

## SHOALHAVEN CITY COUNCIL

### DEVELOPMENT COMMITTEE

To be held on Tuesday, 1<sup>st</sup> December, 2009  
Commencing at the conclusion of the Crown Reserve, Community and Commercial Operations  
Committee (commencing at 4.00pm).

25<sup>th</sup> November, 2009

Councillors,

#### NOTICE OF MEETING

You are hereby requested to attend a meeting of the Development Committee of the Council of the City of Shoalhaven, **to be held in Committee Rooms 1, 2 and 3, City Administrative Centre, Bridge Road, Nowra on Tuesday, 1<sup>st</sup> December, 2009 commencing at the conclusion of the Crown Reserve, Community and Commercial Operations Committee (commencing at 4.00pm)** for consideration of the following business.

R D Pigg  
General Manager

#### Membership (Quorum – 7)

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

#### BUSINESS OF MEETING

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

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

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

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

Cell Phones:

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

## **LOCAL GOVERNMENT ACT 1993**

### **Chapter 3**

#### **Section 8(1) - The Council's Charter**

(1) The council has the following charter:

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

---

## TABLE OF CONTENTS

<b>STRATEGIC PLANNING AND INFRASTRUCTURE</b> .....	<b>1</b>
1. Shoalhaven Contributions Plan Draft Amendment No 77.3 - Planning Area 3 Roads File 28709E (PDR) .....	1
2. Status Report - Verons Estate Rezoning Investigations and Budget Issues File 1422E (PDR) .....	4
3. Quarterly Report - Planning Work Program (Environmental Planning & Assessment Act Projects) File 28283 (PDR).....	7
4. Council Policy - Rezoning Request Guidelines File 23425E, 14690E (PDR) .....	14
5. Nebraska Estate Rezoning Investigations File 2653E (PDR) .....	17
<b>DEVELOPMENT AND ENVIRONMENTAL SERVICES</b> .....	<b>23</b>
6. Abolishment of Places of Public Entertainment Licences File 3167E .....	23
7. Request to waive outstanding court imposed fine - Greg Jones. File 25415E.....	26
8. Draft Development Control Plan 120 - Commercial Use of Public Footpaths and Development Control Plan 18 - Car Parking Code (Draft Amendment No 3). File 39733E, 5213E (PDR) .....	30
9. Tourist Cabin Development (1 x 1 bedroom cabin and change of use of 1 bedroom within dwelling to a bed and breakfast room) - Lot 4 DP 875541 - 21 Wattamolla Road, Woodhill. Applicant: Adrian Turnbull. Owner: Adrian and Kerry Turnbull. File DA09/2339 (PDR).....	34
<b>STRATEGIC PLANNING AND INFRASTRUCTURE / DEVELOPMENT AND ENVIRONMENTAL SERVICES</b> .....	<b>39</b>
10. Shoalhaven Contributions Plan draft Amendment No 101 – Huskisson Business 3(g) Zone Development Precincts File 40529E (PDR) .....	39
<b>CONFIDENTIAL BUSINESS PAPER AGENDA</b> .....	<b>42</b>

---

## **REPORT OF GENERAL MANAGER**

### **DEVELOPMENT COMMITTEE**

**TUESDAY, 1 DECEMBER 2009**

## **STRATEGIC PLANNING AND INFRASTRUCTURE**

### **1. Shoalhaven Contributions Plan Draft Amendment No 77.3 - Planning Area 3 Roads File 28709E (PDR)**

---

**Purpose of the Report:** To inform Council of the outcomes of the public exhibition of Shoalhaven Contributions Plan Draft Amendment No 77.3 – Planning Area 3 Roads.

**RECOMMENDED that in relation to the Shoalhaven Contributions Plan Draft Amendment No 77.3 – Planning Area 3 Roads:**

- a) Council adopt the draft Amendment as exhibited;
- b) Council place a Notice of Adoption in local newspapers and on Council's website within 28 days of adoption of the draft Amendment;
- c) Council seek approval from the Minister for Planning for roads contributions project 03ROAD2016 to exceed the \$20,000 residential contribution threshold through the public exhibition of the draft Shoalhaven Contributions Plan 2010; and
- d) A further report be submitted to Council on the reallocation of Development Contributions for contributions projects deleted in the Shoalhaven Contributions Plan Amendment No 77.3 – Planning Area 3 Roads.

**Options:**

Council may choose to:

- 1) Adopt the draft Amendment as exhibited.
- 2) Adopt the draft Amendment with changes.
- 3) Not adopt the draft Amendment.

**Details/Issue:**

**Background:**

Council resolved on 8<sup>th</sup> September 2009 to publicly exhibit draft Amendment No. 77.3 – Planning Area 3 Roads for a minimum period of 28 days. The Development Committee report of 1 September 2009 pertaining to this resolution is provided with the Councillor's Information Folder.

A copy of the draft Amendment as proposed for adoption will be made available to view in the Councillor's Room prior to this Development Committee meeting.

**Planning Areas 3 Roads:**

The draft Amendment proposes to:

- Delete 20 Planning Area 3 road projects from the current Contributions Plan;
- Retain and update 7 projects from the current Contributions Plan;
- Create 2 new Planning Area 3 road projects; and
- Retain 6 recoupment projects for the cost of road projects that Council has undertaken in anticipation of new development.

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

**Table 1 – Planning Area 3 Proposed Road Projects**

<b>Project</b>	<b>Project Cost</b>	<b>Development Share</b>	<b>Contribution Rate</b>	<b>Council Share</b>
03 ROAD 2001 Dowling Street Falls Creek	\$49,526	\$12,381	\$6,190.73/ET	\$37,144
03 ROAD 2011 Hart Road Falls Creek	\$194,210	\$38,842	\$12,947.36/ET	\$155,368
03 ROAD 2013 Sinclair Road (Part 3) Falls Creek	\$122,472	\$40,824	\$13,608.00/ET	\$81,648
03 ROAD 2014 Sinclair Road (Part 1 & 2) Falls Creek	\$74,981	\$56,753	\$8,107.57/ET	\$18,228
03 ROAD 2016 Port Jervis Estate Roads Tomerong	\$955,421	1) \$894,500	\$14,908.33/ET	\$0
		2) \$50,326	\$2,648.76/ET	\$10,595
03 ROAD 2019 Tasman Park Estate Roads St Georges Basin	\$266,604	\$89,591	\$5,599.44/ET	\$176,613
03 ROAD 2021 St Georges Basin Bypass	\$5,123,898	\$27,401	\$109.17/ET	\$426,401
		\$620,935	\$654.99/ET	\$3,255,977
		\$22,379	\$109.17/ET	\$93,664

Project	Project Cost	Development Share	Contribution Rate	Council Share
		\$185,895	\$185,895 Lump Sum	\$0
03 ROAD 2022 Grange Road St Georges Basin	\$642,439	\$123,895	\$604.36/ET	\$518,544
03 ROAD 2024 Atherton St/ Wool Rd Basin View	\$128,010	\$67,374	\$6,737.37/ET	\$60,636
03 ROAD 2025 Basin View Estate Roads	\$242,300	\$60,575	\$8,653.57/ET	\$181,725
03 ROAD 2028 Wandean Road Wandandian	\$502,135	\$469,387	\$7,334.18/ET	\$0
		\$27,290	\$5,457.99/ET	\$5,458
		N/A	0.09/Tonne	N/A
03 ROAD 2033 Naval College Road Tomerong	\$8,578,146	\$414,379	\$1,650.91/ET	\$8,163,766
03 ROAD 2053 The Wool Lane Sanctuary Point	\$447,370	\$91,970	\$243.95 /ET	\$198,821
		\$111,843	\$111,843 Lump Sum	\$0
03 ROAD 0114 Windley Road Wandandian	\$256,608	\$256,608	\$6,415.20/ET	\$0
03 ROAD 0115 Sydney/ Bowen Street Huskisson	\$938,739	\$520,330	\$332.48/ET	\$418,409

### Public Exhibition of the draft Amendment

The draft Amendment was placed on public exhibition from 30<sup>th</sup> September to 30<sup>th</sup> October, 2009. Notification of the exhibition was placed in the South Coast Register on Wednesday 30<sup>th</sup> September 2009. Relevant Community Consultative Bodies were notified in writing on 28<sup>th</sup> September 2009.

No submissions were received.

### \$20,000 Residential Contribution Threshold

---

Of the new rates proposed in Table 1, three (3) Road Contribution Projects together with other S94 project contributions have the potential to exceed the \$20,000 residential contribution threshold set down by the Minister for Planning on 13th January 2009. Of these 3 contribution projects, 2 projects (03ROAD2011 & 03ROAD2013) have been given consent by the Minister for Council to levy contributions above this threshold where these projects are included in a development proposal.

However, recognising that project 03ROAD2016 has not been granted approval to exceed this threshold, it is proposed that Council seek this exemption through the public exhibition process of the draft Shoalhaven Contributions Plan 2010. A review of properties affected by this contribution project indicates that no development consents are likely to be issued for this project in the short-term.

### **Transitional Arrangement**

Once this Amendment has been made effective, development applications which have been lodged but not yet determined will be subject to the provisions of this Amendment. Development consent prior to and on the date of making the Amendment effective, will incur the contribution provisions prior to this Amendment.

For projects deleted in this Amendment, a further report to Council will be provided detailing the reallocation of any remaining contribution funds as well as contributions for consents not yet paid to Council. These funds will be reallocated to similar projects within the deleted project contribution area.

### **Economic, Social & Environmental (ESD) Consideration:**

The Contribution Plan seeks to ensure equitable cost showing for essential community infrastructure.

### **Financial Considerations:**

The draft Amendment allows Council to collect Development Contributions to assist in the funding of roads within Planning Area 3. A total of 15 road projects are identified for which Council will be able to recoup the cost of 6 projects provided in anticipation of new development.

Council funding required to match Development Contributions, as identified in Table 1, will need to be considered in future capital works planning.

## **2. Status Report - Verons Estate Rezoning Investigations and Budget Issues** **File 1422E (PDR)**

---

### **Purpose of the Report:**

To update Council on the status of the Verons Estate rezoning investigations and clarify budget issues

**RECOMMENDED that the status report on the Verons Estate rezoning investigations and budget issues be received for information.**

### **Options:**

---

Not applicable as this is an update or status report.

