

SHOALHAVEN CITY COUNCIL

DEVELOPMENT COMMITTEE

To be held on Tuesday, 3rd November, 2009
Commencing at the conclusion of the Crown Reserve, Community and Commercial Operations
Committee (commencing at 5.00pm).

28th October, 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, 3rd November, 2009 commencing at the conclusion of the Crown Reserve, Community and Commercial Operations Committee (commencing at 5.00pm)** 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. **Addendum Reports**

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

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

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

Cell Phones:

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

LOCAL GOVERNMENT ACT 1993

Chapter 3

Section 8(1) - The Council's Charter

(1) The council has the following charter:

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

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REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 3 NOVEMBER 2009

STRATEGIC PLANNING AND INFRASTRUCTURE

1. Review of the Native Vegetation Act and the Catchment Authorities Act

File 33115E

Purpose of the Report:

To update Council on the review of the *Native Vegetation Act 2003* and the *Catchment Authorities Act 2003* and the way Council has fed information into this review process to date.

RECOMMENDED that the report on the Review of the Native Vegetation Act and the Catchment Authorities Act be received for information and Council be kept advised of the progress of the review.

Options:

- Option 1* - Receive the report for information and request that Council be kept advised of the progress of the review.
- Option 2* - Resolve to make a more detailed submission to the State Government on the Review. Note, the final comment period has closed.

Details/Issue:

The NSW Government reviews legislation every five years. This is the first review of *Native Vegetation Act 2003* and the *Catchment Management Authorities Act 2003*.

- # As part of this review the Government requested input from relevant stakeholders. Council has collaborated with other Councils in the region and via the Local Government and Shires Association (LGSA) to provide a series of recommendations for the Department of Environment, Climate Change & Water (DECCW) to consider, in the hope that this will have more impact than individual submissions. This process recognised that the bulk of issues relate to the Regulations rather than the Act. Staff attended an independently facilitated round table discussion with the LGSA attended by fifteen (15) Local Government and four (4) Catchment Management Authority representatives from across the State. The full list of recommendations made to DECCW by LGSA as a result of the consultation process is provided - Attachment "A".

As part of the review process DECCW released a Discussion Paper, a copy of which is provided in the Councillor Information Folder for today's meeting. Comment was sought on the review by 23 September 2009.

The most significant issue for local Councils with the *Native Vegetation Act 2003* (NV Act) is the potential for dual consent requirements with Council functions under the *Environmental Planning and Assessment Act 1979*. This issue has been consistently raised with the Government since 2004.

Currently, the Department of Environment, Climate Change & Water (DECCW) is negotiating with the Department of Planning (DOP) on how to resolve the dual consent issue. While nothing has been confirmed, it is understood that the issues being discussed include:

- Exemptions for developments consistent with the Seniors Living SEPP
- Expansion of the Single Dwelling exemption to proposals that have a similar footprint / environmental impact
- Clarification of the application of the NV Act in R5 Large Lot Residential zones
- Clarification of the application of the NV Act in regard to Declared Public Roads
- Clarification of the application of the NV Act in regard to all other LEP zonings
- Review of Routine Agricultural Management Activities (RAMAs) within certain zones particularly environment protection zones.

Catchment Management Authorities Act 2003

After initial concern during their establishment, the relationship between Catchment Management Authorities (CMA's) and local Councils is gradually evolving. However there are still a range of issues that have been raised by Local Government regarding the management and operations of CMA's across the state.

The NSW Government has been very clear that this review is focussed on "evolution, not revolution", and so recommendations were developed with the recognition that CMA's will continue to exist, with only minor legislative changes to their roles, responsibilities and operations.

Economic, Social & Environmental (ESD) Consideration:

The Native Vegetation Act determines whether non-urban vegetation can be cleared. Appropriate amendments will help to lower the confusion associated with the implementation of this legislation and ensure equity.

Financial Considerations:

Not applicable.

2. Shoalhaven Contributions Plan Draft Amendment No 76.1 - Drainage

File 28708 PDR

Purpose of the Report: To seek Council endorsement of the Shoalhaven Contributions Plan Draft Amendment No 76.1 – Drainage for public exhibition.

RECOMMENDED that in relation to the Shoalhaven Contributions Plan Draft Amendment No 76.1 – Drainage:

- a) **Council endorse the public exhibition for a minimum of 28 days;**

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- b) **Notice of exhibition be placed in local newspapers and on Council's intranet site with easy links to make comments electronically;**
 - c) **Community Consultative Bodies in Ulladulla be made aware of the draft document; and**
 - d) **A further report be submitted to Council after the public exhibition period.**

Options:

Council, in relation to the Shoalhaven Contributions Plan Draft Amendment No 76.1 – Drainage, may choose to:

- a) Endorse public exhibition.
- b) Seek further changes prior to public exhibition.
- c) Not endorse public exhibition.

Details/Issue:

Background

Council is in the process of preparing a new Contributions Plan (draft Shoalhaven Contributions Plan 2010) to meet legislative requirements as detailed in recent reports to Council.

To meet this requirement, it is intended that the 1993 Shoalhaven Contributions Plan (1993 Plan) be amended to incorporate information in the draft Shoalhaven Contributions Plan Amendment No. 76.1 – Drainage (draft Amendment). This draft Amendment, along with other recent amendments to the 1993 Plan, will then be incorporated into the new Contributions Plan.

This report outlines changes recommended following review of the drainage component of the 1993 Plan which has not previously been subject to a review. A copy of the draft Amendment is available to view in the Councillor's Room.

Drainage Project Amendments

The 1993 Plan contains 18 drainage projects. The draft Amendment proposes 7 projects for inclusion into the Contributions Plan and for funding consideration in Council's capital works planning. In addition to these 7 projects, drainage for St Georges Basin and Hillcrest Avenue, South Nowra has been revised in recent amendments to the 1993 Plan. The Shoalhaven Contributions Plan draft amended for Huskisson Town Centre also proposes a future drainage project. Therefore, a total of 9 drainage projects will be retained in the 1993 Plan and 9 projects are recommended to be deleted.

In addition to rectifying anomalies in the 1993 Plan, the review has considered:

- The status of each project in terms of works undertaken;
- The amount of contributions collected for each project;
- The potential development related to each project;
- Changes in circumstances since the 1993 Plan was made effective;
- Current need for each project;
- The difficulties in applying some projects due to:

- Recent industry preference for Water Sensitive Urban Design.
- Inter-allotment drainage that may be superseded due to development design.
- The difficulty in predicting development (ie upstream or downstream development has not occurred).

The draft Amendment proposes to:

- Delete 9 drainage projects from the 1993 Plan;
- Retain and update 5 projects from the 1993 Plan; and
- Retain 2 recoupment projects from the 1993 Plan.

Details of deleted projects and the reason for deletion are shown in Attachment 'A'. Through deleting these projects, it is recommended that current and future contributions collected by Council through current consents be reallocated to improvement works in and down stream of the catchment area.

Details of retained and recoupment projects are shown in Attachment 'B'.

The estimated project costs and apportionments included in the Amendment are shown in Table 1. The catchment area which determines the contribution rate in m² is detailed in Attachment B.

Apportionment is determined by calculating the existing developed land (Council's share) and the potential developable land (development's share) as percentages of the total catchment area.

Table 1

Project	Estimated Cost	Council Share	Development Share	Proposed Contribution Rate/m²	Current Contribution Rate
01 DRAI 2002 Sth Nowra Industrial Estate	\$827,629	\$437,064.34	\$390,564.66	\$0.60	\$0.75
01 DRAI 2003 Illaroo Rd, Nth Nowra	\$208,980	\$178,409.25	\$30,570.75	\$0.95	\$1.90
05 DRAI 2002 Camden St, Ulladulla	\$30,000	\$6,608.15	\$23,391.85	\$4.97	\$3.30
05 DRAI 2005 New St, Ulladulla	\$33,916	\$13,266.76	\$20,649.24	\$1.72	\$3.30

Project	Estimated Cost	Council Share	Development Share	Proposed Contribution Rate/m²	Current Contribution Rate
05 DRAI 2010 Kingsley Ave Ulladulla	\$868,590	\$732,561.97	\$136,028.03	\$4.39	\$4.46
05 DRAI 2009 Boree St, Ulladulla	\$150,000	\$142,131.09	\$7,868.91	\$3.63	\$6.59
05 DRAI 2012 St. Vincent St, Ulladulla	\$234,830	\$206,507.71	\$28,322.29	\$5.53	\$4.94

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 assist in the funding of drainage projects that are required as a result of user demand from future commercial development. An objective of the draft Amendment is to ensure equitable sharing of costs for such essential community infrastructure.

As detailed above, Council funding required to match Development Contributions will need to be considered in future capital works planning.

**3. Draft Shoalhaven Contributions Plan Amendment No 73. - Active Recreation
File 28705E PDR**

Purpose of the Report: To seek endorsement of the Shoalhaven Contributions Plan Draft Amendment No 73 – Active Recreation for public exhibition.

RECOMMENDED that in relation to the Shoalhaven Contributions Plan Draft Amendment No 7. – Active Recreation:

- 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) All Community Consultative Bodies be made aware of the draft document;
- d) A further report be submitted to Council after the public exhibition period; and

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- e) **A further report be submitted to Council on options for alternative use of Council land no longer required for sporting facilities.**

Options:

Council, in relation to the Shoalhaven Contributions Plan draft Amendment No. 73 – Active Recreation, may choose to:

- a) Endorse public exhibition.
- b) Seek further changes prior to public exhibition.
- c) Not endorse public exhibition.

Details/Issue:

Background

Council is in the process of preparing a new Contributions Plan (draft Shoalhaven Contributions Plan 2010) to meet legislative requirements as detailed in recent reports to Council.

To meet this requirement, it is intended that the 1993 Shoalhaven Contributions Plan (1993 draft Plan) be amended to incorporate information in the draft Shoalhaven Contributions Plan Amendment No. 73 – Active Recreation (draft Amendment). This draft Amendment, along with other recent amendments to the 1993 Plan, will then be incorporated into the new Contributions Plan.

Development of the draft Amendment has primarily been informed by the Sportsground Strategic Plan 2008 – 2036 which Council adopted in January 2009 (Min09.107). The Strategic Plan guides the provision of future sportsground facilities to meet the needs of the Shoalhaven community up to 2036 and its development involved extensive consultation with Shoalhaven based;

- Sporting clubs
- Sporting associations
- Schools
- Community Consultative Bodies
- Relevant Management Committees
- The general public

The Sportsground Strategic Plan 2008 – 2036 can be viewed at

<http://www3.shoalhaven.nsw.gov.au/applications/policyindexinternet/docs/1767476.pdf>

This report outlines changes recommended following review of the active recreation component of the 1993 Plan. A copy of the draft Amendment is available to view in the Councillor's Room.

Shoalhaven Contributions Plan 1993 Summary

The 1993 Plan contains 21 project sites which provide facilities for tennis, football (all codes), cricket, basketball, netball & hockey. The estimated cost for all projects in 1993 totalled \$40,546,696.

- Estimated Development Contributions of \$17,952,348.26.
- Estimated Council funding of \$ 22,594,347.45.
- Population estimates based on a 20 year period (1991 – 2011).

Principles applied when developing the draft Amendment

- Projects in the 1993 Plan and not constructed be deleted and available contributions reallocated to reduce the overall cost of new projects. (Reasons for not commencing construction are detailed in Attachment 'A' and in the draft Amendment)
- New projects be based on adopted population projections, Sportsground Strategic Plan 2008-2036 (high priorities only), adopted 2009/12 Management Plan and Council's long term capital works planning.
- Developer/Council apportionment be based on population projections up to 2021 which were adopted by Council in May 2008.
- Project construction estimates be based on a standard construction rate.
- Definition of community benefit areas
 - Local community benefit area = Single Planning Area.
 - District community benefit area = 2 or more Planning Areas.
- Project contributions be pooled according to Planning Area or 2 or more Planning Areas (i.e. District).
- Project sites identified in the 1993 Plan, where Council does not own the land and does not require it at this time, be excluded from the draft Amendment.
- Project sites identified in the 1993 Plan, not developed for sporting use and in Council ownership, which this draft Amendment deletes, be considered for alternative use.
- Tennis facilities not identified in the Sportsground Strategic Plan be subject to future demand analysis and added via a further Plan amendment.

Project sites identified for alternative use

This draft Amendment proposes that the following project sites identified in the 1993 Plan, not developed for sporting use and in Council ownership, be considered for alternative use.

Project Site (proposed facilities)	Reason for Deletion (relevant Council Minute)
Nowra West Tennis Courts - Cavanagh Lane, West Nowra (Tennis)	Sportsground Strategic Plan 2008 - 2036 recommends to "cluster" such facilities at Narang Road Tennis Complex (Min08.150).
Solon Tennis Courts - Stanbury	Sportsground Strategic Plan recommends to "cluster" such facilities at Narang Road Tennis

Project Site (proposed facilities)	Reason for Deletion (relevant Council Minute)
Place, Worrigea (<u>Tennis</u>)	Complex (Min08.150).
Allsands Sporting Complex – Worrigea Road, Worrigea (<u>Football & Cricket</u>)	Sportsground Strategic Plan recommends to “cluster” such facilities at South Nowra Soccer Fields and Lyrebird Sports Park (Min08.150).
Worrigea Estate Sporting Complex – Isa Road, Worrigea (<u>Football & Cricket</u>)	Sportsground Strategic Plan recommends to “cluster” such facilities at existing at South Nowra Soccer Fields and Lyrebird Sports Park (Min08.150).
Cambewarra School – Main Rd, Cambewarra (<u>Football & Cricket</u>) (Part Council ownership)	Sportsground Strategic Plan recommends to “cluster” such facilities at Ray Abood Village Green (Min08.150).
Vincentia Sporting Fields - Argyle Street, Vincentia (<u>Football & Cricket</u>)	Site considered to have significant environmental constraints. Council has reallocated part funds to expand existing facilities within the area (Min 06.878 & Min08.150).
Village Drive Sports Field - Village Drive, Ulladulla	This site is currently providing a passive recreation function and is not able to accommodate two full sized playing fields.

Draft Amendment Summary

The draft Amendment proposes the following elements:

- Identifies 30 project sites (new, updated & recoupment projects) which provide facilities for tennis, football (all codes), cricket, basketball, netball, hockey, croquet, leisure centres & skate parks. The estimated cost for all projects totals \$48,908,082.
- Estimated Development Contributions of \$10,935,093.
- Estimated reallocated Development Contributions of \$6,907,284.
- Continue recoupment for Bay and Basin Leisure Centre and Ulladulla Leisure Centre to the combined recoupment amount of \$1,136,472.
- Estimated Council funding of \$31,065,706.
- Population estimates based on a 13 year period (2009 – 2021).

Proposed distribution of accumulated contributions

The draft Amendment proposes that funds be pooled for projects in each Planning Area, and be applied progressively in accordance with Council’s Capital Works budget. This provides a more flexible approach to expenditure of contributions held in Trust by Council.

