so the street frontage area, which is generally level and has good access to the public road, assumes an important role of vehicle access and parking, among others.

Properties in the vicinity of the subject land where buildings are located within the 7.5m front building line are shown on the map at **Attachment D**.

There is room to locate the garage so that it would comply with the 7.5m setback, but this would reduce the distance between the garage and the dwelling to less than 2m. This would greatly reduce the usefulness of the proposed courtyard area, reduce solar access to the living areas of the dwelling and present a "crowded" relationship between the buildings when viewed from the street. The proposed arrangement is considered to provide a reasonable balance of utility for the owner and an acceptable streetscape for the community and takes into account site attributes.

It is proposed to provide additional screen landscaping to the front and western boundaries which will have the effect of partially screening the proposed garage. The garage is proposed to have wall and roof colours that match those of the existing dwelling which,

when combined with the proposed landscaping, means that it should integrate well into the existing streetscape.

Accordingly the variation of the front building line to 3.5m is supported.

Side setback (carport)

The applicant notes that the carport is replacing an existing carport that is positioned at the same location and so the closest post will be 200mm from the side boundary. The structure is an open one and so all view corridors will be maintained. Being a new structure the appearance will be greatly improved.

Assessment

Basically the result of this aspect of the application will be the replacement of an old carport with a new structure of the same dimensions, without any change to site impacts. There appear to be no adverse impacts arising from the existing structure.

Accordingly the variation to the side setback for the carport to 200mm is supported.

Side setback under Section 5.2.3 of Chapter G6 (Coastal Management Areas) of Shoalhaven DCP 2014

This section of Chapter G6 of the DCP provides that one side setback of 10% of the width of the lot (in this case 10% of 21m = 2.1m) is provided so that opportunities are provided for intermittent views from the public road through to the water.

The applicant states that “with the irregular shape of the block and the existing siting of the dwelling and carport the proposed alterations and additions will have no impact on these views. The replacement carport will be similar to the existing being an open structure.”

Assessment

The intent of this section is to provide intermittent views from the public road through to the water. The existing dwelling is located approximately 1.2m from the eastern boundary and the existing carport 200mm from the western boundary. The lot is irregular with the proposed garage to be located a minimum of 900mm from the western boundary, but approximately 7m inside the line of the eastern wall of the existing house, due to the skewing of the eastern boundary. The additions will not impact on the extent of existing views through the site.

Accordingly the variation to the side setback under Section 5.2.3 of Chapter 6 of Shoalhaven DCP 2014 is supported.

CONCLUSION

In summary:

- The variation to the front building line to 3.5m for the proposed garage is supported as it will allow the owner to make effective use of a suitable area of the land and with the proposed building design, colours and landscaping will be compatible with the existing streetscape character;
- The variation to the side setback to 200mm for the proposed carport is supported as the carport is simply replacing an existing structure of the same size and location and the net result will be the improved appearance of the new structure; and
- The variation to the side setback under Section 5.2.3 of Chapter 6 of SDCP 2014 is supported as the proposed additions will not impact on the extent of existing views through the site.

Tim Fletcher

DIRECTOR PLANNING AND DEVELOPMENT SERVICES

NOTICES OF MOTION
DEVELOPMENT COMMITTEE
TUESDAY, 7 JUNE, 2016

8. Proposed Strategic Planning & Urban Design Overlay - Nowra-Bomaderry **File 53422E [Index](#)**

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

Recommended that the General Manager develop a report for Council's consideration of the creation of a resource document that is 'visual' in nature and shows the Future Vision of Nowra-Bomaderry Urban Area in the form of a Strategic Overlay that presents desired urban design, land use planning, heritage conservation and other outcomes for the various precincts that make up this key area.

Background:

Nowra-Bomaderry is identified in the new Illawarra-Shoalhaven Regional Plan as our "major regional centre" and the "Nowra Centre" is also identified in this plan as a "key economic driver". Council has the Nowra-Bomaderry Structure Plan and Nowra CBD Masterplan in place and recently completed further detailed planning that identifies building height and associated urban development controls for the CBD. Work has also recommenced on a masterplan for the Shoalhaven Riverfront Precinct.

This NOM proposes that Council now consider the development of an overarching explanatory document/ booklet showing Council's preferred Vision for Nowra-Bomaderry; a big picture approach to the desired future direction and potential for the town and presenting in one document the many concepts, ideas and strategic plans for this important and growing urban area. It should show what we currently have in place in a strategy planning sense and show where we are heading in the next 10 years.

The intention is to create a reference document that can be kept updated, to serve as a guide for future interest in development while also presenting important considerations, such as: design principles, acknowledgement of heritage values, recreation, green space, treed avenues, laneways, affordable housing and identifying the numerous precincts being considered such as the health, river and residential precincts.

The role of the overarching overlay should not be seen as an additional layer of planning or a new control, but rather serve as a discussion paper or explanation of current thinking and urban planning concepts to trigger a bigger conversation around appropriate new zones for a new mix of density considerations and land uses to suit future growth and modern lifestyles while preserving the character, historical values and amenity of a rural/regional river town.

An example of this type of graphical presentation which is currently in place, planned or envisaged has been used to promote the Townsville Waterfront redevelopment and can be viewed on the internet at: <https://www.townsville.qld.gov.au/building-planning-and-projects/council-projects/priority-development-area>

Funding will come from within the existing Strategic Planning Section Budget.

Signed
Clr Baptist
Clr White

CONFIDENTIAL BUSINESS PAPER AGENDA

PLANNING & DEVELOPMENT

1. **Regional Development Application for an eco-tourist facility, function centre and associated infrastructure - Lot 13 DP 707955 (No.801) Kangaroo Valley Road, Bellawongarah – Class 1 Appeal lodged with the Land and Environment Court of NSW. Applicant/Owner: Camberlee Investments Pty Limited**

Reason

Section 10A(2)(g) - Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

It is not in the public interest to disclose this information as it may impact on the ability of Council to conduct appropriate legal proceedings.

Pursuant to Section 10A(4) the public will be invited to make representation to the Council meeting, before any part of the meeting is closed, as to whether that part of the meeting should be closed.