**Details/Issue:**

The following assessments have been completed or are nearing completion.

***Threatened Biodiversity Survey & Assessment***

*Status:* Being finalised by EcoLogical Australia Pty Ltd (ELA). Fieldwork completed from June – September 2007 (stage 1: vegetation survey & preliminary habitat assessment) and February 2008 - February 2009 (stage 2: targeted surveys). Preliminary draft report completed in June 2009. Comments provided in July 2009. Currently awaiting final draft report. Revised completion deadline: late 2009.

*Comment:* The findings will be reported to Council when the report has been finalised.

***Aboriginal & European Archaeological & Cultural Heritage Assessment***

*Status:* Field survey undertaken in March 2009 and overall assessment completed by Australian Museum Business Services in June 2009.

*Summary:* Two Aboriginal sites were identified within the south-western part of the subject land. The site of most importance is located on land currently zoned Environment Protection 7(a) (Ecology) which affects lots 24 and 25. It was recommended that the environment protection zone be retained over this area. The other site was located west of Wandra Road and south of the transmission line. Consent would be required under section 90 of the *National Parks and Wildlife Act, 1974 (NP&W Act)* if development or disturbance was proposed at this location.

Other areas within and adjacent to swamps and creeks were considered to have archaeological sensitivity and potential for “substantial *in situ* archaeological deposit”. These areas cover parts of lots 1,2, 3 and 16. If development was proposed within these areas further archaeological investigation involving sub-surface excavation, would be required under a section 87 permit (*NP&W Act*).

***Mapping Verification of Riparian Land***

*Status:* Field survey undertaken in October and November 2008. Completed by GHD Pty Ltd in April 2009.

*Summary:* Provided verified mapping of watercourses and categories, and water bodies within the subject land.

***Clarification of State Government Requirements for Assessing Impacts on Swan Lake***

Chapter 4 (Natural Environment) of the South Coast Regional Strategy, states that:

*“Local environmental plans will not include further residential or rural-residential zoning in the catchments of coastal lakes and estuaries shown on Map 2 [includes Swan Lake] unless it is demonstrated that a neutral or beneficial effect on water quality as measured at the boundary of the proposed new zoning can be achieved.”*

The above requirement was discussed at a meeting with staff from the Department of Planning (DoP), the Department of Environment, Climate Change and Water (DECCW)



---

and the Department of Primary Industries (DPI) on 27 May 2009. Correspondence was sent to DoP and other relevant NSW Government agencies formally seeking clarification on the above requirements in early July 2009.

The correspondence sought clarification on the following:

- Preferred decision support tool(s): is detailed modelling required? Is it intended that the REP framework be applied to the SCRS for sensitive water bodies or is an alternative proposed?
- Responsibility for doing the assessments: Council, DECCW, other?
- Quantitative &/or qualitative criteria.
- Any particular water cycle management requirements for rural-residential development in the context of Verons Estate.

At present a formal response has not been received from DoP. This is needed to enable Council to formulate and assess possible development scenarios and commence the necessary further water quality related assessments.

Other assessments that will also still need to be done will include:

- Bushfire
- Onsite effluent disposal and water cycle management

It is anticipated that once all the required assessments are prepared they will be pulled together and options to progress this matter will be reported to Council for consideration. Landowners will be notified in writing prior to the matter being considered in detail by Council.

#### **Economic, Social & Environmental (ESD) Consideration:**

ESD considerations are discussed where relevant in the body of the report.

#### **Financial Considerations:**

As at 30 September, \$166,966 had been spent on the rezoning investigations. \$150,000 was borrowed in 2006 as part of the Special Rate variations to fund the Verons Estate rezoning investigations. This is being repaid by the landowners over a 10 year period through a special rate levy – the landowners are now in the 4<sup>th</sup> year of this repayment program. A summary of special rate expenditure has been provided on Council's website and is updated quarterly. Note that the loan amount was based on a very preliminary budget and prior to release of the State Government's South Coast Regional Strategy which potentially requires additional expense to assess the impacts on Swan Lake.

An amount of \$12,968 has been transferred to the Verons Estate rezoning budget from the Verons Estate road design budget and \$5,213 was transferred from the Verons Estate road construction budget. As a result of these transfers there was a \$3,786 surplus at 30 September 2009, which will not be sufficient to complete the rezoning investigations. In the short term, the Strategic Planning Consultants budget will be utilised to temporarily fund the rezoning investigations, but this will need to be recouped from the landowners at a later date. Potential mechanisms for recouping the additional costs currently include: development contributions, voluntary planning agreements or a special rate. A decision on the cost recovery options will need to be made when the total cost is more clearly known. At this stage, the cost of completing the further assessments required by the State Government could vary greatly depending on the level of detail required to assess impacts on Swan Lake.

---

3. **Quarterly Report - Planning Work Program (Environmental Planning & Assessment Act Projects)** **File 28283 (PDR)**

---

**Purpose of the Report:**

To provide Councillors with an update on the planning work program, in relation to projects being undertaken as per the *Environmental Planning & Assessment Act, 1979* and specifically for the quarter July to September 2009.

**RECOMMENDED that the Quarterly Report of the General Manager (Strategic Planning & Infrastructure Group) in relation to the Planning Work Program (Environmental Planning & Assessment Act Projects) be received for information.**

**Options:**

*Option 1:* Adopt the report on the Planning Work Program and any reported variations for information.

*Option 2:* Identify any required Planning Work Program adjustments and adopt a revised work program.

**Details/Issue:**

***On Line Work Program***

The on line work program can be accessed via Council's Intranet site by using the "Planning Work Program" link.

***Promoting Better Practice Review***

Recommendation 12 of the Department of Local Government's Promoting Better Practice Review recommended that:

*Council should review the projects on the Strategic Planning Groups work program in order to give priority to finalising the Growth Management Strategy and the new Comprehensive LEP.*

A Planning Session was held with Councillors on 7<sup>th</sup> August 2009 to discuss current Planning Tasks in the context of this recommendation.

The need to focus on the delivery of the significant Citywide planning projects was acknowledged. The Planning Session was also an opportunity to discuss future projects that the community and landowners are keen to see commenced or progressed following the completion of the major Citywide projects.

***Current Status Report***

Thus staff are continuing to focus on the delivery of the four significant Citywide planning projects that the State Government and Council are keen to see completed – Citywide LEP 2009, Citywide DCP 2009, Citywide Growth Management Strategy and Citywide Contributions Plan 2010. Comment on the status of each project is provided below.

Strategic Planning Staff are also heavily involved in the new Local Government Integrated Planning & Reporting Project and the delivery of the new Community Strategic

---

Plan, which is due for delivery in early 2010 as well continuing to progress as a priority a number of other important Council planning projects.

The following is a status report on some of the higher profile projects in the existing Work Program and supplements those matters referred to in the Management Plan reporting process.

This is also an opportunity for Council to review the priority of items shown in the on-line comprehensive listing and whether Council wishes to add or remove items from the list.

## **1. Completed Projects**

No projects were completed during the report quarter.

The two longstanding draft LEP's (LP225 – Seaspray Street and LP338 Ross Avenue) and the associated deed of agreement to facilitate the transfer of Garrad's Lagoon, Narrawallee were exhibited for public comment from 10<sup>th</sup> September until 9<sup>th</sup> October 2009. The exhibition outcomes will be reported to Council shortly.

Several other projects have progressed to near completion stage.

## **2. Major Projects**

### ***Small Lot Rural Subdivisions***

Heritage Estates - The rezoning was refused by the Federal Government under the provisions of the Environment Protection & Biodiversity Conservation Act on 13<sup>th</sup> March 2009. The draft LEP was removed from the Work Program and replaced with a new project focussed on resolving the land tenure of the Estates.

The outcomes of representations made to the Commonwealth Director of National Parks and the Deputy Director General (National Parks) of the NSW Department of Environment, Climate Change & Water requesting acquisition of the land to resolve the land tenure were reported to Council in July 2009. Council resolved to make further strenuous representations to the Federal and State Governments.

Additional correspondence that was sent to the Federal and State Governments as a result of this resolution. Correspondence was also sent to the new State Minister for the Environment, John Robertson MP. Once Council has received all responses they will be reported to Council.

Council staff investigated and prepared a report on management of unauthorised activities within the Estates for consideration by Council in October 2009. Staff have been liaising with the relevant stakeholders in accordance with Council's resolution.

Jerberra Estate – Following State Government advice on the conservation issues associated with the Estate and its development, a report outlining development options was considered by Council in October 2009. Staff will now prepare the required environmental study to enable a draft LEP to be prepared based on a Torrens Title outcome. Upon preparation of a draft LEP, a Section 65 Certificate will be requested from the Department of Planning.

---

Nebraska Estate - Comments were received from the NSW Department of Environment, Climate Change & Water on the draft Threatened Biodiversity Study prepared by Eco Logical Australia Pty Ltd (ELA). Thus, the matter will be reported to Council once the comments have been considered and the Study has been finalised as a result.

Verons Estate – Clarification was sought in July 2009 from the State Government on their requirements for assessing potential water quality impacts on Swan Lake and SEPP 14 wetlands. These requirements and the findings of the Threatened Biodiversity Assessment Report and other assessments will be reported to Council to enable the direction of this project to be discussed.

Goodland Road - The outcomes of the various environmental studies completed to date to prepare a draft Environmental Study (ES) and is currently in discussions with relevant State Agencies.

Various development options are being discussed with DECCW and DoP and their final comments are yet to be received in writing to enable the completion of the draft Environmental Study. Once the draft is complete, the matter will be reported to Council for formal consideration.

### ***Citywide Growth Management Strategy***

Detailed Council workshop held on 6<sup>th</sup> August 2009 and a draft Strategy has been prepared as a result of the workshop outcomes for discussion with the NSW Department of Planning, prior to reporting to Council for consideration and exhibition.

It is anticipated that the draft Growth Management Strategy will be exhibited for community comment in association with the draft Community Strategic Plan, given their interrelationship.

In accordance with the resolution of 11<sup>th</sup> August 2009, \$50,000 was redirected from this project to the Citywide LEP project, consistent with agreements reached with the Department of Planning on 'Planning Reform Fund' projects.