It is proposed that Accumulated Development Contributions, as at October 2009, be distributed as follows, and used to offset the cost of future projects. Additional contributions received via consents not yet acted upon can be distributed this way.

Planning Area	Allocation of Available Funds
1	\$3,683,818
2	\$23,482
3	\$897,547
4	\$43,306
5	\$225,711
District Hockey Facility	\$1,212,982
Northern Shoalhaven Indoor Sports Stadium	\$843,920

Draft Amendment Contribution Rates

Contribution rates in the 1993 Plan were based on significantly higher population projections than those adopted by Council in May 2008. To meet these previous high projections a number of additional project sites were identified which subsequently have not been constructed. Since the 1993 Plan commenced, Council has also resolved where possible to “cluster” such facilities at existing sites to provide economies of scale for future operation.

As a result of applying the population projections adopted by Council in May 2008, the contribution rates in the draft Amendment are generally less than those of the 1993 Plan. The impact of this change is moderated by the pool of available funds. The apportionment and contribution rates for new, updated & recoupment projects included in this draft Amendment are detailed below with a comparison against the 1993 Plan contribution rates:

Planning Area (PA)	Contribution Projects	Draft Amendment Contribution Rate	1993 Plan Contribution Rate
1	01AREC0004 – Area 1 Sportsground provision	\$224	<u>\$2,586</u>
	01AREC0005 - Northern Shoalhaven Leisure Centre	\$1,000	
	01AREC0006 Northern Shoalhaven Indoor Sports Stadium	\$283	
	<u>Total</u>	<u>\$1,507</u>	
2	02AREC0002 - Culburra Sporting Complex (Proposed Long Bow Subdivision – Culburra Road, Culburra)	Subject to future re-zoning or development approval	<u>\$1,197</u>

Planning Area (PA)	Contribution Projects	Draft Amendment Contribution Rate	1993 Plan Contribution Rate
3	03AREC2003 Bay and Basin Leisure Centre – The Wool Road, Vincentia	\$248	\$524
	03AREC0004 – Area 3 Sportsground provision	\$811	\$2,103
	<u>Total</u>	<u>\$1,059</u>	<u>\$2,627</u>
4	04AREC0003 Sussex Inlet Aquatics Centre	\$1817	<u>\$1,515</u>
	04AREC0004 – Area 4 Sportsground provision	\$48	
	<u>Total</u>	<u>\$1,865</u>	
5	05AREC2002 - Ulladulla Leisure Centre Indoor Swimming Pool	\$76	\$191
	05AREC0004 – Area 5 Sportsground provision	\$653	\$1,665
	<u>Total</u>	<u>\$729</u>	<u>\$1,856</u>
District	CWAREC0004 Bernie Regan Sporting Complex Hockey Facility	\$77	PA1 = \$278 PA 2 = \$225 PA3 = \$255 PA4 = \$261 PA5 = \$266

Through deleting 02AREC0001 for Planning Area 2, Council currently holds \$23,482 in Contributions. It is proposed that this amount and any additional contribution from current consents be allocated to future sportsground improvements in Area 2.

Past Council resolutions that will be superseded

Since commencement of the 1993 Plan, a number of resolutions have been made by Council to guide the development of this draft Amendment. The most recent resolutions are:

MIN 08.150 – Developer Contributions Available for Active Recreation
Capital Works Expenditure (Attachment ‘B’)

MIN 06.878 – Proposed Football Fields for Planning Area 3, Amendments
to Section 94 Contributions Plan (Attachment ‘C’)

Once adopted, this Amendment will supersede the above resolutions.

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 assist in the funding of active recreation projects that are required as a result of user demand from future development. An objective of the draft Amendment is to ensure equitable sharing of costs for essential community infrastructure.

As detailed above, Council funding required to match Development Contributions will need to be considered in future capital works planning.

The \$700,000 recently advised to Council under the Australian Government’s Jobs Fund will provide a higher standard of facilities over and above the provisions of the project proposed by Council.

4. Shoalhaven Contributions Plan Draft Amendment No 74.1 - Car Parking
File 28706E PDR

Purpose of the Report: To seek Council endorsement of the Shoalhaven Contributions Plan Draft Amendment No 74.1 – Car Parking for public exhibition.

RECOMMENDED that in relation to the Shoalhaven Contributions Plan Draft Amendment No 74.1 – Car Parking:

- a) Council endorse public exhibition for a minimum 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) Community Consultative Bodies where car parking contributions change (ie Kangaroo Valley, St Georges Basin, Sanctuary Point, Sussex Inlet, Culburra, and Milton/Ulladulla) be made aware of the draft document; and
- d) A further report be submitted to Council after the public exhibition period.

Options:

Council, in relation to the draft Shoalhaven Contributions Plan Amendment No. 74.1 – Car Parking, may choose to:

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- d) Endorse public exhibition.
 - e) Seek further changes prior to public exhibition.
 - f) Amend the draft plan to exclude the gas works car park as a recoupment project.
 - g) Not endorse public exhibition.

Details/Issue:

Background

Council is in the process of preparing a new Contributions Plan (draft Shoalhaven Contributions Plan 2010) to meet legislative requirements as detailed in recent reports to Council.

To meet this requirement, it is intended that the 1993 Shoalhaven Contributions Plan (1993 Plan) be amended to incorporate information in the draft Shoalhaven Contributions Plan Amendment No. 74.1 – Car Parking (draft Amendment). This draft Amendment, along with other recent amendments to the 1993 Plan, will then be incorporated into the new Contributions Plan.

Council resolved in June 2008 (MIN08.796) to seek expressions of interest for both the Boree St and South St car parks. However, this is yet to be resolved.

This report outlines changes recommended following review of the car parking component of the 1993 Plan which has not previously been subject to a review. A copy of the draft Amendment is available to view in the Councillor's Room.

Car Parking Project Amendments

The 1993 Plan contains 10 car parking projects. The draft Amendment proposes 7 projects for inclusion into the Contributions Plan and for funding consideration in Council's capital works planning. In addition to these 7 projects, car parking in Berry and Huskisson has been revised in recent amendments to the 1993 Plan. Therefore, it is proposed that a total of 9 car parking projects will be retained in the 1993 Plan.

In addition to rectifying anomalies in the 1993 Plan, the review has considered:

- The status of each project in terms of works undertaken;
- The amount of contributions collected for each project;
- The potential development related to each project;
- Changes in circumstances since the 1993 Plan was made effective; and
- Current need for each project.

Projects in addition to the 9 projects retained in the 1993 Plan could be considered through negotiation of a Voluntary Planning Agreement (VPA) with a Development that requires considerable car parking needs. This approach has recently been successful in regard to public car parking at Culburra Beach.

The draft Amendment proposes to:

- delete project 02CARP0001 – Culburra (Prince Edward Avenue) from the 1993 Plan because a VPA has recently been negotiated; and
- retain and update 7 projects from the 1993 Plan.

Details of the 7 projects to be retained are shown in Attachment 'A'.

Currently Council has \$3,559.49 in contributions collected for 02CARP0001. Through deleting this project it is recommended that these funds, and any future contributions collected by Council through current consents, to be spent on car park improvements in the Culburra Village area. If the VPA that has made this project redundant does not go ahead, it is proposed that Council consider a further amendment of the Plan to include a similar project.

The estimated project costs and contribution rates are shown in the Table below. Contribution rates are calculated by dividing the total project cost by the number of car parking spaces to be provided.

Contribution Rates

Project (Address)	Estimated Cost	No. of Spaces	Proposed Contribution Rate per Space	Current Contribution Rate
01 CARP 3001 – Nowra Egans Lane 8 Lawrence Ave Collins Way Old Gas Works, Bridge Road 9 Haigh Avenue 67 Kinghorne Street	\$19,660,439	900	\$21,844.93	\$25,290.17
01 CARP 3003 – Bomaderry 42-44 Coomea Street	\$356,992	54	\$6,610.97	\$8,528.88
01 CARP 3004 – Kangaroo Valley 169 Moss Vale Road	\$137,482	48	\$2,864.20	\$3,133.63
03 CARP 3001 – Sanctuary Point Kerry Street	\$573,967	118	\$4,864.13	\$6,097.50
04 CARP 3001 – Sussex Inlet 16 Nielson Road 45-47 Ellmoos Avenue	\$745,152	126	\$5,913.90	\$5,672.29
05 CARP 3001 – Ulladulla 19 Boree Street 94-96 St Vincent Street	\$1,524,906	93	\$16,396.84	\$20,472.86
05 CARP 3002 – Milton 84 Princes Highway	\$586,591	65	\$9,024.48	\$6,952.36

As detailed above, proposed contribution rates are generally lower. For Nowra and Ulladulla the following reasons apply:

Nowra – the inclusion of the old gas works site reduces the contribution rate because Council were able to provide 196 spaces for less than \$5,000 a space. Council has the option to remove the car park from the draft Amendment given that it is outside of the defined CBD area. This would raise contribution rates to \$26,633.07 per space. This is a more accurate rate for providing multi-storey parking, however, Council would then be unable to recoup the funds spent on the old gas works car park.

The proposed contribution rate per space is \$21,844.93 which includes the recoument of recent works undertaken by Council in Haigh Avenue, Kinghorne Street, Collins Way and the old Gas Works totalling \$2,807,751. The total cost of works including recoument is \$19,660,439, this is apportioned 100% to commercial development. The current balance for project 01CARP0001 is \$413,096.75 because the 1993 Plan did not include Haigh Avenue, Kinghorne Street and the old Gas Works site and those costs were not charged to development. However, with the inclusion of the above projects, the account balance will total \$2,394,654.25. Without the inclusion of the old Gas Works site the account total would be \$1,483,899.25 and the contribution rate will be \$26,633.07 per space.

The car parking project for Nowra CBD in the current Contributions Plan, estimated in 1993, totals \$18,041,244. Since 1993, Council has received with interest \$667,538.91. Based on this historical data it is unlikely that the new contribution rate will be able to achieve the proposed new estimates of \$19,660,439 in the short term without a significant contribution occurring.

Ulladulla – contribution rate is based on at grade parking as per Council's current position on car parking in Ulladulla. Contributions for multi storey parking would remain higher.

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 assist in the funding of car parking projects that are required as a result of user demand from future commercial development. An objective of the draft Amendment is to ensure equitable sharing of costs for such essential community infrastructure.

All car parks are proposed to be fully developer funded, however Council funding may be required to provide facilities in anticipation of new development. These projects would need to be considered in future capital works planning. This funding would then be recouped through future contributions.

5. **Development Control Plan (DCP) No 56 Ulladulla Town Centre and Harbour Review
- Draft Amendment No 5** **File 13767E PDR**

Purpose of the Report:

In February 2009 Council carried out an inspection of the Ulladulla CBD followed by a Councillor workshop to allow the adoption in July 2008 of DCP Amendment No.4 to be examined in more detail. The purpose of this report is to put forward recommendations to resolve the issues and if necessary amend the Plan.

The Environmental Planning and Assessment Act (EP&A Act) contains provisions to vary a DCP which involves public exhibition of the proposed changes. The current DCP states that in special circumstances Council is able to allow minor variations arising from detailed design considerations resulting from development applications. As the proposed amendments do not arise from a proposed development application it is considered that the amendments foreshadowed in this report if adopted will be required to be exhibited for public comment for the minimum period of 28 days.

Draft LEP 2009, based on the standard template and submitted to the Department of Planning is still awaiting a Section 65 Certificate to allow public exhibition. Because of the standard approach of the template there may be inconsistencies in draft LEP 2009 and DCP No. 56 which will need to be addressed following public exhibition of both documents.

RECOMMENDED that Development Control Plan (DCP) No. 56 Ulladulla Town Centre and Harbour Review - Draft Amendment No. 5 be prepared, with recommendations as outlined hereunder and that after the document has been amended, the revised Plan be reported to Council with the intention of placing the draft plan on exhibition for a period of 6 weeks and in accordance with the requirements of the EP&A Act and Council's Community Consultation Policy.

- a) **The accelerated growth strategy be retained to assist with the revitalisation of the town centre and that all major retail development including DDS, supermarkets etc, be contained within the commercial core.**
- b) **The minimum site area within the commercial core to qualify as a key development site be increased to 6000m².**
- c) **Delete the infrastructure requirement to provide a library in key development precincts 2 & 3.**
- d) **Council initiate dialogue between with applicants for the proposed Woolworths supermarket and the Country Target Developments with the view to encouraging the creation of a key development site that would allow the provision of essential major infrastructure, a future DDS and residential accommodation.**
- e) **The EOI for the development of Council car parks be structured to reflect the principles of the accelerated growth strategy.**
- f) **Maps 5b and 6b relating to heights and FSR's in key development precincts be replaced with Table 1.**

-
- g) Architectural roof features above the height limit be permitted in accordance with the standard LEP template definition.**
 - h) Combine the Key development Precincts for the Ulladulla Harbour Triangle and the Marlin Hotel into one precinct and include the small lots on Wason Street; and**
 - i) Vary the maximum building heights FSR's and minimum site areas in the combined key development precincts as shown in the Table 1.**
 - j) For the Harbour Triangle precinct building depths above the first storey should not exceed 15 metres.**
 - k) The number of storeys in Burrill Street South be reduced from four to three to correct an anomaly.**

Options:

1. A Councillor Briefing be held to outline in detail the implications of the recommendations contained within the report.
2. Adopt the recommendations as contained in this report (based on retaining the accelerated growth strategy), which consist of changes to the DCP including revised height and Floor Space Ratios (FSR's) and or possible changes to the Draft LEP 2009 to allow preparation of a reviewed document for consideration by Council; or
3. Restrict changes to minor administrative changes, typographic errors and reformatting (to make the document easier to read); or
4. Abandon the accelerated growth strategy with its increased heights and residential densities and major infrastructure components (multi level car parking, civic open space, walkway construction, etc).
5. Abandon the accelerated growth strategy and amend DCP No 56 amendment No. 4 to include minor administrative changes, typographic errors and reformatting and maximum heights of 4 storeys and 13 metres and max floor space ratios of 2.0:1.

Details/Issue:

Background

Council exhibited draft Amendment No 3 to the DCP to allow heights of up to 6 storeys and floor space ratios of up to 3.5:1. The draft plan had significant community input and there was considerable opposition to the proposals essentially due to its impact on the existing character of the town. In 2006, a further review was agreed through a joint venture partnership between Council and State Government Agencies. The agencies saw the opportunity to be part of the DCP process to ensure that adequate land based facilities (particularly residential opportunities) and support infrastructure would be available for the proposed upgrade to Ulladulla Harbour. The review was completed in 2007/08 and Amendment No 4 was adopted on the 29th July 2008.

- # A further report was submitted to Council on 11 November 2008 to discuss issues arising from the adopted DCP. A copy of the report is provided as attachment "A". The issues brought to Council's attention included:

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- The principle of the Accelerated Growth Strategy
 - Review of infrastructure requirements for Key Development Sites
 - Incompatible controls for the Harbour Triangle Key Development Site
 - Burrill Street South height controls
 - Heritage Provisions
 - Roads and Traffic Authority requests
 - Public transport facilities

It was subsequently resolved that a Councillor workshop and a Town Walk be organised.