### ***Shoalhaven LEP Review (LEP2009)***

Given the significance of this project it continued to be a major focus during the report quarter. Staff have been involved in on going discussions with the Department of Planning, regarding the draft LEP and its contents.

Considerable staff resources went into finalising the draft mapping that forms part of the plan to enable the issuing of a Section 65 Certificate to enable exhibition. The mapping was presented in it's final form to DoP in early August 2009.

In August 2009, the NSW Minister for Planning announced the reprioritisation of new Standard LEP's throughout the State. Shoalhaven was acknowledged as one of 67 priority Council's that had a revised completion date of 2011.

It is anticipated that the draft LEP will be exhibited in early 2010 to enable us to meet the revised deadline. This is dependent on Council receiving the required Section 65 Certificate this month.

---

### ***Shoalhaven DCP Review (DCP2009)***

Work continued to transfer current DCP's and relevant planning policies into the single DCP with the assistance of the Development & Environmental Services Group.

Series of workshops were held with Council to discuss the proposed detail of the draft DCP during July/August/September 2009.

Council adopted updated Waste Minimisation and Management Guidelines in September 2009, to enable them to be linked to the new DCP when finalised. In September and October 2009, Council also reaffirmed various development policies and existing DCP's in the short term pending their consideration and possible inclusion in DCP2009.

### ***Release Area Report/ Development Control Plan/ Contribution Plan for Mundamia and Worrigeer release areas***

Although the new urban "release areas" identified in the Nowra-Bomaderry Structure Plan will be rezoned for development via Shoalhaven LEP 2009, a clause in the LEP requires certain criteria to be satisfied prior to the NSW Director-General of Planning releasing the land to allow actual development to occur.

An in-house consultant is currently working on this project, and the Development Control Plan and Contribution Plan are now being prepared for Mundamia Release Area, along with the other first stage release areas. Council staff met with affected landowners in late October and early November to update them on the progress of this project and discuss its potential outcomes.

### **Scenic Drive Master Plan**

The site analysis was completed by Cox Humphries Moss and a draft master plan option was discussed with staff in October. This was discussed at the Council briefing workshop on 20<sup>th</sup> November 2009.

### **Draft LEP No.LP401, Reclassification of Council land at Nowra and Huskisson**

The draft LEP was publicly exhibited during July/August 2009 and the required public hearings were held on 2<sup>nd</sup> & 3<sup>rd</sup> September 2009. The Nowra component of the draft LEP was considered by Council in October and is being advanced separately as a result. The Huskisson component is yet to be reported to Council.

### **Draft LEP No.LP130 Badgee Urban Expansion, Sussex Inlet**

The proposed urban expansion is identified for investigation in the endorsed Sussex inlet Settlement Strategy and is currently being pursued by the proponents as both a Part 3A Development Application and rezoning (draft LEP). The proponents briefed Council on their plans on 20<sup>th</sup> October.

In accordance with the agreed process, quotations were sought from consultants to peer review the proponents studies and if appropriate form them into an environmental study (required to support a draft LEP). As a result ERM Pty Ltd were engaged (using funding provided by the proponents) to undertake this task and they commenced work in late September 2009.

The environmental study will be reported to Council for consideration at the appropriate point.

---

### **Draft LEP No. LP400 One Tree Bay, Sussex Inlet**

There has been ongoing dialogue between Council, the Department of Planning and the proponents in an attempt to clarify the process that this proposal will follow, particularly the scope of the environmental study component.

The Department has indicated that the studies need to provide further justification for the proposal against the 'Sustainability Criteria' in the South Coast Regional Strategy.

### **Section 94 Contribution Plan - Major Review**

Review of the 1993 Contribution Plan is approaching completion, with the final component of the review (Active Recreation, Drainage & Car Parking) reported to Council in November 2009 for Exhibition. Areas 2 & 4 of the Roads and Ulladulla Town Centre Contribution Plan became effective 9<sup>th</sup> November 2009. Preparation of Contribution Plan 2010 is continuing and on track, and work has commenced on a web based package.

### **Ulladulla CBD DCP Review**

A further report to Council attempting to resolve outstanding anomalies and issues with Amendment 4 of the Ulladulla DCP No.56 was presented to Council and adopted on 10<sup>th</sup> November 2009.

### **Nowra CBD DCP Review**

Work has commenced on a review of the Nowra Town Centre DCP No.95, with a town walk and briefing of Councillors undertaken. A 3D base model of the town centre has also been completed. Council has resolved to prepare a master plan for the whole of the Nowra town centre. Short-listing of consultants has occurred and an appointment of a successful consultant is expected in early December.

## **3. Other Work Program Alterations**

The following projects have been or will be added to the work program since it was last considered by Council:

*Expansion of the Shoalhaven Riverfront Site Analysis/ Master Plan* – Council resolved to extend the area to which the site analysis/master plan will apply and also resolved in October to accept a quote from consultants Cox Humphries Moss Pty Ltd to undertake the initial site analysis. This project is to be coordinated by the Assistant General Manager.

The following projects have been removed from the work program since it was last considered by Council:

*Nil*

## **4. Items with Department of Planning or Subject to Recent Response**

<b>Project No.</b>	<b>Task/Strategic Project</b>	<b>Comments/Progress Statement</b>
LP396	Currarong – Heritage	Incorporated into draft

	Item - Removal	Citywide LEP 2009
LP313	Dolphin Point – Dolphin Point Road – Thomson	Incorporated into draft Citywide LEP 2009
LP379	Meroo Meadow – Residential Expansion	Incorporated into draft Citywide LEP 2009
LP387	Citywide LEP 2009	Request for S65 certificate submitted in September 2008. Detailed mapping provided to DoP August 2009.

## 5. Other Involvements

In addition to the work program Planning staff have coordinated or had major input/advice to other matters during the reporting period including:

*Planning Reform Legislation* – Continued to coordinate Council's review of the planning reform legislation that was finalised by the State Government during the report quarter.

Council staff attended the Local Government Planning Directors Forum facilitated by the Department of Planning on 13<sup>th</sup> August 2009 and provided input into the planning reform agenda.

*Reforms to the Plan Making* – Council staff attend an information session on the changes to the plan making process that commenced on 1<sup>st</sup> July 2009. Councillor Briefing on the changes held on 19<sup>th</sup> August 2009.

*Standard Instrument Liaison Group* - Council staff provided ongoing feedback to the Department of Planning on draft circulars and practice notes related to the Standard LEP Instrument.

*SEPP Affordable Rental Housing 2009* – Council staff reviewed the SEPP that was released on 31<sup>st</sup> July 2009 and attended information sessions on it. Report prepared for Councils consideration in October 2009.

*Illawarra Employment Lands Taskforce* - staff attended the Taskforce meeting that was held in Dapto on 16<sup>th</sup> October.

*Aboriginal Land Claims* - Continued involvement with the Department of Lands in regard to a number of claims, both new and existing, and updating Councils GIS as a result.

*South Coast Regional Strategy Implementation* – Continuing to progress the establishment of a land development monitor for Shoalhaven.

*Sustainable Energy Production (Wind Turbines)* - Council made representation's to the State Government requesting that a State wide standard be formulated for small scale domestic wind turbines and included in the Exempt & Complying Development SEPP.

*Sustainable House (Sustaining Our Shoalhaven Project)* – Continued staff involvement in this privately led project that opened on 1st July 2009. Council, with the support of the State Department of Environment, Climate Change & Water and the Good Guys, ran a

---

successful \$10,000 "sustainable home make over" competition in association with the opening that was drawn on 1 September 2009. Over 2000 people have visited the display home this quarter. The average person stays for one hour which suggests that the interpretive material provided by Council is hitting the mark

*Annual Threatened Species Day Competition 7 September* – This year's overall winner was Nowra Anglican College and Terara Public School won the most creative entry. This is an opportunity for school aged children to learn about threatened species which live in the Shoalhaven area.

*National Tree Day* – Numerous Local Schools and community groups participated in Council organised planting days.

*Climate Change Response* - training on adapting to climate change impacts commenced as part of the overall monthly Corporate Responsibilities Training Sessions for staff. Grant funding obtained from State Wide Mutual to undertake a climate change risk assessment of Councils operations – offer formally accepted by Council in October 2009.

*Four Seasons Sustainable Housing Forum (Berry)* - Staff ran a Council 'trade booth' at this forum that was held on 25th September 2009. Composting workshops, tank rebates and the Sustainable Display Home were some initiatives that were promoted by Council at this forum.

*Fire Management* – The Draft Fire Management Strategy for Jervis Bay National Park was reported to Council in August 2009 and submission made to the NSW Department of Environment, Climate Change & Water. The revised Bushfire Prone Land Mapping has been submitted to the Rural Fires Service for Comment prior to finalisation.

*Review of Australian Standard Geographical Classification* – Reported to Council in August 2009 and submission made to the Australian Bureau of Statistics.

*Development Application and Part 3A Referrals* – managed Strategy Planning & Infrastructure Group comment on development applications referred from Development & Environmental Services Group and Part 3A referrals from the Department of Planning.

## **6. Additional Requests/Projects**

*Citywide LEP Review* – various requests have been received seeking changes to zoning etc as part of the Citywide LEP review. These requests will be considered as submissions as part of the exhibition process.

## **7. Staff Resources**

One Strategic Planner's position became vacant during the report period. The position has subsequently been filled by an internal appointment.

### **Economic, Social & Environmental (ESD) Consideration:**

ESD considerations integrated into individual projects within the work program



---

**Financial Considerations:**

Projects on the work program are generally managed in accordance with existing budgets.

**4. Council Policy - Rezoning Request Guidelines**

**File 23425E, 14690E (PDR)**

**Purpose of the Report:**

Council resolved in October 2009 to rescind the Policy entitled "*Rezoning – Procedures for Requests (POL08401)*" given that it had been superseded by changes to the rezoning process and requested a further report on a new process or procedure for dealing with rezoning requests in the future.

This report details the changes that were made to the rezoning process and commenced on 1 July 2009 and presents a new process/procedure for dealing with future rezoning requests via guidelines.

**RECOMMENDED that Council adopt the proposed Rezoning Request Guidelines for public release.**

**Options:**

1. Receive the report for information and not adopt the proposed Rezoning Request Guidelines.

This option is not recommended as it will leave Council without clear guidance for dealing with any rezoning requests that may be submitted.

2. Adopt the proposed Rezoning Request Guidelines for public release.

This is the favoured option as it sets out how Council will deal with any rezoning requests that are submitted. It also continues the existence of rezoning request guidelines that have been publicly available since 1992.

**Details/Issue:**

***New LEP Procedure***

As part of the ongoing reforms of the NSW planning system a completely new process and procedure has now come into play for dealing with the rezoning of land or draft LEP's

The new procedure for LEP's commenced on the 1<sup>st</sup> July 2009 and applies to all draft LEP's, other than those that had formally commenced prior to that date.

The State Government has indicated that the new procedures will:

- *Strengthen the link between strategic plans and LEP's*: the relationship between proposed LEP's and the strategic planning framework will need to be justified.



---

potentially need to be updated on an annual basis should the Council fees associated with a rezoning change.

- # The new guidelines (Attachment "C") are generally consistent with the previous ones. However, a new and important feature has been added through the addition of a preliminary process at the "front end" prior to a rezoning proceeding into the more formal process set by the Act and incurring the potential cost of preparing a detailed Planning Proposal for consideration.

The additional steps are not onerous and involve the proponent discussing the proposal/request with Council staff and possibly attending an initial Rezoning Advisory Unit (RAU) meeting, not dissimilar to the current Development Advisory Unit, with Council staff. Following the discussion they would then submit a preliminary rezoning proposal to Council for consideration. The proposal would be reviewed by staff and reported to Council for consideration to determine whether or not to proceed into the formal process set by the Act.

These additional steps are shown graphically within Attachment "C" and are considered to be important, as they will ensure that proponents are aware of Councils position on a rezoning proposal before they go to the expense of preparing a formal Planning Proposal.

Given previous experience, it is not envisaged that Council will receive very many formal rezoning requests annually. It is however important that we have guidelines for the ones that we may receive. It is also likely that a number of the more minor rezoning proposals will either be dealt with or considered through the process of finalising the draft Shoalhaven LEP 2009 or will be part of a schedule of matters to be further considered after the gazettal of the LEP.

The *Rezoning Request Guidelines* will need to be revised slightly following the gazettal of the new LEP to replace the current references to Shoalhaven LEP 1985.

**Economic, Social & Environmental (ESD) Consideration:**

Ecologically Sustainable Development (ESD) principles will be considered during the "rezoning" process for each individual proposal as required by the Environmental Planning & Assessment Act 1979.

Also the new steps at the "front end" are seen as important, as they will ensure that proponents are aware of Councils position on a rezoning proposal before they go to the expense of preparing a formal Planning Proposal.

**Financial Considerations:**

None at present. However, Council currently undertakes proponent initiated zoning changes on a cost recovery basis. As a result the current Management Plan 2009/2010 includes a number of fees associated with the rezoning process. These fees and the terminology used will need to be adjusted in the Management Plan for 2010/2011.

**Purpose of the Report:**

To present findings from the flood assessment and threatened biodiversity assessment and to seek Council direction on a possible development footprint to enable the environmental study and draft local environmental plan to be progressed to exhibition.

**RECOMMENDED that Council**

- a) **Accept that land identified as highly constrained due to flooding and/or threatened biodiversity issues is unsuitable for rezoning to allow development.**
- b) **Adopt a potential development footprint supported by DECCW but investigate where the buffers to the threatened vegetation can be reduced to accommodate additional development and impacts can be minimised through appropriate measures.**
- c) **Further investigate options for resolving the tenure of any land that cannot support further development**
- d) **Advise landowners of these outcomes in writing.**

**Options:**

1. Lobby the relevant State Government agencies to provide an additional development area. Experience with Jerberra and Heritage Estates suggests that this approach could lead to lengthy delays in progression of the rezoning investigations and is unlikely to result in a significantly different outcome.
2. Accept that land which is highly constrained by flooding and/or threatened biodiversity is unsuitable for rezoning to allow development (preferred option).
3. Adopt the preliminary development footprint supported by DECCW and undertake further investigations as necessary.
4. Adopt a potential development footprint supported by DECCW but investigate where the buffers to the threatened vegetation can be reduced to accommodate additional development and impacts can be minimised through appropriate measures (preferred option).
5. Further investigate options for resolving the tenure of the land that cannot be developed.

The implications and options for rezoning, road design and road construction special rate charges will be reported and considered separately once a preliminary development footprint has been adopted by Council as a way forward.

**Details/Issue:****Summary**

The threatened biodiversity assessment and the preliminary flooding assessment show that a significant proportion of Nebraska Estate is adversely affected by both constraints. While the north-east corner of the Estate is not flood prone, it is highly constrained by threatened biodiversity. Flood free land in the north-west is relatively unconstrained by threatened biodiversity and is the main area with development potentially within the

---

Estate. A range of development options could be considered in this area including one dwelling per lot and higher density residential development (*i.e.* resubdivision) if provision of reticulated water and sewer is feasible. A small flood-free area south of Pelican Road on the eastern side of the Estate has minimal development potential.

To enable the draft environmental study to be completed in a timely and cost-effective manner, the rezoning investigation areas need to be defined based on the outcomes of the studies completed thus far.

### ***Background***

#### Current zoning

# The Nebraska Estate subdivision was registered by the Land Titles Office in 1919. The land is currently zoned Rural 1(d) (General Rural) and Rural 1(g) (Flood Liable) under Shoalhaven LEP 1985. Refer to the zoning map in Attachment "A". The rural zoning generally restricts Council's ability to approve dwelling houses on individual lots within the Estate. Land to the south of the Estate (*i.e.* on the southern side of the land zoned as 'flood liable') is zoned Residential 2(a1) and 2(a2) and forms the western end of the residential area at St Georges Basin.

#### Existing developments and voluntary conservation agreement

There are three approved dwellings in the Nebraska Estate investigation area:

- DA82/1209 – dwelling approval over 20 lots (existing holding) in north-western corner of the Estate.
- DA01/3604 – approval for "Use of the existing buildings for worm farm, office and dwelling" over two lots (originally approved by the Land & Environment Court). The current owner purchased two adjoining lots and has entered into a voluntary conservation agreement (VCA) over the four lots.
- DA05/3226 – approval for "Use of a structure for the purposes of a dwelling house". Five lots were consolidated into one, in accordance with the consent.

#### Overview of Nebraska Estate rezoning investigations

On 20 October 1992, Council resolved to prepare a draft local environmental plan over that part of Nebraska Estate zoned rural for the purpose of allowing low density residential development.

On 20 September 1994, Council resolved to deal with the lots located on Park Road separately from the rest of Nebraska Estate. In July 2001, land within the vicinity of Park Road was rezoned to Residential 2(a3) providing for 13 dwelling entitlements over an area encompassing 20 existing lots (Amendment no. 155).

Rezoning investigations for the remainder of the Estate to which draft LEP No. LP 145 applied were interrupted in 1995 when the NSW State Government placed a moratorium on further land release in the Jervis Bay Region pending gazettal of the Jervis Bay Regional Environmental Plan, 1996 (JBREP) and, subsequently, completion of the Jervis Bay Settlement Strategy.

The Jervis Bay Settlement Strategy (JBSS) prepared by Council and endorsed by the State Government, was finalised in 2003. The JBSS states that the remainder of the Nebraska Estate will be investigated for rural residential opportunities through a review of lot sizes and configuration to accommodate onsite effluent disposal; and a review of the performance of environmental measures at Park Road.

---

### ***Progress of the rezoning investigations***

The approach initially taken with the rezoning investigations for Jerberra Estate and the Heritage Estates was to commission the various assessments concurrently. In both cases, the threatened species constraints were subsequently found to substantially impact on or preclude all or part of the investigation areas from development. In the case of Jerberra Estate, some of this work, such as the bushfire assessment, would need to be reviewed once the threatened species issues has been resolved.

In the case of Nebraska Estate it was considered prudent, given what was already known, to complete the assessments in two stages as follows:

- threatened species (completed) and flooding (draft assessment completed) – the findings of these are summarised below.
- once the primary constraints/potential development footprint was known - bushfire assessment, water cycle management including an assessment of onsite effluent disposal and reticulated sewerage options and water sensitive urban design (WSUD) design and modelling, traffic, and economic feasibility.

### ***Preliminary flood assessment***

A site specific draft preliminary flood study was prepared in late 2006 by Council staff with expertise in flood modelling. This preliminary study was undertaken utilising a digital elevation model derived from the airborne laser scanning (ALS) survey undertaken over Nebraska Estate in 2005. A copy of the draft flood study is provided in Councillors Room.

# A map showing the extent of flooding in a 1 in 100 year flood event derived from the modelling undertaken in 2006 is shown in Attachment “B”. The map also shows the current Rural 1(g) zone (SLEP 1985) and the equivalent mapping from the 2001 St Georges Basin Flood Study. The maps derived in 2006 are comparable to the maps of the St Georges Basin Flood study (2001) and the discrepancies are mainly explained by the availability of more detailed survey data (from the ALS survey) which was not available when the St Georges Basin Flood Study was prepared. There are also discrepancies between the areas zoned Rural 1(g) (Flood Liable) that had been in place since 1985, and the 1 in 100 year flood line (1% AEP), these discrepancies are explained by the fact that detailed flood studies were not available in 1985 and the zone is based on historical data.

It is noted that a significant proportion of the lower-lying flood prone land is also mapped as “high probability” of acid sulfate soils occurring within one metre of the ground surface.

*Comment: It is recommended that the rezoning investigations exclude any further development within the area identified as below the 1% AEP flooding extent in the draft flood study (2006).* This is consistent State Government directions on the zoning of flood liable land.

### ***Threatened Biodiversity Assessment***

A detailed Threatened Biodiversity Survey and Assessment has now been completed by Eco Logical Australia Pty Ltd (ELA) incorporating Bushfire & Environmental Services (BES). Fieldwork was undertaken from December 2006 to May 2008. The project also included an assessment of issues associated with the land identified under clause 15 of Jervis Bay REP as “disturbed habitat and vegetation”. Comments were sought from the

---

Department of Environment, Climate Change and Water (DECCW) on the draft report and their comments considered in the final report.

A copy of the report is provided in Councillor's room.