Correspondence was also received from the Department of Planning reiterating concerns expressed during the public exhibition of Draft Amendment No. 4.

These included:

- Concern that the DCP was overly complex and heights and floor space ratios (FSR's) needed to be shown on separate maps showing controls for each precinct. This was considered to be important given the need to translate this information to the new LEP template.
- Whilst 5 storeys was considered acceptable in the harbour triangle area, the Department indicated that it would be unacceptable to apply this height over the full length of any proposed building. Questions were also raised over the adequacy of the proposed building setbacks to the elevated walkway. Further clarification was sought over the latter statement and it was explained that the main concern related to the adequacy of outdoor dining and display areas (setbacks) on adjoining private land, to achieve the desired objectives of the elevated harbour walkway concept.
- The height and FSR controls promote too large a commercial core. The 25m and 6 storey area should be limited to the Boree Street precinct to promote its development as the retail and service core. Height and FSR controls for the South Street precinct should be reduced so that it remains subservient to the Boree Street precinct. (Earlier correspondence suggested that this should be 20m and 5 storeys).

Other issues that have arisen since the adoption of the DCP and the town walk include:

- The resolution to accelerate construction of the elevated harbour walkway with the intent to have the project completed within the term of the current Council.
- The current LEP has been revised (draft) in accordance with the State Government model LEP and has generated possible inconsistencies particularly with the detail land use provisions in the DCP.
- The economic downturn has slowed growth significantly.

Director of Strategic Planning & Infrastructure Group Comments

The Department of Planning's concerns, as well as other issues highlighted in the report to Council in November 2008 and the Town Walk, were discussed at a Councillor workshop on the 11th February 2009.

Whilst there appeared to be consensus that certain changes were required to the document, there has also been the time to analyse the document more thoroughly and evaluate the effectiveness of the current controls and development activity over the recent years. Accordingly, the following suggestions/observations are offered for consideration and need to be read in conjunction with the report to the Development Committee on 11 November 2008 and the existing DCP 56 provided in the Councillor's Information Folder.

1) Complex Nature of the Document

To reduce the complexity of the document, the following could be undertaken:

- a) Parts 2 and 3 (the strategic component of the Plan) be re-formatted to describe the objectives rather than grouping these under "Performance Criteria" and "Acceptable Solutions".
- b) Part 1 (the aims and objectives) could be re-formatted by limiting the number of categories to Economic, Environment, Built Form/Urban Design and Social/Cultural. Following the application of the DCP through the development application process, it is suggested that two additional objectives be provided under Built Form/Urban design being:
 - o To ensure that development promotes active street frontages with shop fronts with awnings, outdoor cafes and the like.
 - o To encourage shop top housing within the Commercial Core.

2) Accelerated Growth Strategy

The relevance of the Accelerated Growth Strategy was discussed at the working party meeting and whilst there appeared to be general acceptance of the underlying principles, some doubts were raised whether a discount department store (DDS eg. Big W), could be sited within the defined retail area. Concern was expressed that without such a facility, escape expenditure would continue to occur. Some flexibility was believed necessary to allow the DDS to locate outside the retail area, even though this would be contrary to the position put forward at the community based facilitated workshops. Discussion also took place on whether the minimum site area should be increased before height and floor space bonuses apply.

Since this meeting, the downturn in the economic climate has had the effect of dampening future major developments in the short-term, with the exception of retailing and seniors living. Even so, it is felt that the strategy of providing stimulus opportunities for larger sites, via the accelerated growth strategy, is still relevant subject to the following requirements:

- The only zones other than the retail area where a DDS would be compatible in the draft LEP for Ulladulla would be Business Development zones. It should be noted that retail shops of the size of a DDS would not be permitted in Industrial or

Business Park zones. The Business Development zones for Ulladulla are located generally south of Deering Street and would be separated from the retail area by a mixed use zone (approx 200m in width). Whether monetary contributions or agreements could be applied to DDS developments outside the retail area, even if they were identified as key development sites, is problematic given the distance (nexus) from the retail area where such funds would be spent.

- Two sites currently within the retail area are subject to separate proposals, the Woolworths site (corner South Street and Princes Highway) and the Country Target (Princes Highway and Boree Street).
- The two sites, if combined, are approx 11,000m² in area (16,000m² if the adjoining Boree St Council owned car park site is included). A site of this size could accommodate a major development including supermarkets, discount department store, civic open space and multi level car park as envisaged by the strategy. However, when fragmented into three individual development sites, it is unlikely that any of the nominated major public infrastructure facilities would be provided making the vision of encouraging residential living into the retail area more difficult to realise unless provided on Council owned land. The only land that Council owns in the retail area are the two car parks and it would be very difficult to justify their sale because to purchase additional land for such infrastructure in such a strategic location would be cost prohibitive. Furthermore, if these two developments proceed, a Discount Department Store with a high density residential component may only be feasible on one other site in the commercial core i.e. the South Street car park site. Under these circumstances, the relevance of the Accelerated Growth Strategy, and particularly the principle to locate major retail facilities in the existing commercial core, is questionable.
- The principle of promoting key development sites and major infrastructure projects through increased height and floor space has diminished during the preparation of the DCP, to the point that the differences between normal development heights and FSRs and key development sites are now marginal (one or two stories). For the strategy to be effective, there needs to be a significant difference. One option is for the normal controls to be reduced to 3 stories and 11m and floor space ratios reduced to 1.5:1. Key development sites would then be 2-3 storeys and 5-11m higher. Floor space ratios would have a difference of 1.0:1. In the current economic climate the need to minimise additional costs i.e. development contributions and building infrastructure (i.e. no need to provide lifts over 3 storeys) could be some reasons to adopt such controls for the most common types of retail and residential developments.
- There is also another case to reduce the height of buildings as the definition of an architectural roof feature in the new LEP template allows such features to extend above the building limit. The adopted DCP requires these features to be contained within the height limit. See also section 3 below.
- The minimum site size for key development sites in the commercial core of at least 6,000m² was advertised in draft Amendment No. 4. For example, an area of 8,000m² would allow for 2,000m² of open space and a DDS of 6,000 m².

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- It is also suggested that to remove any legal doubts in being able to implement infrastructure requirements in the key development precincts, the infrastructure comment for the library be deleted.

It is therefore recommended that:

- a) *The accelerated growth strategy be retained to assist with the revitalisation of the town centre and that all major retail development including DDS, supermarkets etc, be contained within the commercial core.*
- b) *The minimum site area within the commercial core to qualify as a key development site be increased to 6000m².*
- c) *Delete the infrastructure requirement to provide a library in key development precincts 2 & 3.*
- d) *Council initiate dialogue between with applicants for the proposed Woolworths supermarket and the Country Target Developments with the view to encouraging the creation of a key development site that would allow the provision of essential major infrastructure, a future DDS and residential accommodation.*
- e) *The EOI for the development of Council car parks be structured to reflect the principles of the accelerated growth strategy.*

3) Building Heights and Floor Space Ratios (FSR)

There appeared to be agreement that building heights of 25 and 20m would be acceptable in key development precincts 2 (South Street) and 3 (Boree Street) respectively, which is in response to the Department's concern that such heights, particularly in the South Street car park, would diminish opportunities for view sharing. The Department also expressed concern that the proposed floor space ratios of 3.0:1 would generate excessive retail floor space and suggested that this be revised down. It is suggested that a more appropriate figure may be 2.5:1.

As mentioned above, there is conflict between the definition in the DCP for architectural roof features (which requires them to be contained within the maximum height limit) and the new LEP template definition (which allows them to be located above the height limit). This could lead to elements of buildings being higher than the proposed height controls of the DCP.

It is suggested that the FSR for key development precinct No 1 (Civic Centre) be changed from 3.0:1 to 2.5:1 and heights be reduced to 18m and 5 storeys to maintain consistency in the scale of development and minimise overshadowing to public open spaces. It is also suggested that the height and floor space ratios in the Ulladulla Harbour triangle area and the Marlin Hotel site be fixed at 4 storeys and 16m with an FSR of 2.0:1. as discussed in section 4 of this report.

The suggested heights are shown in Table 1.

Table 1

Key Development Precincts (see map 2)		BUILDING HEIGHT ⁽¹⁾		FSR ⁽²⁾ Requirements	
		Storeys and Metres ⁽³⁾		Min Lot size (m ²) ⁽⁵⁾	Max. FSR
1	Civic Centre	5	18	4000	2.0:1
2	Boree St. Car Park	6	23	6000	2.5:1
3	South St. Car Park	5	20	6000	2.5:1
4	Harbour Triangle & Marlin Hotel Precincts	4	16	2000	2.0:1

Note:

(1) & (2): Refer to the definition.

(3): Above natural ground level.

(4): A two storey or 8.5m height limit applies to the frontage of Wason St. for an average building depth of 10m

It is recommended that;

- f) *Maps 5b and 6b relating to heights and FSR's in key development precincts be replaced with Table 1.*
- g) *Architectural roof features above the height limit be permitted in accordance with the standard LEP template definition.*

4) Ulladulla Harbour Triangle and Marlin Hotel

The Department of Planning have cited concerns over potential adverse impacts due to bulky 5 storey building on the harbour foreshore and have suggested that a break in the length of the building would be helpful. The Department also expressed concern that building setbacks from the elevated walkway concept should be wide enough to provide sufficient areas for outdoor dining.

These concerns were discussed at the Councillor workshop, and whilst there was consensus on the importance to develop the potential key development site in this precinct, there also appeared to be agreement that the elevated walkway was a strategic project and that adequate dining and display area should be provided. The workshops also appeared to agree that the impact of a potentially bulky building should be minimised by making the pedestrian link to the Wason Street Highway intersection open to the sky.

Note: The current development proposal for the site proposes outdoor dining but no continuity of the pathway to the eastern end of the subject land.

There may be planning and urban design opportunities arising from a second pathway to Wason Street. These include:

- A direct link to the café precinct zone in Wason street and beyond to South Street public carpark over more pedestrian friendly grades.
- It would be preferable to reduce the height of any building to 16m and 4 storeys to reduce the buildings impact on the harbour setting and to also accommodate architectural roof features which will be permissible above the height limit. Due to the visually sensitive nature of the location, it would also be desirable to have relatively thin buildings having depths not exceeding 15m above the 1st storey.

Servicing options

Servicing the harbour triangle development precinct continues to be problematic. To provide service access from below the bank, providing an underground car park with lift access for servicing for the smaller lots north would be cost prohibitive. Even if the land was consolidated to create a key development site (2000 m²), it is probable that at least one access point would be allowed from the Highway in return for the removal of existing driveways. It is considered that this option may only be feasible if provided as part of a key development site.

Marlin Hotel – clarification of key development site criteria

As the Marlin Hotel precinct is not dissimilar to the Ulladulla Harbour Triangle key development precinct there would be merit in combining these two precincts into one with similar development guidelines.

The Marlin Hotel site did not contain a FSR in the adopted DCP on the basis that the heritage provisions would determine suitable FSR's. However, it is felt that some guidance would be desirable in relation to height and FSR and minimum site area similar to other key development sites. Therefore, a height of 16m and 4 stories, a FSR of 2.0:1 and a minimum site area of 2000 m² has been suggested. This is similar to the development requirements of the Ulladulla Harbour Triangle key development precinct.

The following additional guidelines are recommended:

- h) *Combine the Key development Precincts for the Ulladulla Harbour Triangle and the Marlin Hotel into one precinct and include the small lots on Wason Street; and*
- i) *Vary the maximum building heights FSR's and minimum site areas in the combined key development precincts as shown in the Table 1.*
- j) *For the Harbour Triangle precinct building depths above the first storey should not exceed 15 metres.*

5) Mixed Use/Medium Density Residential

There was general agreement at the Councillor workshop that the heights for this area were appropriate, although some concerns were expressed over the proposed Illawarra Retirement Trust villa units to the highway frontage which were considered to be an under-utilisation of the site and inappropriate to reinforce the gateway to the town.

It is suggested that the proposed heights of 13m and 4 storeys be reaffirmed and view corridors benefiting medium density sites to the north, be provided through the site to the harbour as an alternative to the single storey buildings proposed by the owners adjacent to the highway.

Discussion occurred on the height anomaly in Burrill Street South and it was agreed that the heights should remain at 10m and the number of storeys reduced from 4 to 3.

It is recommended that:

- k) *The number of storeys in Burrill Street South be reduced from four to three to correct an anomaly.*

6) Draft Shoalhaven LEP 2009

Since the Councillor workshop on the DCP, a draft of LEP 2009 has been prepared by Council based on the State Governments model LEP.

As advised above the draft LEP 2009 zones do not directly equate to the detail of the DCP No. 56 having a much broader approach. Depending upon Council's final decision on the review of the DCP it may be necessary to more closely relate the provisions of both and some minor amendments to draft LEP 2009 and the DCP may be necessary after exhibition.

7) Others

Heritage Conservation Guidelines.

Discussion focussed on the inadequacy of heritage management guidelines and it was agreed that reference be made in the document to generic guidelines.

Bus facility

Discussion occurred on the inadequacy of the current bus facility on the highway to cater for local and intrastate coaches and it was generally agreed that investigations take place that would allow the current facility to be extended or relocated.

Economic, Social & Environmental (ESD) Consideration:

Suggested amendments to the document are considered to improve the environmental and social attributes of the plan and assist in reducing some speculative elements of the DCP that could have been detrimental in achieving its revitalisation objectives.

Financial Considerations:

Suggested amendments to the plan can be achieved in-house with draft Amendment No 5 to be subject to a report to Council following exhibition. It should be noted that although Council has resolved to exhibit the Section 94 Plan for the Town Centre, the need to address the major infrastructure components identified in the accelerated growth strategy has not been resolved but should be pursued prior to the determination of any major retail developments in the commercial core or sale of Council owned land.

E J Royston

DIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE

R D Pigg

GENERAL MANAGER

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 3 NOVEMBER 2009

DEVELOPMENT AND ENVIRONMENTAL SERVICES

6. State of the Environment Report 2008/2009.

File 30842E

PURPOSE OF THE REPORT:

The purpose of this report is to inform Council of the completion of the 2009 Comprehensive State of Environment Report (SoE) and advise of changes in relation to this year's report.

RECOMMENDED that this report be received for information.

DETAILS/ISSUE:

Local Government plays a significant role in environmental management through its range of functions such as waste management, strategic planning, development assessment, sewage treatment, drainage management, water supply and community education. The purpose of the SoE is to provide a summary of the attributes of the local government environment and the human impacts on that environment. It also provides a public record of the activities of government, industry and the community in protecting and restoring the environment. A key component of a SoE report is Ecologically Sustainable Development (ESD) and Council's progress towards ESD.

The preparation of an annual SoE Report is currently a requirement of the Local Government Act. The 2009 SoE Report has been completed and will be available on Council's web site from 30 November 2009. The report provides updated information for the 2008/09 year and provides details for 65 indicators ranging from Aboriginal Heritage to Wildfire History.