### Field Survey Findings

The key threatened species constraints identified are:

- 3 vegetation communities including Swamp sclerophyll forest, an Endangered Ecological Community (EEC) under the Threatened Species Conservation Act (TSC Act).
- 8 threatened fauna species (TSC Act), one of which is also listed on the Federal Environment Protection & Biodiversity Conservation Act (EPBC Act).
- 2 threatened flora species, both of which are listed on the TSC Act and the EPBC Act: Biconvex Paperbark and the Leafless Tongue Orchid.
- 1 migratory species listed on the EPBC Act: Black-faced Monarch.
- 1 non-threatened orchid species of particular conservation significance which has only recently been described and the only known populations are within the subject land and near Sussex Inlet: *Speculantha ventricosa*. 467 individuals were found, concentrated mainly in the north-east of the Estate. BES's report states:

*"The species is likely to occur more widely, at least in adjoining areas, but until the status of the species can be clarified by an increased understanding of its taxonomy, distribution and abundance, it is recommended that the species (and associated habitat) is treated with the same status as that of a threatened species."*

It is understood that this species has been nominated for listing on the TSC Act.

### Ecological constraint map

# The map prepared by BES showing the ecological constraint categories is provided in Attachment "C". No development is recommended in areas containing "high level constraint" areas. The occurrences of the following were categorised as "high level constraint":

- Swamp Sclerophyll EEC
- *Melaleuca biconvexa* (main occurrences)
- *Cryptostylis hunteriana* (including buffer)
- *Speculantha ventricosa* (including buffer)

One of the layers shown on the map is the area supported by DECCW as not being suitable for development. DECCW's comments are discussed in the next section.

### **DECCW Comments**

In correspondence dated 25 August 2009, DECCW provided the following comments on the draft ELA report:

- The methodology and survey intensity is considered satisfactory for this stage of the planning process.
- A map was attached indicating the areas that DECCW considers should not be developed, but development could be allowed in the remaining areas subject to adequate retention of threatened species habitat.
- Development of the less constrained land would require substantial redesign of the subdivision (*i.e.* consolidation). Provision of one dwelling per lot in the remaining areas would not be feasible based on the existing lot configuration

---

(from a biodiversity perspective). However, subsequent discussions indicate that one dwelling per lot in the north-western part of the Estate might be supported by DECCW if appropriate measures are provided to protect and manage the remaining bushland.

- There would need to be a high level of compliance and commitment to ensure development of these areas did not impact on threatened species habitat.

# Correspondence from DECCW dated 11 November 2009 stated that land within 50m of the EEC and/or *M. biconvexa* should be excluded from development. DECCW's correspondence dated 25 August and 11 November 2009 is provided in Attachment "D".

### ***Issues that need to be addressed***

Once a possible development footprint has been determined and agreed upon by Council, the following assessments will still need to be undertaken to support a rezoning:

- Bushfire assessment to ensure any proposed development is consistent with Planning for Bushfire Protection, 2006. It is necessary to determine the location of any vegetation to be retained prior to completing the bushfire assessment.
- Feasibility of extending water and sewer services to the proposed development.
- Onsite effluent disposal (if reticulated sewerage is not feasible).
- Water sensitive urban design and modelling to address potential impacts on St Georges Basin.
- Acid sulphate soils if any development is proposed within or near risk areas (refer to Attachment "B").

# A map showing flooding and biodiversity constraints is provided in Attachment "E". The map shows the results of density analysis (ie degree of overlap) undertaken by Council using the significant habitat (BES point data). The darker shades indicate a higher degree of overlap of the buffers recommended by BES. The EEC and biconvex populations were not included in the density analysis but are shown as a combined layer on the map.

### **Economic, Social & Environmental (ESD) Consideration:**

The economic feasibility of development will be assessed when a potential development footprint has been adopted by Council.

Obviously, not all landowners will benefit due to the constraints which affect a large proportion of the Estate. Nevertheless, it is imperative to resolve the longstanding zoning issues with this subdivision, either positively or negatively. Consideration could be given to a potential compensation scheme whereby the benefitting lots make a financial contribution to towards land that cannot be developed within the Estate. However, this is likely to be contentious and difficult to pursue.

The detailed environmental considerations are discussed in the body of this report.

### **Financial Considerations:**

At 30 September 2009, Council had spent approximately \$83,000 of the \$200,000 borrowed through the special variation to fund the Nebraska Estate rezoning investigations. Landowners are in the fourth year of a 10-year repayment program. Expenditure on other aspects of the rezoning investigations cannot occur until a development footprint has been adopted.



---

A separate report will be prepared on options concerning the rezoning, road design and road construction special rate charges once a potential development footprint has been adopted.

E J Royston  
**DIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE**

R D Pigg  
**GENERAL MANAGER**

---

## **REPORT OF GENERAL MANAGER**

### **DEVELOPMENT COMMITTEE**

**TUESDAY, 1 DECEMBER 2009**

## **DEVELOPMENT AND ENVIRONMENTAL SERVICES**

### **6. Abolishment of Places of Public Entertainment Licences**

**File 3167E**

---

#### **PURPOSE OF THE REPORT:**

This report aims to inform Council of the recently gazetted NSW State Government legislation that abolishes Places of Public Entertainment (POPE) licensing aimed at facilitating the wider provisions of live entertainment at pubs and clubs by removing unnecessary regulation.

#### **RECOMMENDED that:**

- a) **Council receives this report for information; and**
- b) **Council continues to monitor fire safety matters in venues where Places of Public Entertainment licence conditions no longer apply.**

#### **OPTIONS:**

- a) Council adopt the recommendation presented in this report; or
- b) Council not adopt the recommendation presented in this report and provide staff with further direction.

#### **DETAILS/ISSUE:**

##### **Background**

The NSW State Government has recently gazetted new legislation that:

- commences certain provisions in the *EP&A Amendment Act 2008* that repeal the definitions of place of public entertainment and public entertainment and allow for regulations to be made dealing with entertainment venues;
- amends the *EP&A Regulation 2000* to introduce a definition of 'entertainment venue' such as cinemas, theatres, concert halls and indoor sports stadiums, which will replace the term POPE and relate to a narrower range of uses. The amendments also allow for Councils to impose reviewable conditions on development consents relating to hours of operation and maximum capacity and make a number of other changes relating to the regulation of entertainment venues and temporary structures;

- 
- amends the State Environmental Planning Policy (SEPP) (Places of Public Entertainment and Temporary Structures) 2007 to remove the requirement for Development Consent for POPEs. The SEPP has also been amended to remove all references to POPEs in the provisions of the SEPP dealing with temporary structures. As part of the changes, the SEPP has been renamed 'SEPP (Temporary Structures) 2007';
  - provides for entertainment on certain premises to be "exempt development" or "complying development", under the SEPP (Temporary Structures) 2007:
    - "Exempt development" is entertainment provided on or within temporary structures or tents that does not require any approval from the State Government or Council, such as marquees for backyard parties and similar small scale and low impact proposals. Certain prescribed standards and conditions apply through the SEPP, such as hours of operation and size of structures.
    - "Complying development" is entertainment provided on comparatively small premises that requires a Complying Development Certificate issued by Council or a private accredited certifier. As with exempt development, certain prescribed development standards and conditions also apply through the SEPP.

Premises that are neither exempt nor complying development require Council's separate Development Consent in order to conduct entertainment.

- amends the Standard Instrument - Principal Local Environmental Plan to change the definitions of restaurant, pub and registered club to include entertainment.

# Attached to this report (**Attachment 'A'**) is the Circular from the Department of Planning (DoP) (PS09-028), dated 26 October 2009 that provides information regarding the new legislation.

### **Previous system**

Previously, licences for a "Place of Public Entertainment" (POPE) were sought under the provisions of the *LG Act 1993*. As of 26 October 2007, the functions regulating such proposals were transferred from the *LG Act 1993* to the *EP&A Act 1979*. Between that time and 26 October 2009, Council have had to adjust the procedures relating to the regulation of entertainment venues, in particular, with respect to fire safety matters. In order to ensure that fire safety aspects of the venues were not breached, Council had requested that all venues conducting public entertainment to submit their annual Fire Safety Statement for their building, in accordance with Clause 177 of the *EP&A Regulation 2000*.

### **Summary of new system**

The new system will operate as follows:

- POPE licences are no longer needed - venues can have live entertainment as part of their main business without the need for a separate approval. POPE licences and associated conditions will no longer have effect from 26 October 2009;
- entertainment is now defined as part of normal activities at pubs, restaurants and registered clubs during the week and on weekends. Examples include a small

---

restaurant engaging a jazz trio, a Celtic folk band playing in an Irish pub or a rock band performing at a registered club;

- the old terminology for such licensing system under the *LG Act 1993*; i.e. “Place of Public Entertainment (POPE)“, no longer exists and has been completely removed from planning legislation;
- for new venues or additions to existing venues, entertainment related issues will be considered as part of the DA;
- existing venues can apply to Council to amend DA consents. In addition, provisions have been introduced so that Council can apply ‘trial’ conditions for hours of operation and capacity to new consents that can be reviewed after the trial period without the need for a further development consent.
- there will be a range of measures to protect neighbourhood amenity, administered by Council, NSW Police and the NSW Office of Liquor, Gaming and Racing (OLGR); and
- conditions on a venue’s DA consent and liquor licence continue to apply. Where necessary, the NSW OLGR will consider proposals for the addition of new liquor licence conditions to regulate security, trading hours, patron numbers and other matters at venues.

### **Implications to Council for Venues with Existing POPE Licences**

For operators who have existing POPE licences for their venues, the POPE conditions no longer apply as of 26 October 2009. The operation of those venues continues to exist under current DA consents or existing use rights.

It is important to note that many older hotels and clubs in the Shoalhaven may have few DA conditions regulating operations of their venues and are instead conditioned in their abolished POPE licences; however, the changes in legislation do not require the operators to lodge a new DA or Section 96 Modification application, to reinstate those conditions.

The changes in legislation now defines “entertainment” as part of normal activities at pubs, restaurants and registered clubs during the week and on weekends. Council will continue to administer the conditions of the development consent for venues and ensure compliance. Council also will respond to complaints from residents relating to disruptions that may breach the venue’s DA conditions. Should there be any breaches of fire safety aspects of the venue, the DoP advises that Council may issue orders under the provisions of the *EP&A Act 1979* and issues relating to noise may be addressed under the provisions of the *Protection of the Operations (POEO) Act 1997*. Other breaches will be dealt with accordingly by the OLGR and/or NSW Police.