Highlights for 2008/09

- More than 700 water samples were collected and approximately 11,000 tests were conducted over 20 catchments. Ten of these catchments had a 'Good' to 'Excellent' water quality rating.
- Total waste recycled has increased from 255 kilograms per capita to 322 kilograms per capita over five years and comprises one third of the waste stream.
- Over 5,000 residents attended Council's Composting program last year with the potential of halving the amount of their household rubbish that is sent to land fill.

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- More than 500 noise complaints were investigated by Council with most being resolved without need for legal action; only 5 regulatory responses were required.
 - The methane destroyed at West Nowra land fill through utilising the gas from July 2008 to June 2009 is equivalent to 20,128 tonnes of carbon dioxide. This is equivalent to removing 4,909 cars from the road for one year. In the past 12 months the generator has produced 5,201 MWhrs of electricity producing sufficient power to supply approximately 993 homes.
 - 35 waste dumping and littering infringements were issued totalling \$16,970 in fines. This is down from 77 infringements issued in 2007/08 and 312 issued in 2006/07.
 - Bushcare volunteers contributed 16,913 people hrs to on-the-ground restoration and rehabilitation of our City's natural areas.
 - We reclaimed 1,430 mega litres of wastewater for irrigation on farmland. This results in 6 tonnes less nitrogen and 9 tonnes less phosphorus than previously would have been released into Jervis Bay each year.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

As part of Council's community engagement, the development this year's report again included a greater focus on community involvement, as is required by S220(B) of the Local Government Act. Community participation was encouraged through completion of an on-line survey. Media releases about the survey encouraged residents to get involved and we wrote to 1581 community groups including local schools, aboriginal land councils, community consultative bodies, landcare/bushcare groups, conservation groups and heritage groups. The survey asked the community to provide information on environmental issues they consider important.

Environmental Services received 230 completed surveys which is up by 91% on last year. 94.5% of respondents were aged 35 years or older.

- 35% of respondents had not heard of the SoE report and recommended that Council use the internet, Council Rate Notices and local media to promote the report.
- 55% of respondents would prefer a summarised report or report card style of SoE report rather than the comprehensive report. Another 21% of respondents did not answer this question.

The most frequently raised environmental issues by respondents were, in order:

- Conservation of water resources;
- Hazard reduction for preventing bushfires;
- Protecting local waterways;
- Tomerong Landfill;
- Climate change;
- Water quality of the local waterways
- Sustainable Development;

The results of the survey revealed that people rank the environment as a very important personal priority.

Further details of the survey results are contained within the SoE Report 2009 in the ESD - corporate action indicator.

Reporting Improvements

Council's SoE reporting has changed over the years to meet the needs of the users of the report. To date, this has occurred by refining the way we report information for each indicator or by simply adding more indicators.

Council now reports on 66 environmental, social and economic indicators. The report has become an excellent resource and contains valuable information for Council, the community, government agencies and other external clients such as consultants.

However, because the report provides such a detailed and comprehensive assessment it is difficult to gauge an overall snapshot or estimate of the state of our environment for the key themes of the report such as air quality.

Staff have been working with a consultant (Planet Footprint) to review the format of the SoE Report with the aim of providing information in a more simplified and standardised manner that is easier to interpret. Planet Footprint is initiating a program to assist in the production of State of the Environment Reports for a number of Councils. Shoalhaven City Council's SoE is being used as a pilot report.

Developing effective indicators is a complex process. It is important to differentiate the indicators where Council operations and management actions can have a direct impact and those where we cannot. Moving towards a system where we can undertake benchmarking comparisons with similar Councils would also be valuable in order to demonstrate the high level of service being provided to the community and enable Council to monitor its progress towards sustainability. Staff from all Groups have been working with Environmental Services in the development of indicators to achieve these aims.

Based on the findings of the Comprehensive 2008/09 SoE Report, with Planet Footprint's assistance, a summary or report card has been produced to provide a 'snapshot' of our state of the environment and will be used for future SoE Reporting. These report cards reflect both the Council's corporate environmental footprint and the community's environmental footprint.

This new report is presented in a graphical format which is easily converted to media releases and has many promotional applications that we currently cannot take advantage of. These report cards are included in the Councillors' Information Folder. It needs to be noted that this information is still in the formative stage and needs further refinement before making publicly available.

Integrated Planning Reporting

The key result area of "environment" will be a significant element in Council's Community Strategic Plan and the planning and reporting framework, although State of the Environment reporting will remain as an additional and specific Local Government Act requirement.

Community feedback received during phase 1 engagement on the Strategic Plan indicated:

- The largest number of responses were received in relation to environmental issues;
- There is strong support, in a general sense, for a “cleaner and greener city”, where there are more trees, the environment is protected and urban development is carefully managed;
- Other key results are responses reflecting themes supporting a “lower footprint” from our human activities on the environment, through strategies like sustainable housing, town centre environments, public transport and bicycle/pedestrian path ways.

The State of the Environment reporting will be extremely valuable in both developing the required Integrated Planning Reporting “measures” in both defining strategic priorities and initiatives for the Community Strategic Plan and delivery program.

FINANCIAL CONSIDERATIONS:

Coordination and preparation of the 2008/09 Comprehensive SoE Report and community consultation was completed within existing Environmental Services and Council resources.

CONCLUSION:

It is anticipated that adopting these changes will raise the profile of Council's State of the Environment Report and encourage the community to consider the impact of their daily actions on the Shoalhaven City environment.

Continued State of the Environment reporting, and in particular the “Report Card” style presentation, will assist Council in meeting its obligations under ‘integrated planning and reporting system’ amendments to the Local Government Act in relation to both measuring ESD objectives and the integration of identified strategies and actions into Council’s Community Strategic Plan.

7. Current Part 3A Major Projects Applications.

File 3167E

PURPOSE OF THE REPORT:

To inform Council of the approval and progress of certain Part 3A Major Projects since the report to the May 2009 Development Committee.

RECOMMENDED that this report be received for information.

DETAILS/ISSUE:

The full details of the applications within Shoalhaven City Council area are available on the Department of Planning (DoP) website www.planning.nsw.gov.au, under Major Project Assessments.

(a) Recent Approvals

The Minister for Planning has issued the following approval:

1. 3A07/1004 - Highview Drive Dolphin Point (MP05_0024)

Minister's approval dated 8 August 2009. Proposed 104 lot residential subdivision including creation of a 6.2 ha Conservation Reserve.

(b) Recent Submissions to the Department of Planning

The Council has made submissions to the DoP on the following applications:

1. 3A08/1009 - Tourist Development, 76 and 84 Greenwell Point and Goodnight Island, Greenwell Point (MP06_0034)

Following the Environmental Assessment (EA) exhibition, the applicant submitted a Preferred Project Report that made amendments to address the various agencies' (including Council's) submissions. A further submission was made to the DoP on 11 September 2009, that addressed some components on Goodnight Island (e.g. sewage management and flora /fauna) and some parking and traffic issues at both 76 and 84 on the mainland.

2. 3A08/1001 - Nowra Brickworks Quarry – P07_0123

Following the EA exhibition the applicant submitted a 'Response to Agency Submissions' and this has been reviewed and a further submission made to the DoP on 29 September 2009.

The concerns expressed include the importance of maintaining the proposed western bypass road corridor and the objection to the biodiversity offset land being proposed in terms of the impacts from the road bypass and maintenance provisions, both issues being ones the proponent discounted as having any importance. The other issues of concern relate to the requirements for traffic ingress and egress in conjunction with future Roads and Traffic Authority (RTA) highway upgrades, dust, noise and vibration matters and the issues relating to a recent Land and Environment (L&E) Court action that is awaiting the court's judgement in respect of extraction quantities.

3. SF9747 - 58 Lot residential subdivision (Vacenta P/L) - Lot 172 Manyana Drive, Manyana (MP06_0165)

Following the EA exhibition a submission was made to the DoP on 24 September 2009. A number of issues were raised including the road and lot layout and impacts of flooding, bushfire and climate change, all of which resulted in a recommendation that the layout and potential number of lots be amended. Other issues include flora/fauna, bushland and protection of foreshore reserves and stormwater management.

4. 3A08/1003 - Bamarang Gas Fire Power Station - Modification No 1.
(MP06_0029 MOD1)

Following the EA exhibition a submission was made to the DoP on 25 August 2009. The proposal seeks to provide for an alternate route westward of a 330 kilovolt transmission line to connect with an existing 330kv transmission line approximately 5km west, while retaining the approved 132kv line to the east of the site.

The issue raised in the submission relates to a requirement for further flora/fauna studies.

(c) Other related applications:

1. 3A07/1007 - residential development - One Tree Bay (MP09_0052)

The Director General's Requirements (DGRs) have been issued 26 May 2009. The application is also in conjunction with a rezoning application that is being processed by the Strategic Planning and Infrastructure (SPI) Group. The DGRs state that the Part 3A cannot be progressed or exhibited until the Local Environmental Plan (LEP) amendment is ready for exhibition.

2. Maria's Farm, Bolong Road, Bolong.

The proponent has held discussions with the DoP before submitting a preliminary environmental assessment report; however the application has not yet been confirmed by the DoP as a Part 3A application.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

There are no direct economic, social and environmental (ESD) considerations identified for this progress report.

FINANCIAL CONSIDERATIONS:

There are no direct financial considerations identified for this progress report.

8. **Development Application for four (4) new shops and toilet for the disabled to be located within the rear service area of the existing Settlement Shopping Centre - Lot 1 DP 741976 - 97 Princes Highway, Milton. Applicant: ADS Designs. Owner: John Blackburn. File DA08/2767**
-

PURPOSE OF THE REPORT:

Council deferred consideration of this matter at the October ordinary Council Meeting in accordance with the following minute:

"...that the matter of Development Application for four (4) new shops and toilet for the disabled to be located within the rear service area of the existing Settlement Shopping Centre - Lot 1 DP 741976 - 97 Princes Highway, Milton be deferred so the applicant has an opportunity to present his position"

Discussions have been held with the applicant and the matter is reported back to council for determination. A copy of the report to October Development Committee is included as **Attachment 'A'**.

RECOMMENDED that:

- a) **Council permit the applicant to utilise the existing covered awning located north of the proposed shops for the purpose of providing for informal pedestrian linkage with the adjoining property Lot 1 DP 735827, 105 Princes Highway, Milton; and**
- b) **The application be determined under delegated authority.**

OPTIONS:

Council may:

- a) Require the development to be redesigned to comply strictly with the DCP and associated Map (which does not make any specific provision for pedestrian link between the village green and settlement arcade); or
- b) Require redesign of the proposed development by relocating shops 1 and 2 to the north to create a pedestrian way through the building between shops 2 and 3 to better align with the Village Green access gate (no policy in support of this option); or
- c) Permit the applicant to utilise the existing covered awning located north of the proposed shops for the purpose of providing for informal pedestrian linkage with the adjoining property Lot 1 DP 735827 No. 105 Princes Highway, Milton; (recommended option) or
- d) Require the applicant to, for the purpose of providing future pedestrian linkage with the Village Green, that a 3.0m wide pedestrian right of Way be registered with the Land Titles office providing public access from the western boundary of Lot 1 DP 735827 to Wason Street, Milton. (no policy in support of this option).

DETAILS/ISSUE:

The Site

Situated on the land is the existing heritage listed Settlement Shopping Centre comprising a series of brick buildings ranging from single to double storey facing the highway, an early cottage and the original coach house all of which have been adapted for retail/commercial use.

The land is relatively flat with a rear service yard accessed off Wason Street that provides vehicular and pedestrian access to the rear of the Settlement shops, privately owned public toilets and trade waste bins.

Discussions with applicant regarding Right of Way

Discussions with the owner have indicated that he is not prepared to provide a Right of Way as part of this development proposal to give pedestrian access to the Village Green. He does not consider that the DCP requires such a Right of Way, nor is there any nexus with this proposal for such a requirement.

Under these circumstances it is not considered that a Right of Way can be pursued with this application. Access to the rear of the adjoining land (owned by Morton Family) will need to be considered with any future proposal for this adjoining land.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

If it is desired to provide a pedestrian link between the Village green and adjoining commercial premises there would need to be a review of DCP 26 – Milton Village Centre and direct negotiation with affected property owners.

FINANCIAL CONSIDERATIONS:

There are no direct financial implications for Council associated with the policy report presented.

CONCLUSION:

- # The future development footprint and driveway/market square envisioned in the DCP map does not acknowledge all the existing buildings over the subject land and has not had landowner agreement. The DCP written document and an extract of the plan relative to this proposal are included for information in **Attachment 'A'**.

Since adoption of the DCP in 1998, the DCP and associated map have not been updated to represent the actual developed footprint of the Village Green, Mr Blackburn's or Mr Morton's land and Council has not prepared any specific development guidelines to quantify Council's vision, particularly relating to pedestrian links. As such the document can only really be considered a guiding document and the plan indicative of potential development.

Pedestrian linkage with the Village Green will need to be pursued independently from this application.

- 9. **S96 Modification Application - Request to extend the approved hours of operation for an existing home activity - "Hair Salon" - Lot 127 DP 245378 - 86 Suncrest Avenue, Sussex Inlet. Owner/Applicant: Joanne Donovan. File DS09/1228**

PURPOSE OF THE REPORT:

A s96 application has been submitted to Council requesting a modification to Condition No.14 of the original development consent to extend the hours of operation for an existing 'Home Activity' (Hair Salon), outside the "*normal business hours*", which are defined in Development Control Plan 109 (Home Activity Guidelines) as being:

Monday to Friday - 8.00am to 5.00pm
Saturdays - 8.00am to 1.00pm
No work on Sundays or Public Holidays

This matter is reported to Council as it involves the consideration of a policy variation and the fact that a previous s96 application to extend those hours was refused by staff under delegation. As such, direction is sought from Council prior to the determination of this s96 modification request.

RECOMMENDED that in respect of DS09/1228 for the modification of hours of operation of the existing home activity (hair salon) at Lot 127 DP245378, 86 Suncrest Avenue, Sussex Inlet:

- a) **the request to vary from normal business hours (acceptable solution) on the basis of addressing the performance criteria be deemed to be satisfied providing there is provision of greater screening in the form of a 2.4 metre high fence adjacent to the adjoining dwellings which will mitigate any potential loss of privacy and noise impacts from the operations of the salon. In addition all operations on Saturdays to cease at 1pm, with no extensions; and**
- b) **the application be determined under delegated authority.**

OPTIONS:

Council may:

- a) Refuse the application on the grounds that the requested additional hours of operation of the hair salon home activity are considered to be unreasonable on the grounds that they will result in a significantly reduced residential amenity for the adjoining home occupants; or
- b) Support the application requesting variations to the operating hours on the basis that:
 - i) the provision of greater screening in the form of a 2.4 metre high fence adjacent to the adjoining dwellings will mitigate any potential loss of privacy and noise impacts from the operations of the salon;
 - ii) no agreement to an extension beyond 1pm on Saturdays;
 - iii) those later hours are not considered to be an unreasonable intrusion into the amenity of a residential area bearing in mind the nature of the activity; or
- c) Resolve to conduct a site inspection of the existing home activity to better appreciate the likely impacts of its consideration of this policy issue.