---

## **ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:**

Economic - Economic consideration is not identified in this report.

Social - Social consideration identified in this report relates to the implications of the new legislation, where existing venues where POPE licences have been abolished and previous licence conditions in relation to fire safety matters no longer apply. The DoP has advised that if Councils are concerned regarding the inadequacy of the fire safety aspects of the venues, then Fire Safety Orders under Section 121 of the *EP&A Act 1979* can be issued.

Environmental (ESD) - Environmental (ESD) consideration is not identified in this report.

## **FINANCIAL CONSIDERATIONS:**

The abolishment of POPE licences means that Council will no longer be able to impose POPE licencing fees. Nevertheless this loss is considered minor in the context of Council's total fee revenue.

## **7. Request to waive outstanding court imposed fine - Greg Jones. File 25415E**

---

A confidential report concerning this matter has also been provided in accordance with sections 10A(2)(a) and 10A(2)(g) of the *Local Government Act 1993* (NSW) as the report includes information of a personal nature and contains advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

### **PURPOSE OF THE REPORT:**

- a) Obtain a decision from Council in relation to a request by Mr Gregory Albert Jones to write off an outstanding court imposed debt owed to the Council of \$102,159.00 or accept a lesser amount of \$5,000; and
- b) Determine instructions to be given to the State Debt Recovery Office (SDRO) in relation to this matter.

**RECOMMENDED that Council resolve to keep in place the charge registered on the Certificate of Title for Lot 1 DP 708477 and direct the State Debt Recovery Office to take no further action to recover the debt for the time being and review the matter again in 3 years if the debt is still outstanding.**

### **OPTIONS:**

Council may:

- a) resolve to recover the debt and direct the SDRO to proceed with recovery action for payment of the outstanding court imposed debt of \$102,159.00 owed to the Council by Mr Gregory Albert Jones;

- 
- b) resolve to rely upon the charge which has been recorded against Mr Jones' title to his land and leave the charge in place and direct the SDRO to take no further action to recover the debt for the time being. Council may revisit the issue at some distant point in time, such as in 3 years, accepting that when the matter is revisited, the circumstances applying today may apply at that later stage as well;
  - c) accept the material submitted by Mr Jones and resolve to accept the sum of \$5,000 offered by Mr Jones and direct the SDRO to abandon the remainder of the debt and recover the \$5,000. If the \$5,000 is not paid in full within an agreed time then none of the outstanding debt be written off;
  - d) resolve to enter into negotiations with Mr Jones to recover a lesser sum than the \$102,159.00 currently owed to Council. Presently, Mr Jones offers Council a sum in the amount of \$5,000. Council could accept that amount to bring finality to the issue. However, Council does not have to accept that sum. It could negotiate to recover a larger amount (albeit that Mr Jones does not presently offer a larger amount). However, if Mr Jones does not wish to negotiate with the Council then Council does not have to resolve to release Mr Jones from his obligations. In this circumstance Council can legitimately bide its time, as described in option 2, and rely upon the charge which has been recorded against Mr Jones' title to his land and leave the charge in place and direct the SDRO to take no further action to recover the debt for the time being; or
  - e) accept the material submitted by Mr Jones and resolve, based on that material, that there are reasonable grounds to conclude that an attempt to recover the debt would not be cost effective. Council must determine based on the material submitted by Mr Jones that there is no reasonable prospect of recovering the debt even if Mr Jones was forced to sell the property under the writ registered by the SDRO against the title to his property. If Council determines that this is the case then the debt can be written off pursuant to clause 213(5)(c) of the Local Government (General) Regulation 2005. Council could also resolve to direct the SDRO to cease recovery action and release Mr Jones from his obligation to pay the debt.

## **DETAILS/ISSUE:**

### **Background**

On 9 August 2002, Mr Jones was convicted for failing to comply with a Clean-Up Notice under the *Protection of the Environment Operations Act 1997* (NSW). The Notice was issued in relation to the dumping of fill and waste material (including bricks, concrete, timber, metal, plastic, villa board and ceramic tiles).

As a result of the conviction, Mr Jones was fined \$102,159.00. Mr Jones has failed to pay the fine. This fine is a debt that is owed to Council.

Mr Jones had the right to contest both the conviction and the penalty. In 2002, Mr Jones made an application to the Local Court to annul the conviction. The Court refused the application on 11 October 2002. As a result, the Court no longer has the ability to review and alter the conviction or penalty. Therefore, the conviction and penalty stand.

---

The SDRO have been engaged to recover the debt. On 31 January 2008 the SDRO registered a charge on the Certificate of Title for Lot 1 DP 708477 (241 Old Southern Road, South Nowra) ('the Title') pursuant to section 74 of the *Fines Act 1996* (NSW). The property is jointly owned by Mr Jones and his wife.

### **Request by Mr Jones**

Mr Jones has made a number of representations to Council requesting Council to:

- a) accept a lesser amount to satisfy the debt (\$5,000.00); or
- b) write off the debt completely.

Council has also received legal advice on the matter.

Information relating to the request made by Mr Jones and Council's legal advice are contained in a confidential report submitted to a confidential meeting in accordance with sections 10(A)(2)(a) and 10(A)(2)(g) of the *Local Government Act 1993* (NSW) as the information is of a personal nature and contains advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

### **Accepting a Lesser Sum to Satisfy Debt**

Mr Jones has offered Council \$5,000.00 to settle the debt of \$102,159.00.

The SDRO have advised that Council can request the SDRO to accept a lesser amount. Council would need to advise the SDRO in writing and on payment of the agreed amount, SDRO would write off the balance with a note on the system to ensure the balance was not reactivated if Mr Jones received an additional fine in the next 5 years from date of write off.

Council could resolve to enter into negotiations with Mr Jones to receive more than the \$5,000.00 on offer through a lump sum or instalment arrangement. Mr Jones does not have to agree to pay such an amount. If he does not, Council can resolve to leave the charge on the Title in place.

### **Council's Restrictions on Writing off Debts**

In relation to debts (other than rates and charges), clause 213 of the *Local Government (General) Regulations 2005* (NSW) will apply.

#### ***"213 Restrictions on writing off debts to a council***

- (1) *This clause does not apply to amounts owed to a council for rates or other charges for which the Act, or any other regulation in force under the Act, makes specific provision for writing off those amounts in specified circumstances.*
- (2) *A council must from time to time, by resolution, fix an amount above which debts to the council may be written off only by resolution of the council.*

- 
- (3) *A debt of or below that amount can be written off either by resolution of the council or by order in writing of the council's general manager. In the absence of a resolution under subclause (2), the council's debts can be written off only by resolution of the council.*
- (4) *A resolution or order writing off a debt to a council must:*
- (a) Specify the name of the person whose debt is being written off, and*
  - (b) Identify the account concerned, and*
  - (c) Specify the amount of the debt,*
- Or must refer to a record kept by the council in which those particulars are recorded.*
- (5) *A debt can be written off under this clause only:*
- (a) if the debt is not lawfully recoverable, or*
  - (b) as a result of a decision of a court, or*
  - (c) if the council or the general manager believes on reasonable grounds that an attempt to recover the debt would not be cost effective.*
- (6) *The fact that a debt is written off under this clause does not prevent the council concerned from taking legal proceedings to recover the debt<sup>7</sup>*

Council can only write off the debt if:

- (a) the debt is not lawfully recoverable*

This does not apply. Mr Jones has been lawfully convicted by the court so Mr Jones is legally obliged to pay the fine.

- (b) the Court decided to write off the debt*

This does not apply as the conviction still stands. The Court refused to annul the conviction, so the Court does not have the ability to re-consider the conviction or penalty.

- (c) the Council believes, on reasonable grounds, that an attempt to recover the debt would not be cost effective*

If Council wanted to write off the debt then there would have to be reasonable grounds to conclude that it would not be cost effective for Council to recover the debt.

To date Council's external legal costs in relation to this matter are approximately \$4,000. Other associated costs and resources expended by Council on this matter include advice from Council's Legal Services Section, court attendance by staff, preparation of briefs of evidence and other related legal documents, correspondence, collection of evidence and meetings with external parties involved.

The SDRO have advised Council that the costs associated with recovering the debt are deducted from the total amount recovered.



---

## **ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:**

The debt of \$102,159.00 arises out of a lawful conviction of Mr Jones. Considerable public funds were spent on this matter to:

- ensure the land was cleaned up; and
- to act as a deterrent to potential offenders.

In undertaking the prosecution, Council wanted to prevent the illegal dumping of waste within the Shoalhaven and protect the local environment and public health.

## **FINANCIAL CONSIDERATIONS:**

The financial implications, including potential court costs, are outlined within this report and the confidential report.

8. **Draft Development Control Plan 120 - Commercial Use of Public Footpaths and Development Control Plan 18 - Car Parking Code (Draft Amendment No 3).**  
**File 39733E, 5213E (PDR)**
- 

## **PURPOSE OF THE REPORT:**

This report addresses submissions received as a result of the public exhibition of draft Development Control Plan (DCP) 120 - Commercial Use of Public Footpaths and the consequential amendments to DCP 18 - Car Parking Code (Amendment No 3). The report further recommends that both draft DCPs, as publically exhibited subject to amendments outlined in the report, be adopted.

A copy of draft DCP 120, including the recommended further amendments (as highlighted) and DCP 18 (draft Amendment No 3) as exhibited are included in the Councillors' Information Folder.