DETAILS/ISSUE:

The Site

The subject property is located within an existing 2(a1) residentially zoned area and is identified as Lot 127 DP 245378, 86 Suncrest Avenue, Sussex Inlet. The site is located on the northern side of Suncrest Avenue, approximately 110 metres west of Tradewinds Avenue and has a total land area of 557.4m² (see **Attachment 'A'**).

Proposal

The applicant has requested a further s96 modification application to the approved "*Hours of Operation*" (condition No.14) for the existing "Home Activity" (Home based 'Hair Salon') as set out below:

From:

Monday to Friday - 8.00am to 5.00pm

Saturdays - 8.00am to 1pm

No work on Sundays or Public Holidays

Note: These hours coincide with the "normal business hours" defined in Section 5 of DCP 109 - Home Activity Guidelines (DCP 109).

To:

Monday - 8am to 5pm;

Tuesday/Wednesday/Friday - 8am to 6.30pm;

Thursday - 8am to 8.30pm

Saturday - 8am to 1pm ("...with the provision to open until 4pm on at least 6 occasions during the year").

Background

DCP 109 is a performance based document which, under *Amenity - Hours of Operation*, the operating hours listed in the acceptable solutions are "*normal business hours*" (NBH). Activities proposing to operate outside NBH need to justify their proposal against the "*Performance Criteria*" which, in this case, is "*The hours of operation do not adversely affect any neighbouring premises*".

A previous s96 application was received by Council on 25 November 2008 and subsequently 'Refused' on 12 January 2009 for failing to provide an adequate justification against the performance criteria and why the existing 'Home Activity' should be granted a dispensation to operate outside of the prevailing "NBHs" as defined in Section 5 of DCP 109.

Prior to the lodgment of the s96 application, numerous written and verbal complaints were received from the adjoining neighbour, who objected to the applicant's alleged non-compliance with the approved "Hours of Operation". Although limited, anecdotal evidence was provided to support these claims, the fact that the applicant has requested an extension to the approved 'hours' suggests that there maybe some credence to these complaints.

Council had written to the applicant on two (2) occasions (9/7/08 & 16/10/08), reminding her of the obligation to adhere to the specified "*Hours of Operation*". Subsequent responses were received to both letters which vehemently denied any allegation relating

to operating the Hair Salon in contravention of the business hours nominated in the original development consent.

Other concerns raised at the time by the neighbour included the number of cars parked in street associated with the business, sometimes blocking neighbour's driveway and the loss of privacy caused by people waiting in cars and sitting on a bench, which faces the neighbour's house, positioned outside the salon. A further concern relates to the adjacency of the salon door to a side window to the neighbour's living room, which the neighbour claimed had to have curtains closed to prevent clients from looking straight into their home.

Subsequent to the refusal of the first s96 application, Council staff spent a considerable amount of time endeavouring to reach common ground on these issues by conducting site visits and corresponding with both parties. A number of matters in dispute were considered to be beyond Council's power to intervene and it was suggested to the complainants that those matters would be more appropriately dealt with by recourse to the Community Justice Centre to mediate and resolve those issues between the parties. This option was not taken up by the parties.

Council's Director of Development and Environmental Services convened a meeting between both parties in an attempt to mediate the issues in contention regarding the current and future operation of the 'Home Activity'. Those discussions clarified a number of issues, including consideration of constructing a 2.4 metre high fence between the properties tapering down to 1.2 metres closer to the street. No formal agreement between the parties was reached.

The current s96 application was then lodged on 24 June, 2009. This application was inclusive of a plan of the salon and proposed fencing/screening structure (see **Attachment 'B'**).

Policy Issue

Clause 3.2 (Amenity) of DCP 109 stipulates the following 'Performance Criteria' and 'Acceptable Solution(s)' in order to determine the most appropriate "*Hours of operation*" for a Home Activity in a residentially zoned precinct:

<i>Performance Criteria</i>	<i>Acceptable Solutions</i>
<i>P5 The hours of operation do not adversely affect any neighbouring premises</i>	<i>Hours of operation</i> <i>A13 The home activity is not exempt development but is wholly contained within the dwelling or dwelling house and minimal traffic movements outside normal business hours are generated</i> <i>A14 Hours of operation are limited to normal business hours.</i>

Providing the operation of a Home Activity does not have an “*adverse affect on any neighbouring premises*”, the above mentioned ‘Performance Criteria’ can be addressed to justify alternative operating hours to those specified the ‘Acceptable Solution’ i.e. “*normal business hours*”. However, there have been numerous and persistent submissions received from the adjoining owners, who have constantly objected to the adverse affects that this activity has had on their amenity and enjoyment.

In situations where issues or conflicts related to the operation of home activities have emerged, there is a general caution amongst staff before considering any further expansion or intensification of the activity.

Applicant’s Comment

In the submitted S96 application, the applicant seeks to justify an extension to the approved ‘Hours of Operation’ by stating that:

“*The reason for this (requested extension to the approved hours of operation) is some clients who work 5 ½ days per week or work out of town are unable to attend my salon within the current hours. I am also unable to fit in some family and friends with the current situation.*” See **Attachment ‘C’** for a copy of the applicant’s letter supporting the variation.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

Council Comment

A home activity is an opportunity for a person to work from home provided the use is compatible with adjoining residential use of land. The definition of a home activity is quite broad and encompasses a great range of activities and businesses. The main requirements relate to hours of operation, employment of residents and only one non-resident (as it relates to urban land), maximum area that can be used and prohibition of retailing and general polluting activities.

The nature of home activities can vary widely and particularly, in terms of hours of operation. Generally, there is a measured and proportional response to a request to extend hours beyond “normal business hours” due to the likelihood of greater sensitivity amongst neighbours to the impacts of operating at those times. Accordingly, there may be a reduced likelihood of conflict with a proposed activity that doesn’t involve many visitors to the premises such as an accountant working from home after hours. Then, there are circumstances, not unlike to present case where the operator seeks some greater latitude in operating hours beyond the normal 5pm closure - for instance, in the subject application by one and half hours three nights a week and three and half hours on Thursday nights. The question is “how reasonable are these extended hours in light of the likely impact that may be caused to the adjacent residents?”.

The applicant’s statement in relation to justifying the extended operating hours is based predominantly on the fact that she has developed her business over the last 4 years, has an establish clientele - not all of which can attend her premises within normal business hours, she wants have a more flexible working arrangement and large number of people and the local Chamber of Commerce support her proposal.

However, the requested hours of operation are more akin to a hairdressing salon located within a commercial zone. Part of the home activity concept is for the establishment of

businesses to the point where they can then re-establish themselves within business zones where the number of clients can more readily be served without any negative impacts. Although, it must be said that, throughout the city area, there are large number of hairdressers working from home in much the same way as the subject business.

From time to time, Council has received industry representations that the number of home based hairdressers is having a marked economic impact on the viability of hairdressing establishments locally in appropriately zoned commercial areas due to overhead costs. Likewise, from time to time, there has been complaints about home based hair dressing operations but it is usually the immediately adjacent neighbour only who is objecting.

Community Consultation

The s96 application was placed on public exhibition between 16 July 2009 and 31 July 2009. A total of twenty-two (22) letters of 'support', including one from the Sussex Inlet Chamber of Commerce (see **Attachment 'D'**), and one that expressed 'objection' to the extended 'Hours of Operation', were received during this exhibition period. A copy of the objection is included as **Attachment 'E'**. A summary of this 'objection' is as follows:

- The subject 'Home Activity' (Hair Salon) has "*outgrown*" its capacity in this residential area and should be relocated to an "*industrial area or shopping centre*".
- Any extension to operating hours would exacerbate the current issues that exist with the operation of the subject 'Home Activity' in terms of increased customer patronage and the resultant traffic implications associated with this increase.
- There is the potential for further loss of amenity and privacy in this residentially zoned area due to the proposed extension to the approved 'Hours of Operation'.

FINANCIAL CONSIDERATIONS:

There are no direct financial considerations for Council in relation to this report.

CONCLUSION:

This matter is being reported to Council to ascertain whether or not Council is supportive of the requested variation, as discussed in the body of this report, in accordance with the specified DCP 109 provision relating to *normal business hours* for a 'Home Activity'. A previous request to extend the operating hours was refused by staff under delegated authority due to a lack of proposed measures to mitigate the amenity impacts upon the adjacent neighbour.

The current application incorporates ameliorative measures discussed during a mediation session between the parties and the submissions by the proponent on the alleged impacts upon neighbour amenity. However, what isn't in dispute is the fact that the resident most likely to be potentially affected by the impacts of the home activity, whether they are large or small, reasonable or not, is the longstanding objecting neighbour next door.

Whether the impacts from this hair salon are significantly greater than similar home activities operating elsewhere within the city area is difficult to estimate. But what is certain is that the residential amenity will be affected to some extent by any home activity

operation because it is introducing a new and different activity into a residential area which wasn't there before. The extent to which people adjust to this changed amenity varies from person to person. What Council has to be mindful of is whether the extent of the impact is unreasonable and whether the change in the amenity resulting is sufficiently deleterious to warrant refusal of the application.

In the subject case, the only neighbour claiming adverse impact on their amenity is the adjacent resident who has the salon door facing their living quarters of their home. The proposed construction of a new, higher fence extending past the area of privacy sensitivity between the dwellings potentially can mitigate both noise and visual intrusion into resident amenity.

Having dealt with the conflict between the operator and the neighbour for over 18 months, Council's assessment staff are strongly of the view that unless the applicant can adequately demonstrate that the requested extension of operating hours will not have any adverse affect on any adjoining premises, then the subject "Home Activity" (Hair Salon) should be requested to adhere to the prevailing "Hours of Operation" as specified in Condition No.14 of the original development consent and DCP 109's definition of "normal business hours".

Therefore, it is largely dependent on how successful any new fence will be in providing effective screening between the two premises sufficient to mitigate any remaining impact on the neighbour's amenity. Parking in the street should not present as a problem as the land opposite is bushland and undeveloped. Accordingly, there is little demand for on-street parking from other users of the street. The applicant has two on-site car spaces available for clients if required.

There is also concern over the requested and somewhat unspecified alteration to trading on Saturdays. Up to 4pm on at least 6 occasions during the year. Such an extension does intrude into Saturday afternoons and would be difficult to administer given the resources required to monitor how many Saturdays exceeded normal business hours.

10. Development Control Plan 99 (Draft Amendment No 1) - Huskisson Business 3(g) Zone Development Precincts - Urban Design Guidelines and Development Controls - POL09/61. File 20891E

PURPOSE OF THE REPORT:

The purpose of this report is to present Council with the draft amendments to Development Control Plan (DCP) 99 - Huskisson Foreshore Business Development Zone 3(g) Duncan, Bowen, Fegen and Nowra Streets; which further incorporates three (3) other Business 3(g) zoned precincts in Huskisson. This report also recommends that Council adopt the draft amendments to DCP 99 for public exhibition in accordance with Clause 18 of the *Environmental Planning and Assessment (EP&A) Regulation 2000*.

RECOMMENDED that:

- a) Council adopt draft Amendment No 1 to Development Control Plan 99 and place the draft document on public exhibition, in accordance with Clause 18 of the *Environmental Planning and Assessment (EP&A) Regulation 2000*;
- b) In relation to Recommendation 1 above, complementary amendments be made to the Section 64 submission of draft Shoalhaven Local Environmental Plan (SLEP) 2009, to reflect:
 - on the floor space ratio (FSR) map that maximum FSR of 0.8:1 to apply to Precinct 1; and
 - on the zoning map that the Zone E2 Environmental Conservation to apply to part Precinct 4A and Precinct 4B (as shown in Map 2 of this report).
- c) Amendments to the Contributions Plan be prepared (under Section 94 of the EP&A Act 1979), to allow the levying of developers' contribution relating to the service lanes affecting Precincts 1, 2 and 3 associated within DCP 99 (draft Amendment No 1), and be reported to Council separately for their inclusion into Council's draft Contributions Plan 2010.

OPTIONS:

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

DETAILS/ISSUE:

Background

Council, at its meeting of 25 June 2009, resolved to proceed with the drafting of the amendments to DCP 99 in accordance with the Ruker Urban Design Strategy and further investigate the design for the three (3) lanes affecting Precincts 1, 2 and 3 associated with DCP 99 (draft Amendment No 1), for inclusion into Council's new draft Contributions Plan 2010. Accordingly, the amendments to DCP 99 have now been made and a copy of this document is attached in the Councillors' Information Folder.

Draft Amendments to DCP 99

The proposed amendments to DCP 99 have been drafted in a performance-based format. The original DCP 99 has been amended to include three (3) other Business 3(g) zoned Precincts in Huskisson, and is based on the Ruker Urban Design Strategy, being:

- Precinct 1: Bounded by Duncan, Fegen, Nowra and Bowen Streets, as per land applying to the original DCP 99.
- Precinct 2: Bounded by part Fegen Street, Nowra Street, Beach Street and Winnima Lane; shares a boundary to the north with Huskisson Beach Tourist Caravan Park. This Precinct is known as "Beach Street North". The Huskisson Beach Tourist Caravan Park is located to the south of Precinct 2.

Precinct 3: Bounded by an unformed road reserve of Tapalla Avenue, Beach Street, Jervis Street and an unformed and unnamed lane. This Precinct is known as Beach Street South. The Huskisson Beach Tourist Caravan Park is located to the north of Precinct 3.

Precinct 4A & 4B: Precinct 4A and 4B is bounded by unformed road reserve of Currambene and Moona Streets, National Park boundary, Murdoch, Burrill and Berry Streets. It is located on the very southern edge of Huskisson Town on the foreshores of Moona Creek. The area is adjacent to a National Park. The eastern part of Precinct 4A and its frontage to Burrill and Murdoch Streets form part of the southern entry to Huskisson.

Map 1 - Precincts to which the draft DCP applies



The re-drafted DCP is now divided into three (3) main parts:

- Part 1 - General Information about the DCP.
This Part provides background information on this DCP, procedural context and general rationale of the Plan.
- Part 2 - Specific Criteria and Guidelines for each Precinct.
Firstly, this Part provides an explanation of the existing urban structure of the four (4) Precincts; particularly the physical characteristics of each Precinct in relation to their surrounding. The visual setting for each Precinct is also provided to ensure appropriate built form outcomes are achieved. A summary of the existing urban structure and visual setting principles are provided so that they can be considered in the preparation and the assessment of DAs.

Secondly, this Part sets out the objectives for future development within each Precinct.

Thirdly, this Part provides development controls applying to both private and public domains within each Precinct, comprising a set of Performance Criteria and associated Acceptable Solution, which shall be achieved.

- Part 3 - Generic Control Definitions, Calculation Rules and Design Guide for all 4 Precincts

This Part outlines the general development control definition, calculation rules, style guidelines and desirable design solutions for development of the Precincts encouraging appropriate built form for all the four (4) Precincts.

Development Constraints affecting part Precinct 4A and Precinct 4B

It should be noted that the Ruker Urban Design Strategy identifies much of Precinct 4A and 4B as unsuitable for urban development, given that endangered ecological communities (EEC) habitat extends over most of the entire Precinct (which constitutes Bangalay Sand Forest and Coastal Sand Swamp), other than the small portion of land along Burrill and Moona Streets. The Ruker Urban Design Strategy finding is based on Council's Threatened Species Officer's initial assessment of Precinct 4A and 4B, which further recommends that a review of Council's SLEP 1985 be undertaken to include an environmental protection zoning for the land.

In line with the Ruker Strategy, this report recommends that the sensitive natural environment of this Precinct be protected by way of rezoning to Zone E2 Environmental Conservation. The effect of this recommendation is that the suggested rezoning will prevent development that could impact, damage or otherwise have an adverse effect on the EEC within that precinct. In this regard it is recommended that an amendment to the zoning of the affected area to Zone E2 Environmental Conservation, be made to the Section 64 submission of draft Shoalhaven Local Environmental Plan (SLEP) 2009.

Map 2 – Area recommended to be rezoned to Zone E2 Environmental Conservation



Matters for Consideration under Section 64 submission of draft Shoalhaven Local Environmental Plan 2009

The processes undertaken to formulate development controls and urban design guidelines for the four (4) Business 3(g) zoned precincts have justified certain corresponding amendments that are recommended to be made to the Section 64 submission of draft Shoalhaven Local Environmental Plan (SLEP) 2009, as follows:

- For Precinct 1 - Amend the floor space ratio (FSR) map to reflect a maximum FSR of 0.8:1 instead of 0.6:1; and
- For part Precinct 4A and Precinct 4B (as shown in Map 2) - Amend zoning from Zone B4 Mixed Use Zone to Zone E2 Environmental Conservation.

The recommended changes to the draft LEP may have to be altered following public exhibition of the DCP as a final position on these matters will not be fully resolved until Council has adopted the DCP.

Development of the Contributions Plan for service lanes in Precincts 1, 2 and 3

Following Council's resolution of 25 June 2009 to proceed with investigating the design for the three (3) lanes affecting Precincts 1, 2 and 3 for inclusion into Council's new draft Contributions Plan 2010, work in this area commenced concurrently with the work on the formulation of the draft amendments to DCP 99. The Design Engineer's Concept Plan suggests that land acquisition is required to allow for the construction of turning areas and future drainage for the proposed service lanes in Precincts 2 and 3. In this regard, work is currently progressing on the matter and the formulation of the Contributions Plan will be reported separately to Council. This work will form part of Council's draft Contributions Plan 2010, and further upon adoption, be reflected in DCP 99.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

Economic consideration - Council at its meeting of 24 February 2009 resolved that the consideration of DA08/2051 for 19 Fegan Street, Huskisson be deferred until such time as DCP 99 underwent a review and that the matter be reported when the DCP is presented to Council. The process of amending the DCP has included the commissioning of Ruker Urban Design to undertake a comprehensive Urban Design Strategy for all the Business 3(g) zoned area in Huskisson (excluding the town centre). In light of the time it has taken from the point of lodgement of DA08/2051 until the formulation of the draft amendments to DCP 99, it is prudent that draft DCP 99 be progressed so as to not further economically disadvantage the proponents of that DA. In this regard, DA08/2051 is currently undergoing notification (between 26 October and 9 November 2009) having been re-designed following consideration of the Ruker report.

Social consideration - The process of formulating the Ruker Strategy has included two (2) residents' workshops. The Strategy not only considers the views of affected landholders but also takes into account the views and aspirations of the wider community of Huskisson. In light of the extensive input from the community into the process and that amendments to DCP 99 have been drafted, it is timely that draft DCP 99 be considered and progressed so that a set of clear-cut guidelines is available for future development proposals affecting Business 3(g) zoned sites in Huskisson and surrounding residents. It should also be noted that additional representations have been made by landowners within Precinct 1 (i.e., providing a separate study undertaken by Elton Consulting),

seeking to provide an alternative basis for the preparation of the draft DCP (i.e. with respect to Precinct 1). Given that Council has resolved to prepare the DCP in accordance with the Ruker Strategy it is considered that this report should be taken as a submission and will be assessed during the public exhibition of draft DCP 99. A copy of the report is provided in the Councillors' Information Folder.

Ecologically sustainable development - ESD matters are considered within the draft DCP itself.

FINANCIAL CONSIDERATIONS:

One financial consideration of this report is related to the Contributions Plan component to allow for the levying of developers' contribution relating to the service lanes. It would be ideal if this Contributions Plan could be reported to Council together with the reporting of draft amendments to DCP 99, so that in the event that draft DCP 99 is adopted, the Contributions Plan could also be adopted, and Council could charge the relevant levy for the construction of the service lanes should a DA within Precinct 2 or 3 be lodged.

Nevertheless, it is anticipated that the Contributions Plan component will be reported to Council in the near future. If Council adopts the amendments to DCP 99 following its public exhibition, the inability to impose a levy under this Contributions Plan may only be temporary until such time as the Contributions Plan undergoes due process of being publicly exhibited prior to adoption. In such a situation Council would need to rely on conditions of consent or temporary arrangements to address servicing issues.

Other financial considerations of this report are that if Council resolves to adopt the recommendations, there will be general administrative costs associated with:

- the advertising of the public exhibition of the draft DCP in the South Coast Register; and
- notifying affected landholders and CCBs via mail.

CONCLUSION:

Given that the amendments to DCP 99 have been drafted in accordance with the Ruker Urban Design Guidelines, Council is now in a position to adopt the draft amendments to DCP 99 for public exhibition in accordance with Clause 18 of the *Environmental Planning and Assessment (EP&A) Regulation 2000*. This will enable draft DCP 99 to be placed on public exhibition for land owner and community comment.

11. Draft Development Control Plan 118 - Areas of Coastal Hazards - POL08/455. File 35859E

PURPOSE OF THE REPORT:

The purpose of this report is to present Council with draft Development Control Plan (DCP) 118 - Areas of Coastal Hazards. This report recommends that Council adopt draft DCP 118 for public exhibition in accordance with Clause 18 of the *Environmental Planning and Assessment (EP&A) Regulation 2000*.

RECOMMENDED that:

- a) Council adopt draft Development Control Plan (DCP) No 118 and place the draft document on public exhibition, in accordance with Clause 18 of the *Environmental Planning and Assessment (EP&A) Regulation 2000*;
- b) All Development Applications affected by Council's resolution of 28 July 2009 for deferment, be generally assessed and determined in accordance with the provisions of the publicly exhibited draft DCP 118 and the specific recommendations for each application set out in Attachment 'A';
- c) Other Council DCPs affected by draft DCP 118 outlined in this report, will be amended to be consistent with the provisions of this draft DCP and separately reported to Council; and
- d) During its public exhibition period, the draft DCP 118 be referred to Council's insurers for review and comments.

OPTIONS:

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

DETAILS/ISSUE:

Background

Council, at its meeting of 28 July 2009, adopted the 2009:2025 Zone of Reduced Foundation Capacity (ZRFC), as described in the SMEC 2009 coastal hazard maps, as a setback line seaward of which a foreshore building exclusion area will apply. Council also resolved in part that:

"...Council revise the development controls in the Coastal Hazard Areas Policy into a comprehensive Coastal Risk Precinct Development Control Plan as a matter of urgency..."

Accordingly, draft DCP 118 - Areas of Coastal Hazards has now been formulated based on the SMEC 2009 findings. A copy of this draft document is attached in Councillors' Information Folder.

General Contents of Draft DCP 118

Generally draft DCP 118 contains five (5) parts.

Part 1 provides background information for the DCP, basis for development controls to be provided and the general rationale of the Plan.

Part 2 contains provisions to apply to all development within areas affected by coastal hazards (identified by the draft DCP maps within Appendices 1 and 2) that require development consent. Those provisions are based on the different levels of risks identified as follows:

-
- Precinct 1 High Risk - Foreshore building exclusion areas (seaward of the 2009:2025 ZRFC), shown on the Natural Hazards Map of Section 64 submission of draft Shoalhaven Local Environmental Plan (SLEP) 2009, where no development within an allotment of land is permitted and; building or works on the allotment at the date of commencement (clause 7.13 (5) draft SLEP 2009) will be removed before, or within a reasonable time after, the development is carried out;
 - Precinct 2 Moderate Risk - Restricted development area (landward of Precinct 1 between the 2009:2025 and the 2009:2050 ZRFC), where prescribed alterations to existing buildings, demolition and erection of new replacement buildings and outbuildings, located wholly or in part within Precinct 2, may be considered; and
 - Precinct 3 Low Risk - Restricted development sites landward of Precinct 2 (2009:2050 ZRFC), where substantive new development with engineered foundations, may be considered.

Part 3 contains the provisions to apply to all development within areas affected by coastal hazards that require development consent, but not yet previously identified, that are subject to potential coastal hazards.

Part 4 contains provisions for public infrastructure that lie within areas affected by coastal hazards (identified by the DCP) that require development consent.

Part 5 contains definitions of certain terminologies used within the draft DCP (consistent with the Section 64 submission of draft SLEP 2009) and explanation of abbreviations used within the draft document.

Development Application (DAs) Deferred

Part of Council's resolution of 28 July 2009 was that:

"...Council defer determining all DAs located seaward of the 2009: 2050 ZRFC until a Coastal Risk Precinct Development Control Plan is adopted by Council..."

Attachment 'A' lists and provides a brief summary of all DAs lodged with Council that are deferred as a result of that resolution.

This report recommends that those affected DAs be assessed and determined based on the provisions of the draft DCP 118, when it is placed on public exhibition, as to further delay finalisation of these applications is seen as unreasonable.

Other DCPs affected by draft DCP 118

The provisions of draft DCP 118 will impact on other Council's DCPs, namely DCP 91 – Single Dwelling and Ancillary Structures, DCP 62 – Residential Development in Foreshore Areas, DCP 48 – Culburra Beach and DCP 57 Dual Occupancy Guidelines. Modifications to those DCPs are required to be made to be consistent with the provisions of draft DCP 118, which will be separately reported to Council.

Proposed State Government Changes Affecting Properties in Coastal Hazard Areas

The NSW government has announced that it will give beachfront property owners threatened by coastal erosion and sea level rises more rights to build sea walls and barriers. This move may have serious implications to the Shoalhaven's current coastal

management planning. Details of this state government announcement are still somewhat unclear but it appears that such mitigation measures will be implemented through the Coastal Management Plan process. In this respect such works may be complimentary to or separate from development approval process which will be addressed through DCP 118. In terms of Council acting in good faith, it is prudent that when draft DCP 118 is placed on public exhibition it be referred to Council's insurers so that the levels of risks that Council may have to deal with may be identified and considered.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

Economic and social - This report identifies that the formulation of draft provisions to guide development in the Shoalhaven affected by coastal erosion processes is a move in the right direction as it provides clarity and guidance to those property owners affected, which in turn provides broader socio-economic benefits to those affected.

Environmental (ESD) - This report identifies that the adaptation to increasing acceptance of climate change risks is a crucial ESD consideration.

FINANCIAL CONSIDERATIONS:

If Council resolves to adopt the recommendations, there will be costs associated with:

- advertising of the public exhibition of the draft DCP in the South Coast Register; and
- notifying affected landholders and CCBs via mail.

The draft DCP also affects the development rights for foreshore properties and to this extent may impact financially on property values.

CONCLUSION:

Given that the draft DCP 118 has been prepared, Council is now in a position to adopt the draft DCP for public exhibition in accordance with Clause 18 of the *Environmental Planning and Assessment (EP&A) Regulation 2000*.

Tim Fletcher
DIRECTOR, DEVELOPMENT AND ENVIRONMENTAL SERVICES

R.D Pigg
GENERAL MANAGER

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 3 NOVEMBER 2009

STRATEGIC PLANNING AND INFRASTRUCTURE / DEVELOPMENT AND ENVIRONMENTAL SERVICES

12. Commonwealth Nation Building Economic Stimulus Plan: SEPP Infrastructure Changes - Housing NSW File File 31157E

Purpose of the Report:

To provide an update on the outcomes of dialogue with Housing NSW regarding the changes to the approval path under the SEPP Infrastructure related to developments funded under the Commonwealth Nation Building Economic Stimulus Plan.

RECOMMENDED that the report be received for information and staff continue to monitor the situation and if necessary report back once we have been involved in a number of Department of Housing developments under the SEPP.

Options:

- Option 1 Receive the report for information

- Option 2 Receive the report for information and request that staff continue to monitor the situation and report back if necessary once we have been involved in a number of Department of Housing development under the SEPP

- Option 3 Continue to lobby the State Government for changes to the SEPP that require the Department of Housing to carry out more widespread community consultation (not just with adjoining occupants)

- Option 4 Send out a notification letters as per our current Council policy advising where the Department of Housing plans can be viewed, the deadline date for comment and who to provide comment to (not Council) and allow for proposed plans to be available to view at Council offices (subject to them being supplied by the Department of Housing).

Details/Issue:

Following consideration of a Notice of Motion submitted by Councillor Guile, Council resolved on 10th March 2009 that:

1. *Shoalhaven City Council is concerned about the potentially adverse impacts that changes to State Environmental Planning Policy (Infrastructure) 2007 regarding social housing may have on existing residents and property holders of Nowra, specifically:*

-
- *Housing NSW will not need development consent and can therefore self approve residential development that is up to 8.5 metres high.*
 - *In residential areas within 400 metres of the Nowra CBD, they will be able to self approve up to 20 dwellings on a single lot without the provision of parking under current Council policies.*
2. *The General Manager is requested to urgently make contact with Housing NSW to determine their stock in and around Nowra and their possible aspirations for it under the SEPP changes.*
 3. *The General Manager is further requested to report on how Shoalhaven City Council can work with the Nowra community in supporting comprehensive public consultation for affected residents and property owners in the face of significant potential changes in the Nowra area.*

As a result of this resolution (parts 1&2), Council wrote to the State Government (Department of Housing) and the Member for South Coast, Shelley Hancock MP outlining the concerns. Copies of the letters are provided in the Councillors Information Folder for today's meeting.

The responses received from the Member for South Cost and Department of Housing and advice received from the Minister for Housing, David Borger MP is also provided in the Councillors Information Folder.

The letters received from the Department of Housing and the Minister outline the task that is ahead of the Department in delivering projects funded under Commonwealth Governments Nation Building Economic Stimulus Plan and also the approval powers under the previously highlighted SEPP Infrastructure and also the *Nation Building & Jobs Plan (State Infrastructure Delivery) Act 2009*. It should be noted that the approval powers under this Act are wide ranging and override other legislation, including the SEPP.

Liaison with Department of Housing

The Mayor and Council staff met with representatives of the Department of Housing in late May 2009 to discuss the delivery of projects under the Economic Stimulus Plan and planning implications.