## **RECOMMENDED that:**

- a) Council adopts draft Development Control Plan 120 - Commercial Use of Public Footpaths as publically exhibited subject to further amendments outlined in this report and that public notice be given on its adoption pursuant to Clause 21 of the *Environmental Planning and Assessment (EP&A) Regulation 2000*;**
- b) Council adopts DCP 18 - Car Parking Code, (draft Amendment No 3) as publically exhibited and that public notice be given on its adoption pursuant to Clause 21 of the *Environmental Planning and Assessment (EP&A) Regulation 2000*;**
- c) In relation to Recommendation a) and b), notice be given to submitters, Community Consultative Bodies and Chambers of Commerce; and**

- 
- d) **The adopted draft DCP 120 and DCP 18 (draft Amendment No 3) be incorporated into the draft citywide Shoalhaven DCP 2009.**

**OPTIONS:**

Council may:

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

**DETAILS/ISSUE:**

**Background:**

Council, at its meeting of 9 June 2009 resolved that:

- “a) Council resolve to prepare a draft DCP for the Commercial Use of Public Footpaths and place this document on public exhibition in accordance with Clause 18 of the Environmental Planning and Assessment (EP&A) Regulation 2000 and that this draft DCP be incorporated into Council’s draft citywide DCP 2009;*
- b) In the spirit of encouraging the uptake of future applications for alfresco dining in the Shoalhaven, Council set the current fee for the licencing component for alfresco dining on public footpaths as; no licence fees for the first two years, a 50% reduction for the life of the alfresco dining, and retains the 50% reduction in DA fees, but completely removes the Section 94 Developers Contribution component for off-street car parking in the assessment of DAs for out-door dining within Council’s footpath reserve; and*
- c) Consistent with recommendation b) above, the associated requirement that additional off-street car parking be provided for alfresco dining on public footpaths also be removed, and accordingly, Council’s DCP 18 - Car Parking Code be concurrently amended to reflect this and placed on public exhibition, pursuant to Clause 18 of the EP&A Regulation 2000.”*

Accordingly, draft DCP 120 and DCP 18 (draft Amendment No 3) were publically exhibited between 24 June and 21 August 2009. One (1) submission was received from a Community Consultative Body (CCB) plus a number of internal submissions.

**Summary of Submissions Received**

Submissions received are summarised and commented on as follows:

- There be a clear 2.0m for pedestrian movement where goods or dining are proposed in the footpath area.

**Comment:** This comment has been incorporated into draft DCP120.

- 
- Where angled parking is adjacent to alfresco dining areas that all angle parking in the City be “front to kerb” whether on the street or in a car park.

**Comment:** The arrangements with on-street car parking spaces across the City is a matter that is currently under consideration. In a recent Development Application (DA) at Culburra Beach, the determination accepted a “nose in” approach for specified reasons. The issues regarding on-street parking are broader than those related to draft DCP 120 (however will be considered as part of the preparation of the citywide Shoalhaven DCP 2009 in the coming months).

- Clarification sought on details to align draft DCP 120 provisions with the Council’s licensing agreement processes, control details concerning types of associated furniture, safety, music and entertainment, relationship with liquor licensing requirements, companion animals and smoking.

**Comment:** Further amendments have been incorporated into draft DCP 120, in particular:

- Clause 2.3.11 - where a logo is used on the furniture (barricades or umbrellas) it shall be a single uniform one;
- Clause 2.4 - while companion animals are not prohibited in the alfresco eating area, patrons must keep the dog on a leash and controlled to not create a nuisance;
- Clause 2.5.5 - the alfresco dining area shall not be enclosed and drop down sides are not permitted;
- Clause 2.6.7 - amplified or other entertainment is not permitted in the alfresco dining area;
- Clause 2.8.3 - additional lighting installed shall not interfere with pedestrian and traffic use in the adjacent areas;
- Clauses 2.8.5 and 2.8.6 - provide guidance to ensure traffic use of the roadway is not adversely affected;
- Clause 3.6 - Smoking - refer to separate comments, below;
- Clause 3.8 - there is reference to the provisions relating to liquor service in the alfresco eating area requiring a specific Consent condition; and
- Clause 3.9 - definitions are added to assist applicants.

No submissions were received with respect to draft Amendment No 3 to DCP 18 - Car Parking Code.

### **General Amendments to Draft DCP 120**

Certain general amendments are also incorporated throughout draft DCP 120 for clarification purposes or for consistency with recent legislation changes; e.g. State Environmental Planning Policy (Exempt & Complying Development Codes) 2008.

These general amendments do not change the intent nor content of the publicly exhibited document.

---

## Smoking and Alfresco Dining Areas

Council resolved at its meeting of 10 November 2009 that:

- “1. Council conduct an investigation/review of its policy regarding smoking at places which have alfresco dining. The investigation/review should seek input from local Chambers of Commerce and local Precincts.
2. A report should be presented to Council to assist with review of Council policy regarding smoking at places used for alfresco dining.”

**Comment:** In relation to this resolution, it is intended to report separately as a general Council policy on smoking in public areas. In addition, another Council resolution of 24 March 2009, had requested in part that:

*“The General Manager (Strategic Planning & Infrastructure) submit a report on the feasibility of prohibiting smoking on Council beaches and playgrounds”.*

Accordingly, it is intended that both the resolutions of 10 November and 24 March 2009 be addressed as one, as a general Council policy on smoking in public areas, and further, its investigation seek input from Community Consultative Bodies and Chambers of Commerce.

In progressing with draft DCP 120 and to clarify aspects of this smoking issue, the following amendment (as highlighted), is recommended to be added to Clause 3.6 of this draft DCP:

### **“3.6 Smoking**

*Smoking is not permitted in any area which is covered or substantially enclosed as defined in the Smoke-free Environment Act 2000. **This DCP does not permit alfresco dining areas to be enclosed.**”*

## **ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:**

There is likely to be an economic benefit to local businesses that wish to include alfresco dining on public footpaths with their associated restaurant or cafe. There is also likely to be an indirect economic benefit to the City if there are increases in tourist and visitor numbers in commercial areas of the City.

## **FINANCIAL CONSIDERATIONS:**

There will be a reduction in developers' contribution revenue due to the waiving of Section 94 car parking contributions levy for alfresco dining on public footpaths, however, this move is in accordance with Council's intention of encouraging the uptake of alfresco dining. The extent of any reduction in developers' contribution revenue is anticipated to be relatively low as the Section 94 developers' contributions levy is a one-off collection and does not re-occur year after year.

---

## **CONCLUSION:**

It is considered that the draft DCP 120 with further amendments and DCP18 (draft Amendment No 3) as exhibited, will provide appropriate guidelines for the commercial use of public footpaths in the Shoalhaven and meet Council's intention of encouraging the uptake of outdoor dining; and as such it is prudent that Council adopts both draft documents as recommended in this report.

- 9. Tourist Cabin Development (1 x 1 bedroom cabin and change of use of 1 bedroom within dwelling to a bed and breakfast room) - Lot 4 DP 875541 - 21 Wattamolla Road, Woodhill. Applicant: Adrian Turnbull. Owner: Adrian and Kerry Turnbull.  
File DA09/2339 (PDR)**
- 

## **PURPOSE OF THE REPORT:**

An application has been received for the development of a one bedroom tourist cabin and the change of use of one bedroom within an existing dwelling to a bed and breakfast (B&B) room. The proposal is an addition to an existing tourist facility that consists of three tourist cabins and a two bedroom B&B accommodation approved by Council via DA99/1184. The proposal does not meet the acceptable solution in Design Element 2.2 Density Standards of Council's *Development Control Plan 63 - Tourist Development in Rural Areas* Amendment No 5 which states that "the number of cabins should not exceed one cabin per two (2) hectares of land".

The matter is being reported to Council as the property is only 5.88 hectares and the additional cabin is over the density standard permitted by the acceptable solution. The applicant amended the application on 9 September 2009 to include the change of use of one bedroom of the house to a B&B room giving a total of three bed and breakfast rooms. The existing tourist facility (DA99/1184) consisting of a dwelling, three cabins and a two bedroom B&B was approved by Council following substantial objection to the development from adjoining and nearby property owners. As such direction is sought from Council on this policy matter prior to the determination of the application.

**RECOMMENDED that in respect of DA09/2339 for the proposed Tourist Cabin Development (1 x 1 bedroom cabin) and additional Bed and Breakfast room - Lot 4 DP 875541 - 21 Wattamolla Rd, Woodhill:**

- a) **A variation of the acceptable solution related to density standards for tourist cabins in Design Element - 2.2 Density Standards of Council's *Development Control Plan 63 - Tourist Development in Rural Areas* Amendment No 5 be supported;**
- b) **A variation of performance standard P5 related to density standards for tourist facilities in Design Element - 2.2 Density Standards of Council's *Development Control Plan 63 - Tourist Development in Rural Areas* Amendment No 5 permitting an additional bed and breakfast room be supported; and**
- c) **That the application be determined under delegated authority.**

---

## OPTIONS:

- a) Resolve to support the recommendation; or
- b) Resolve to not support the variation for the additional cabin and bed and breakfast room and require compliance with the density standards for tourist cabins and parallel development in Design Element 2.2 of *Development Control Plan 63 - Tourist Development in Rural Areas* Amendment No 5. This would result in the additional cabin and bed and breakfast room not being supported; or
- c) Resolve to not support the variation for the additional cabin and support the variation for the bed and breakfast room. This would result in the additional cabin not being supported and the bed and breakfast room being supported subject to determination following the 79C assessment; or
- d) Resolve to support the variation for the additional cabin and to not support the variation for the bed and breakfast room. This would result in the additional bed and breakfast room not being supported and the cabin being supported subject to determination following the 79C assessment.

## DETAILS/ISSUE:

### Proposal

The application proposes to construct a tourist cabin consisting of one bedroom with a lounge/dining area, kitchen and bathroom. The cabin is located on a north facing slope on the southern side of the property on an already cleared section of land. No vegetation is proposed to be removed for the construction of an Asset Protection Zone. The cabin is proposed to be constructed on poles to minimise excavation. This results in the north elevation having a two storey appearance with the lower level used to provide undercover parking. The cabin will have a separate effluent management system.

Refer to **Attachment 'A'** for details of the above.

### Background

The land was the subject of a previous application (DA99/1184) for the development of a six bedroom house with 2 rooms to be used for B&B accommodation and 4 x two bedroom tourist cabins, machinery shed and swimming pool. Following notification, 20 submissions were received objecting to the development. The objectors were generally concerned about traffic safety, visual prominence, scale of the development, size of and number of cabins and effluent disposal. The application was reported to Council and it was recommended on 17 August 1999 that the application be determined under delegated authority on the basis of three cabins. The consent was determined on 23 August 1999 for a rural dwelling-house containing two rooms for B&B accommodation, 3 x two bedroom tourist cabins, machinery shed, swimming pool and cabana.