It was indicated at the meeting that the stimulus package roll out in Shoalhaven will be focussed on three programs:

- Redevelopment
- House and land packages (likely to be limited)
- Maintenance

As part of the redevelopment program they are looking at around 100 units, less whatever is demolished. The units will generally be developed to the standard of the Seniors Living SEPP, with any development more than 10 units complying with the SEPP.

They will be focussing on the redevelopment of existing properties and have appointed consultants to manage the process. Local consultants Cowman Stoddart Pty Ltd are part of the consultant team.

In regard to the Commonwealth funding it was indicated that the following had occurred:

Round 1 – Submissions to Commonwealth – none approved in South East Region.

Round 2 – Submissions to Commonwealth – 7 to 10 sites identified in Shoalhaven.

At a subsequent meeting on 4th June 2009 it was indicated that the Department of Housing need to deliver maximum yield as they are expected to deliver 9000 housing units across the State over the next three years and will adopt a “good neighbour” policy i.e. Will look at getting maximum yield without adversely affecting neighbours and the neighbourhood.

It has been stated that the Department’s critical completion dates include 851 homes by April 2010, 75% of all homes by September 2010, 95% by March 2011 and all remaining homes completed by March 2012.

The SEPP Infrastructure provisions limit the Departments self approval powers to a maximum of 20 units. As such it was suggested that they may need Council assistance with applications that are greater. It was noted that the Department could also use the special delivery powers available under the new Act.

At the meeting the following sites were raised and discussed:

12 to 22 and 24 to 28 Richie Street, Bomaderry – 2 new projects involving demolishing existing dwellings and replacing with aged units.

3 to 7 Karowa Street, Bomaderry – New project involving demolishing existing dwellings and replacing with aged units.

72 to 74 St.Anne Street and 1 to 3 Ryan Avenue, Nowra – Implementing existing applications/approvals.

2 to 4 Oliver Parade, Nowra – Implementing existing applications/approval.

Council has subsequently received advice that the following properties are also moving through this process or in the early stages of consideration:

33 to 37 Bunberra Street, Bomaderry

68 South Street, Ulladulla

Lot 321 St.Vincent Street, Ulladulla

As such it would appear that the current areas of interest or focus areas for the Department of Housing are in Nowra, Bomaderry and Ulladulla (*Council resolution – Part 2*). Council staff have already been involved in various discussions regarding some of the development of some of the sites in these areas. Perhaps the most advanced of these are the proposals for Richie Street, Bomaderry.

Community Consultation

Part 3 of the resolution of 10th March 2009 is that:

The General Manager is further requested to report on how Shoalhaven City Council can work with the Nowra community in supporting comprehensive public consultation for affected residents and property owners in the face of significant potential changes in the Nowra area.

There is the limited requirement under the Infrastructure SEPP when using the “self approval powers” for developments up to 20 units for the Department of Housing to notify Council and only the adjoining occupants (not landowners) and provide 21 days to respond.

At the meeting with Department of Housing representatives on the 4th June, 2009 the issue of notifying adjoining occupants (not necessarily landowners) was discussed and it was noted that other Councils had raised a concern with the approach.

It was indicated that the Department was considering this and that it may result in a change to process. We requested that Council be kept advised of any changes. No updated advice has since been received in this regard.

The options for Council in the process were discussed and it was indicated that Council could:

- Run mini Development Advisory Units (DAU's) for each project when concepts are available; and
- Assist with neighbourhood ownerships/addresses and also be prepared to assist with the exhibition of plans – it was indicated that a formal approach would be required from the Department in this regard.

Under Council current policies developments of this nature would normally be notified to all landowners within the immediate locality, not just the immediately adjoining occupants.

One option in this regard could be that when Council receives any of the notifications under the Infrastructure SEPP a notification letter is sent out as per our current policy. This letter would need to advise where the Department of Housing plans could be viewed, the deadline date for comment and who any comment is to be provided to (not Council). The letters would have to be generated in a timely manner given that there is only 21 days to respond.

To ensure this is facilitated, Council could also consider allowing for proposed plans to be available to view at Council offices, subject to them being supplied by the Department of Housing.

Economic, Social & Environmental (ESD) Consideration:

The provision of additional public housing in close proximity to existing centres has social merit, particularly given the existing and predicated need for single adaptable dwellings as a result of the changing demographics.

However it is important large concentrations of social housing is not built in particular areas. As such it is important the community as a whole and Council has an opportunity to provide feedback in this regard. Also depending on the design and layout of developments, proposals have the potential to change the character and streetscape of an area.

Financial Considerations:

Developments of this nature will be exempt from Section 64 and 94 contributions. As such there will be a financial impact in this regard.

Should Council decide to undertake the neighbourhood notification discussed above this would be an additional direct cost to Council given that there is no fee relief as a result of application fees.

E J Royston

DIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE

T Fletcher

DIRECTOR, DEVELOPMENT & ENVIRONMENTAL SERVICES

R D Pigg

GENERAL MANAGER

ADDENDUM REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 3 NOVEMBER 2009

DEVELOPMENT AND ENVIRONMENTAL SERVICES

1. **Proposed refurbishment of the existing basketball stadium and the construction of a new three-court indoor sports stadium, together with the provision of public and management facilities, car parking and associated landscaping - 84 Cambewarra Road, Bomaderry - Lot 2 DP 130891 - Council Reserve NBO091 - Artie Smith Oval. Applicant and owner: Shoalhaven City Council. File DA09/1826**
-

PURPOSE OF THE REPORT:

The submitted development application seeks approval for a major upgrading of the basketball stadium on land owned by Shoalhaven City Council at Bomaderry.

This matter is being reported to the Council for determination in accordance with Section 47E of the Local Government Act, 1993 (LG Act) which prohibits Council from delegating its power of determination under an environmental planning instrument for development on classified 'Community Land' of a type commensurate with that proposed in this development application; and the need for transparency of process in the assessment and determination by Council of a development application relating to Council owned land.

RECOMMENDED that in respect of DA09/1826 for the proposed refurbishment and expansion of the existing basket ball stadium at Lot 2 DP 130891, Cambewarra Road, Bomaderry, the application be approved subject to the imposition of suitable consent conditions outlined in Attachment 'A'.

OPTIONS:

Council may:

- a) Resolve to approve the application subject to conditions (i.e. adopt the recommendations of this report including the draft conditions of consent provided or modify the provided conditions); or
- b) Resolve to refuse the application (i.e. on the grounds that the submitted proposal will create an unsatisfactory traffic impact).

DETAILS/ISSUE:

Design Rationale

The rationale for the development of the subject site has been based on the following planning criteria:

- the existing basketball stadium is to be retained and refurbished;
- the existing basketball stadium is to be incorporated into the proposed new facility;
- the new facility is to be designed to blend in visually with the refurbished existing stadium and to present an integrated frontage to Cambewarra Road; and
- the parking provision is to be designed to combine the requirements of the new facility, the existing stadium and Artie Smith Oval parking along Cambewarra Road frontage and to improve the safety of access and egress points.

Staging

To allow for the on-going availability of the existing basketball stadium sports facility, it is proposed to develop the project in the following stages:

- Stage I: Construction of the new courts area and the ground floor of the link amenities block and a reduced foyer area;
- Stage II: Construction of the car parking area;
- Stage III: Construction and fit-out of the first floor area above the link amenities block and the extension of the first floor forecourt and foyer areas; and
- Stage IV: Refurbishment of the existing basketball stadium and the conversion to a combined stadium and gymnasium complex.

Depending on the availability of future project funding, the order of Stages 3 and 4 may be need to be reversed.

Scale of Development

The proposal consists of the following components:

Existing stadium	= 1,665 square metres;
Proposed new courts	= 2,748 square metres; and
Proposed new amenities and services link block	= 1,223 square metres.

It is further proposed that the site would have a maximum of six staff members in attendance and up to 900 spectators and contestants during infrequent peak competition times.

Refer to '**Attachment 'B'**' for floor plan for visual detail.

Subject Site

The subject land comprises three separate allotments, the aggregation of which forms the recreational area known as the Artie Smith Oval sporting complex. The total area of the sporting complex is 8,400 square metres. The proposal, however, does not include consolidation of the three separate parcels. The subject land is classified as Community Land under SLEP 1985 and currently accommodates an older style basketball stadium

building, football/cricket ovals, an amenities building and car parking with the remainder of the land being used for passive recreation pursuits. The shape of the subject land is rectangular, with the long boundaries running in an east-west direction.

The project site itself is located behind and adjacent to the existing basketball stadium building and is designed to present a single entry to Cambewarra Road.

The land falls towards the south-east boundary with a fall across the whole site of approximately five metres. Grass grows on the majority of the site, with a copse of trees located on the southern and south-eastern boundaries of the land. A tight group of about five established trees are located within the area proposed for the development.

Existing development surrounding the subject site comprises:

- to the north - Cambewarra Road and Bomaderry High School opposite;
- to the east - community training and education centre;
- to the south - residential area with dwelling houses locate opposite; and
- to the west - grassed areas of the Artie Smith Oval sporting complex.

Refer to **Attachment 'C'** - for aerial photograph detail.

Background

The existing stadium dates from 1964 and is of no known heritage significance. A search of Council's GIS indicates a number of sports related development applications have been previously lodged over the subject land. It is noted that the current use(s) of the subject land include football/cricket fields and the abovementioned basketball stadium.

This application will enhance the basketball playing capability of the stadium and enable higher-level competition games to be conducted on the premises.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

S79C(1) Statutory Considerations

The following State and Regional Environment Planning Policies (SEPPs and REPPs), Environmental Planning Instruments (LEPs), Development Control Plans (DCPs), Council Codes/Policies are relevant to this development application:

- Environmental Protection Biodiversity Conservation Act 1999;
- Environmental Planning and Assessment Act 1979;
- Rural Fires Act 1997;
- State Environmental Planning Policy No. 1 - Development Standards;
- State Environmental Planning Policy No. 55 - Remediation of Land;
- State Environmental Planning Policy - (Infrastructure) 2007;
- Illawarra Region Environmental Plan No.1 (IREP No.1);
- Shoalhaven Local Environmental Plan 1985 (SLEP 1985);
- Development Control Plan No. 18 - Car Parking Code;
- Development Control Plan No. 93 - Waste Minimisation and Management;

- Policy for the Assessment of Council's Own Development Applications; and
- Environmental Planning and Assessment Regulations 2000.

Applicant's Submission

The applicant has submitted suitable quality development plans and supporting information with the application to enable a reasonable assessment of the application to be undertaken.

S79C(1)(a) Statement of Compliance/Assessment

The following assessment considers only those planning instruments, draft planning instruments, DCP's and planning regulations that are relevant to this particular proposed development.

- **Environmental Protection Biodiversity Conservation Act 1999**
The subject site is essentially cleared of native bushland and comprises playing fields and accommodates several physical improvements, including a number of substantial buildings. The proposed development does not seek to remove any significant native vegetation from the site. Under these circumstances, this development would not have an adverse impact on the significant nation's biodiversity.
 - **Rural Fires Act 1997 - S100B Bush Fire Safety Authority**
The subject land is not shown as being prone to bushfire on a map certified by the Commissioner of the NSW Rural Fire Service as a bush fire prone land map for the area of the Council.
 - **State Environmental Planning Policy No.1 - *Development Standards***
The proposed building is affected by a height restriction under Clause 139 of the Illawarra Regional Environmental Plan No.1. Given that the 14.895m height of the proposed building exceeds the 11m height restriction, the concurrence of the Director is required. In this regard, Council's Director of Development and Environmental Services has no objection to using his delegation to approve the variation to the 11 metre height of the building under SEPP 1.
- # Refer to **Attachment 'D'** - Building Elevations for more details.
- **State Environmental Planning Policy No. 55 - *Remediation of Land***
Under Clause 7 of SEPP 55 - *Remediation of Land*, contamination and the remediation of the subject land is required to be considered.

Initial investigation of the subject site indicates that:

- a potentially contaminating activity has not been previously conducted on the land;
- no records exist at Council to indicate or identify that the land is contaminated; and
- there are no land use restrictions relating to possible contamination affecting the land.

As such, there is no reason to suspect that the subject land is contaminated. It is, therefore, considered that the land is suitable for the proposed development and no further assessment in regard to contamination issues is required.

- **Illawarra Regional Environmental Plan No.1 (deemed SEPP)**

The Illawarra Regional Environmental Plan No. 1 (IREP) applies to the subject land.

A series of maps are attached to IREP No.1 localities where specific policy issues apply. In relation to these maps, this application is consistent with the requirements of the IREP. The IREP No.1 contains no specific provisions applying to land with "landscape and environmental attributes". However, the Regional Landscape and Environmental Study (IRLES) that supports the IREP No.1 provide specific recommendations for broad areas of the south coast, including the subject land area. The subject land is located with an established Nowra/Bomaderry urban area and retains most of the existing vegetation. If approved, this proposal would not significantly alter the outward appearance of the locality and would not compromise the IRLES recommendations.

Cl.139 - The proposed building is affected by height restrictions. As the height of the proposed development exceeds 11m, the concurrence of the Director is required.

In summary, the proposal does not conflict with the aims and relevant provisions of the Illawarra Regional Environmental Plan No. 1.

- **Shoalhaven Local Environmental Plan 1985**

The proposed development satisfies the general aims and objectives of SLEP 1985.

The proposal is defined as "community facility" which means a place used for sporting activities or sporting facilities. The subject land is zoned 6(a) (Open Space - Recreation "A" (Existing) Zone) under SLEP 1985. The proposed **community facilities** development is permissible within the subject zone subject to development consent from Council.

Specific Provisions of SLEP 1985 applying to this proposed development are addressed as follows:

Cl.26 Soil, Water and Effluent Management

Cl.26(1) Water Supply, Sewage, and Drainage

The proposed development is located in an area that is serviced by reticulated town sewer and water services/infrastructure and, therefore, satisfies the requirements of this clause.

Cl.26(2) Economical Feasibility and Environmental Protection

It is considered that water supply, effluent disposal and sediment and erosion control measures associated with this proposed development can be designed and implemented in a cost effective manner.

CI.26(3) Sediment and Erosion Control

There will be a need to ensure that, during the construction phase of the development, the site is adequately managed to control water and soil sediment movement. No details on proposed sediment and erosion control measures have been provided as part of this application. Accordingly, in the event of approval, any issued development consent will be conditioned so as to require the implementation of a Sediment and Erosion Control Plan (SECP).

CI.33 Height of Buildings

Although the new stadium building would have an overall height of 14.895m, such a height would be no greater than the height for other comparable basketball stadium purpose built structures and is not particularly unusual for such buildings. It is also worth noting that the existing basketball stadium building is approximately 9 metres in height.

The refurbishment and the link amenity block have been designed at different alignments to reduce the visual bulk of the building. The scale of the building has been reduced by the use of a combination of materials and colours and the area of the subject land in relation to the building envelope.

CI.51 Development in open space zones and on public reserves or other public land

The Council must not consent to the carrying out of development on land within Zone No. 6(a), 6(b), 6(c) or 6(d), or on public reserves or on land owned or controlled by the Council, unless it has considered:

CI.51(a) the need for the proposed development on the land;

Council has identified a demand for a basketball sporting facility within the northern Shoalhaven community and has resolved to develop the stadium complex in conjunction with the Shoalhaven Recreation Strategy.

CI.51(b) the impact of the proposed development on the land; and

Provided all the consent conditions are complied with, it is considered that the development of the basketball stadium complex and gymnasium would pose no unacceptable risk to the local built environment or natural environments.

CI.51(c) the need to retain the land for its existing or likely future use.

The proposed development is designed to enhance and upgrade the existing basketball related sporting facilities located on the subject land to meet the needs well into the future.

- **Development Control Plan No.18 - Car Parking Code**

In respect to basketball stadiums and gymnasiums, the relevant requirement is basketball stadium = 1 space per 10 seats, or if no fixed seating is provided, 1 space per 10m² of gross floor area.

Note: Alternatively, car parking requirements may be determined by Council following the completion and submission of a parking impact and needs study by an independent suitably qualified professional. Comparisons must be drawn with other similar developments in similar locations.

Gymnasiums = 1 space per 13m² gross leaseable floor area.

On-site Parking Provision - Parking has been provided on the following basis:

Disabled	=	9 spaces
Eastern car park	=	192 spaces
Western car park	=	160 spaces
Total	=	361 spaces
Plus Stadium bus set-down area = 1 such area.		

This provision of car parking complies with DCP 18.

Access and Parking Design Criteria

The subject site gains access from Cambewarra Road. The following elements have been taken into account in regard to the access:

- The car parks servicing the existing basketball court and the oval are proposed to be combined to reduce the number of access points to Cambewarra Road.
- The proposed car park includes a drop-off and pick-up area to reduce stopping within the Cambewarra Road reserve.
- The entry and car park circulation would be appropriately sign posted to indicate traffic paths, movement and for drop-off and pick-up only functions.
- The entry point off Cambewarra Road would incorporate two-way access and be designed to provide easy and clear access to the main parking areas.
- The eastern road, past the existing stadium building would be used for waste collection and for service vehicle parking.
- The existing traffic lights in Cambewarra Road are to remain.
- **DCP No. 93 - Waste Minimisation and Management**
A waste minimisation and management plan was submitted with the development application.

This plan indicates the following:

Waste Disposal - Construction

During the construction phase, waste to be generated will include bricks, concrete, insulation material, timber off cuts plasterboard, non ferrous metals, plastic pipe off cuts, paint and other drum type containers. All this waste to be disposed of by the builder at Nowra Waste Depot. As such, any issued development consent will be conditioned so as to ensure that waste generated is contained within the site during construction and disposed of in accordance with the submitted WMMP or at an authorised facility.

Waste Disposal - On-going

Ongoing waste is to be stored at the existing waste/recycling bin storage area. This is considered satisfactory as it is screened from public view (i.e. contained within a purpose built bin storage area), has sufficient space available to hold the waste bins required and allows access for a garbage truck for disposal to landfill and recycling

respectively. In the event of approval, the development would be appropriately conditioned as outlined above.

Garbage Area

Two (2) skip bins are to be stored within a secured area of the site, with access provided via the eastern side of the existing stadium.

S79C(1)(b) Likely Impact of the Development on the Environment Access

Vehicular access is provided from Cambewarra Road and two existing driveway crossings are located to service the existing car park. The proposal is to include the closure of the western most driveway crossing and establish a new crossing further west near the football amenities building. This will improve traffic circulation with the extended carpark. Formed pedestrian access is available from Cambewarra Road and from the partially constructed pathway located in the south-eastern corner of the subject site.

- **Bulk and Scale**

The refurbishment and the link amenity block have been designed at different alignments to reduce the visual bulk of the building. Further, the scale of the building is reduced by the use of a combination of materials and colours.

- **Construction Materials**

The use of fibre cement, glazing and metal cladding materials assists in the overall modern appearance of the building. Any issued development consent shall be conditioned so as to require the buildings to be constructed with the appropriate external materials, finishes and colours.

- **Context and Setting**

The relationship between the external appearance of the proposed stadium building and the surrounding area is addressed by means of the following design elements:

- The elevations to the proposed building are well articulated, with expression given to the individual unit modules;
- The simple design is non-assertive and has a modern appearance; and
- The facades of the building are further modulated with the use of sun screens.

The visual impact of the proposed building is moderated by its setting within a large expanse of open space and sporting fields. Refer to **Attachment "C"**

- **Design**

Considerable attention has been paid to the treatment of the facades and to the roof line designs to maximise the visual aesthetic of the building. The building is proposed to be located so there is no overshadowing onto adjoining properties.

The design of the project takes advantage of the cross-ventilation through the building and also utilises the northern solar access. Design consideration has also been given to the site layout, appearance and orientation of the building to ensure the needs of users and the general public will be met.

- **Economic Impact**

Given its size, the proposed development would have a positive economic impact during the construction phase. In terms of post construction, the proposal would have a positive economic impact as it would result in the creation of additional new jobs and would provide additional sporting options for participants and spectators.

- **Fencing**

Side fencing on the eastern side adjacent to the community education centre would be retained. No additional fencing is proposed for the eastern or southern boundaries.

The Artie Smith Oval boundary fence erected to part of the western boundary would be retained. No fencing exists or is proposed to be erected along the northern boundary of the site.

- **Landscaping**

The applicant has submitted a Landscape Plan in support of the application. Essentially, changes to the existing landscape would be minimal, with existing grassed areas to be reinstated. Drought resistant, low maintenance planting would be implemented on a small scale adjacent to the entry points and to assist in defining car park separation areas.

- **Noise - external**

It is likely that the generation of noise would originate from two sources – external noise from people arriving or leaving the premises, and internal noise which would be generated by specific events.

The external noise would be relatively low level and is likely to be spread over a period of time. Such noise would be negligible and would have little, if any adverse impact on the surrounding residential area.

The external noise would also be of low level during the dominant period of use of the venue. A higher level of noise would be generated for a short period of time at the conclusion of major events. The frequency of major events that would generate an external noise level higher than a negligible impact is considered to be low and would, therefore, have little adverse impact.

- **Noise - internal**

Internal noise would be generated during the use of the stadium venue. The dominant use of the venue for basketball games would generate insufficient noise for it to be audible from outside of the stadium building. Infrequent use of the venue for significant major game events would involve the use of amplified announcements and commentary, together with accompanying generated spectator noise.

The level of noise generated at these infrequent significant big-game events would be audible immediately outside the stadium venue. However, the distance between the stadium building and affected dwellings would be sufficient to allow the noise to be dissipated by the intervening natural topography and other environmental factors such as background noises. The resultant noise impact would be relatively low and, therefore, would be of little consequence on the surrounding residential neighbourhood.

- **Noise - construction**
It is expected that noise would be created during the construction period. In the event of approval, a condition would be imposed on any issued development consent to limit construction hours so as to minimise the impact.
- **Signage**
It is proposed to erect signage as part of this proposal. Such signage would be produced to a high standard and would be located on the existing stadium, facing Cambewarra Road.
- **Solar Access**
Solar access to the site is available from the east, north and west of the site. The site has limited views and is clearly visible from both the Cambewarra Road and the West Birriley Street frontages.
- **Traffic**
Additional traffic would be created during the construction phase of the proposal. The surrounding road network that would be used to gain access to the subject site during this period is considered capable of accommodating the additional construction traffic generated even considering the close proximity of Bomaderry High School.

A Traffic Impact Assessment (TIA) prepared by consultants GHD and dated June 2009 was submitted in support of the development application. This TIA concludes that the proposed development is not anticipated to have a significant impact on local traffic flows. As such, no major external works are required on the local road network. GHD recommends, however, that consideration should be given to providing improved signage at the sharp bend on North Tarawal Street to improve safety for pedestrians, particularly given the significant number of school children that use the nearby pedestrian crossing. Whilst no pedestrian injuries are known to have occurred at this crossing, the restricted sight distance is considered to pose a significant risk to pedestrian safety. This issue whilst having some degree of indirect relationship to the proposal, it considered to be more of a road/pedestrian issue rather than a DA issue.

- **Water - reuse**
It is proposed to reuse rainwater surface run-off for landscaping purposes and roof water collection for re-use in the toilets and cleaner's sink. Significant storage would also be provided to allow rain water to be further utilised for the irrigation of the Artie Smith Oval.
- **Conclusion**
It is considered that the proposed development would pose no unacceptable risk to the built environment or natural environments.

S79C(1)(c) Suitability of the Site for the Development

All services are available to the subject site, including stormwater drainage, power, telephone, reticulated water and sewerage services are connected. It is noted that the sewer line is located to the east of the site and the water is provided from the north of the site.

There are no natural or technical hazards associated with the subject land or those adjoining which would significantly affect the subject site.

The subject land is considered suitable.

S79C(1)(d) Referrals

- **Referrals - *internal***

Building Surveyor

No objection to the proposed development subject to the imposition of recommended conditions relating to:

- Construction Certificate to be obtained from Council or Private Accredited Certifier;
- Appointment of an Accredited Principle Certifying Authority;
- Sewer Drainage application if required;
- Disability Discrimination Act; and
- Disabled access is required.

Strategic Planning - Traffic Engineer

Council's Traffic Unit has reviewed the proposal and the Traffic Impact Report by GHD and provided comments on a range of traffic related matters.

- # It is noted that the comments essentially confirm the concerns expressed by the RTA - *Southern Regional Development Committee* (refer below to Referrals - *external*). The recommendations have been incorporated into conditions of consent which are contained in **Attachment "A"** - *Suitable Conditions*.

Development Engineer

- # No objection to the proposal subject to the imposition of recommended engineering conditions. Refer to **Attachment "A"** for recommended engineering conditions.

Shoalhaven Water

No objection to the proposal subject to the imposition of recommended conditions on any issued development consent relating to trade waste and backflow. Shoalhaven Water Development Application Notice has been provided.

- **Referrals - *external***

The application was referred externally to the **Roads and Traffic Authority** (i.e. the Southern Regional Development Committee - SRDC) for specialist advice and the following comments were received:

"The SRDC noted that a minimum of 166 spaces would need to be provided to service the development. Although a total of 352 spaces are shown on the submitted plan, only 200 formalised parking spaces would be constructed, with the remaining 162 spaces to be provided within an informal overflow parking area until a Master Plan has been prepared.

Such a Master Plan would include the possible re-alignment of Barwon Street towards the overflow parking area.

The SRDC further understands that a traffic management plan would be prepared to cater for larger events such as regional carnivals at the facility. The SRDC recommends the following conditions:

General

An event-based traffic management plan should be prepared and submitted to Shoalhaven City Traffic Committee for review. This plan should include, but not be limited to, proposed parking and pedestrian management associated with larger scaled events and detail proposals for bus pick-up and drop-off, etc.

Pedestrian / Cyclist

The SRDC notes that the internal pedestrian infrastructure does not align with the existing mid-block pedestrian signals located on Cambewarra Road. This is not ideal. In this regard, the SRDC recommends that:

- The internal infrastructure be re-aligned to ensure greater connectivity to existing pedestrian and cyclist facilities; and
- Bicycle parking facilities should be in accordance with Council codes or Austroads Part 4 and should include showers and change rooms where necessary.

Internal Layout

- A traffic plan should be submitted to the Shoalhaven City Council for review. This plan should indicate the proposed traffic control at each intersection within the internal road network and should detail proposed traffic calming devices required to ensure appropriate speed management within the site. The plan should also detail pedestrian crossing facilities.
- The submitted information indicates coaches will be required to access the facility. Although the SRDC supports the need for the site to be designed to accommodate coaches with a minimum length of 14.5m, a swept path analysis should be submitted indicating that these vehicles can manoeuvre within the car park and associated coach parking facilities. The swept path analysis should also be extended to demonstrate the turning movements of these vehicles into and out of the site from Cambewarra Road.
- The submitted information indicates a total of 1 bus/coach parking bay is proposed for the site. Given the nature of the facility, the SRDC is concerned that a single bay would not be adequate to cater for potential demand. It is recommended that Council request justification for the number of bus/coach parking bays to be provided within the site.
- Details regarding the proposed service arrangements for the site have not been submitted. The applicant should provide details regarding the largest vehicle likely to access the site for delivery/servicing purposes. It should be noted that, as an absolute minimum, the SRDC considers that loading areas should be designed to accommodate a large rigid vehicle with a minimum length of 12.5m.

Parking

- *The number of vehicle spaces provided within the site should be in accordance with Council's requirements. These spaces and associated manoeuvring areas should be designed in accordance with Council's Development Control Plan or, if not specified, in accordance with AS2890.1-2004.*
- *Accessible parking should be provided in accordance with Council's requirements or, if not specified, in accordance with AS2890.1-2004. These spaces should be located as close to the building entries as possible."*

Comment:

Council's Traffic and Transport Manager points out that the Southern Regional Development Committee are not requiring any works that are subject of RTA approval, but only recommending such works that require the approval of Shoalhaven Traffic Committee, which can be specified in consent conditions. The Traffic and Transport Manager suggested that the recommendations be incorporated into consent conditions.

S79C(1)(d) Public Participation

In accordance Council's "Community Consultation Policy" the adjoining/adjacent landowners located within 150m of the subject land were notified of the proposal. The notification period was from 13th July 2009 to the 28th July 2009. No submissions were received by Council during this period.

S79C(1)(e) Public Interest

- **Disabled Facilities**

Adequate access for the disabled would be provided for the proposed development. Toilet facilities for the disabled would be provided within the proposed development. Disabled Parking would be provided as part of the proposed development.

- **Fire Safety**

Fire safety of the building will need to comply with the requirements of the BCA.

- **Social Impact**

The submitted proposal will result in the provision of additional sporting facilities and resources for the sporting community and participants of the Shoalhaven, particularly those living in the northern part of the City. As such, it is considered that any social impact will be positive.

FINANCIAL CONSIDERATIONS:

The estimated cost of this project inclusive of the new buildings, refurbishment of the existing stadium and provision of car parking, servicing, access and landscaping is \$12 million of which Council has applied for a National Building Grant under the Commonwealth Stimulus Program of \$7 million.

CONCLUSION:

The construction of this project will provide an enhanced facility that would cater for events of a national standard and will allow the community to develop their fitness,

increase social interaction and boost fun-for-life activities. The proposed development will enhance the recreational opportunities of the northern Shoalhaven community.

The proposal will adequately manage the increase in traffic movements associated with the stadium / gymnasium complex and would also reinforce the visual fabric of the streetscape and the local area in general.

This development application has been assessed having regard to the Matters for Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979.

Given that all reasonable measures have been proposed or implemented to mitigate any adverse environmental impact generated by the proposed development, it is recommended that Council approve the development subject to the imposition of suitable conditions.

Tim Fletcher

DIRECTOR, DEVELOPMENT AND ENVIRONMENTAL SERVICES

R.D Pigg

GENERAL MANAGER