The tourist facility has been operating for approximately 9 years and a search of Council's records system has found no complaints about the operation of the facility.

---

## The Site

# The site has an area of 5.88 hectares and is situated on the southern side of Wattamolla Road, approximately 200m metres west of the intersection with Brogers Creek Road. The property is generally undulating containing cleared areas and three dams with a steep vegetated escarpment to the south. The dwelling and B&B accommodation are located in the south eastern corner with two of the existing tourist cabins located along the western boundary and the remaining cabin located in the middle of the property. See locality sketch - **Attachment 'B'**

## ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

### Policy Issues

#### Development Control Plan 63 - Tourist Development in Rural

The proposal does not comply with the requirements/acceptable solutions detailed below:

- 2.2 Density Standards

The proposed cabin does not meet the acceptable solution which states the number of cabins should not exceed one cabin per two hectares. The site is 5.88 hectares and already has three cabins approved. The DCP however notes that an increase in density may be considered where Council is satisfied the proposal achieves:

- The zone objectives;
- The aims, objectives of this DCP; and
- The relevant performance criteria for each element of this DCP.

# **Summary of applicant's comment** - The applicant states that the proposal meets the objectives and relevant performance criteria of the DCP. In summary the proposal has little to no effect on the rural character of the area, maintains privacy to neighbours, protects water quality and is a well designed, quality and innovative development that adds to an already successful tourist facility. Refer to **Attachment 'C'**.

**Comment** - While the DCP nominates one cabin per 2 hectares as an acceptable density standard it also quite clearly considers that an increase in this density may be an acceptable outcome provided the development meets the relevant performance criteria and objectives of the DCP.

As the tourist facility has been operating for a number of years, it enables Council to better assess whether the existing development meets the requirements of the DCP and how the proposed development may impact on the existing development and the locality.

A review of Council's records found no complaints about the current tourist facility and a site inspection found that the existing tourist facility is mostly hidden from view from Wattamolla Road and Brogers Creek Road and has minimal visual impact on the natural landscape as seen from most public areas and nearby properties.

The visual impact of the proposed cabin on the landscape and surrounding properties is minimised by it being located on an already cleared area below the

---

ridgeline of the escarpment to the south and by being well screened from Wattamolla Road and Brogers Creek Road by existing vegetation located along the property boundary. In addition a landscape concept plan indicates further screen planting is proposed on the northern and western sides of the cabin.

The amenity of nearby residents is protected due to the siting of the cabin away from property boundaries and the screening from view by existing and proposed trees.

Effluent from the cabin is proposed to be treated via an aerated wastewater treatment system (AWTS) with disposal by subsurface irrigation that is separate from the existing wastewater system utilised by the rest of the tourist facility. The proposed effluent management system is currently being assessed by Council staff and the Sydney Catchment Authority.

The variation request as submitted is supported.

- The proposed conversion of a bedroom in the dwelling to a B&B room is also outside the density standards of the DCP where performance criteria P5 states that combined tourist accommodation should not be inconsistent with the acceptable density standards.

# **Summary of applicant's comment:** The applicant states that the additional B&B room will not require any constructions works as it utilises a vacant bedroom in the house. The overall demand on water resources and the effluent management system will not increase and in fact should decrease as the use has changed from a permanent nature to a temporary one. Refer to **Attachment 'D'**.

**Comment:** The proposal for a third B&B room is consistent with Council's Bed and Breakfast Policy which permits accommodation for up to 12 people. The effluent management system for the dwelling was designed to account for the permanent occupancy of the bedroom while the proposed use as a B&B room will only have intermittent occupancy and therefore there should be a reduced the load on the system. There is no visual impact as the B&B makes use of an existing bedroom and does not require any alterations to be undertaken to the dwelling. The only impact may be on traffic generation and this is considered to be negligible considering the limited use. In addition the bedroom appears to have been used for this purpose for a number of years without detriment.

The variation request as submitted is supported.

### **Community Consultation**

In accordance with Council's Community Consultation Policy, the development application (tourist cabin) was notified to adjoining and adjacent land owners (500m buffer) during the period 26 October 2009 to 10 November 2009.

Two submissions were received objecting to the proposal.

The objections are summarised as follows:

- the additional cabin would detract from the amenity of the area;



- 
- additional vehicle movements on the quiet road frequented by walkers, cyclists and horse riders would be unwelcome; and
  - original application for four cabins was refused as it didn't comply with the policy, if this application is approved it would set a dangerous precedent.

The content of these objections have been addressed in the comments above.

The applicant submitted an amended proposal on 9 November 2009 to include the change in use of one bedroom of the dwelling to a B&B room giving a total of three B&B rooms. The amended proposal was re-notified to adjoining and adjacent land owners (500m buffer) during the period 10 November 2009 to 25 November 2009; no further submissions were received.

### **FINANCIAL CONSIDERATIONS:**

There are no financial considerations for this report.

### **CONCLUSION**

While it is clear that the proposed cabin exceeds the density standards set by Council in DCP 63, it is also clear in the DCP that cabin density may be increased where a proposal meets the performance requirements and aims and objectives of the remainder of the document. The aim of the DCP is to encourage tourist development as well as protecting the amenity of rural areas. This proposal aims to achieve both by complementing the existing successful tourist facility and through its design and placement having minimal impact on the natural and built environment.

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

R.D Pigg  
**GENERAL MANAGER**

---

**REPORT OF GENERAL MANAGER**

**DEVELOPMENT COMMITTEE**

**TUESDAY, 1 DECEMBER 2009**

**STRATEGIC PLANNING AND INFRASTRUCTURE / DEVELOPMENT AND ENVIRONMENTAL SERVICES**

**10. Shoalhaven Contributions Plan draft Amendment No 101 – Huskisson Business 3(g) Zone Development Precincts File 40529E (PDR)**

---

**Purpose of the Report:** To seek Council endorsement for public exhibition of the Shoalhaven Contributions Plan draft Amendment No 101 – Huskisson Business 3(g) Zone Development Precincts.

**RECOMMENDED that in relation to the Shoalhaven Contributions Plan draft Amendment No 101 – Huskisson Business 3(g) Zone Development Precincts:**

- a) Council endorse public exhibition for a minimum period of 28 days;
- b) Notice of exhibition be placed in local newspapers and on Council's internet site with easy links to make comments electronically;
- c) Huskisson Woollamia Community Voice and local Business Chamber be made aware of the draft document; and
- d) A further report be submitted to Council after the public exhibition period.

**Options:**

- 1. Endorse the draft Amendment No 101 – Huskisson Business 3(g) Zone Development Precincts for public exhibition for a minimum of 28 days.
- 2. Seek amendments of draft Amendment No 101 prior to public exhibition.
- 3. Not adopt draft Amendment No 101 for public exhibition.

**Details/Issue:**

# Council resolved on 10<sup>th</sup> November 2009 to prepare a draft Amendment to the Shoalhaven Contributions Plan to adequately cater for demand from future development allowed under Development Control Plan (DCP) No. 99 – Huskisson Business 3(g) Zone Development Precincts. The Council report pertaining to this resolution is provided as Attachment 'A.' Whilst the recommendation in the attached report refers to Contributions Plan 2010, it is recommended that Contributions Plan 1993 be amended this way which will allow incorporation into Contributions Plan 2010 in due course.

**Contributions Plan Draft Amendment No. 101**

The purpose of the draft Amendment is to seek contributions from new (future) development within the contribution areas for the provision of service lanes and ancillary works identified in DCP 99.

---

# The Scope of Works in the draft Amendment is based on DCP 99 draft Amendment No. 1 - Huskisson Business 3(g) Zone Development Precincts which is currently on public exhibition. Design and costs used in the draft Amendment are based on concept designs provided by MacDonald International. The proposed works include the provision of service lanes and associated drainage for land zoned 3(g) in Huskisson as shown in Attachment 'B'. Some acquisition of Crown land is required.

As the proposed contribution projects, detailed in the draft Amendment, are solely provided to meet future development demand, all projects are 100% apportioned to development. The table below lists proposed contributions rates on a \$ per equivalent tenement (ET) basis for each contribution project. These contributions will be in addition to any contributions required under Council's Contribution Plan 1993.

**Table 1**

<b>Project</b>	<b>Project Cost</b>	<b>Contribution Rate/ET</b>
01ROAD0117 – Kent Lane, Huskisson	\$332,756	\$7,528.42
01ROAD0118 – Winnima Lane, Huskisson	\$469,566	\$7,672.65
01ROAD0119 – Unnamed Lane, Huskisson	\$338,969	\$18,831.61

A copy of the draft Amendment will be available to view in the Councillors Room prior to this meeting.

**\$20,000 Residential Contribution Threshold**

Of the new rates proposed in Table 1, Contribution Project 01ROAD0119 has the potential to exceed the \$20,000 residential contribution threshold as set down by the Minister for Planning on 13th January 2009. Recognising that project 01ROAD0119 has not been granted approval to exceed this threshold, it is proposed that after public exhibition of this Amendment, Council seek this exemption through the public exhibition process of the draft Shoalhaven Contributions Plan 2010.

**Economic, Social & Environmental (ESD) Consideration:**

The proposed works identified in the draft Amendment will be constructed using best practice industry standards. This will ensure that Economic, Social and Environmental Considerations are appropriately considered at the time of development.

**Financial Considerations:**

The draft Amendment allows Council to collect Development Contributions to facilitate service lanes and associated drainage works required to adequately cater for demand from future development allowed under DCP 99. The draft Amendment identifies 3 projects which Council will be able to collect contributions for.

---

As detailed above, all projects are proposed to be fully funded by development, however Council funding may be required to provide facilities in anticipation of new development. This funding would be recouped through future contributions.

E J Royston  
**DIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE**

T Fletcher  
**DIRECTOR, DEVELOPMENT & ENVIRONMENTAL SERVICES**

R D Pigg  
**GENERAL MANAGER**

---

## **CONFIDENTIAL BUSINESS PAPER AGENDA**

### **DEVELOPMENT & ENVIRONMENTAL SERVICES**

**1. Request to waive outstanding court imposed fine - Greg Jones.**

**Reason**

Section 10A(2)(a) - Matters or information are personnel matters concerning particular individuals (other than Councillors)

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

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.