

## SHOALHAVEN CITY COUNCIL

### DEVELOPMENT COMMITTEE

To be held on Tuesday, 6<sup>th</sup> October, 2009  
Commencing at the conclusion of the Crown Reserve, Community and Commercial Operations  
Committee (commencing at 5.00pm).

30<sup>th</sup> September, 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, 6<sup>th</sup> October, 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, 6 OCTOBER 2009**

## **STRATEGIC PLANNING AND INFRASTRUCTURE**

1. **Policy Review – Strategy Planning Section, Strategic Planning & Infrastructure Group.** **File 33571-02, 33363-09 & 18107-09 (PDR)**
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### **Purpose of the Report:**

To reaffirm a number of existing policies pending completion of strategic planning work that is currently underway or recommends that certain policies be rescinded due to the passage of time.

### **RECOMMENDED that Council:**

- a) **Reaffirm the following policies and reconsider them in conjunction with the development and completion of the Shoalhaven LEP 2009, Citywide DCP, Citywide Growth Management Strategy and Community Strategic Plan Process or other work that is underway:**
- Development – Built Environment (POL08/380)**
  - Development – Coastal Areas (POL08/381)**
  - Development – Hazardous Industries (POL08/382)**
  - Development – Highways & Arterial Roads (POL08/383)**
  - Development – Housing in Residential Zones (POL08/384)**
  - Development – Main Centre Strategy (POL08/385)**
  - Development – Natural Hazards (other than flood or bushfire) (POL08/391)**
  - Development – New Development Areas (POL08/392)**
  - Development – Nuclear Industries and Activities (POL08/393)**
  - Development – Public Utilities – Electricity (POL08/394)**
  - Fair Trading – Dedication of Land for Major Infrastructure Project (POL08/398)**
  - Kangaroo Valley – Planning Issues & Policies (Min91.3357)**
  - Lake Conjola Village Zone – Residential Development (POL08/407)**
  - Requests for Council Support for Rural Road Closures (POL08/399)**
- b) **Rescind the Policy entitled “Development – Land Retention – Canada Street, Cunjurong Point (Min92.495)” given that intent of this policy will be implemented through Shoalhaven LEP 2009.**
- c) **Rescind the Policy entitled “Rezoning – Procedures for Requests (POL08/401)” given that it has been superseded by State Government changes to the rezoning process and a future report be submitted to Council on a new process/procedure for dealing with rezoning requests.**

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**Options:**

- a) Reaffirm the majority of the identified policies unchanged until the completion of the Shoalhaven LEP 2009, Citywide DCP, Citywide Growth Management Strategy and Community Strategic Plan Process and consider any revisions or changes as part of these major projects and rescind certain policies that have now been overtaken by the passage of time – this is the preferred option.
- b) Not reaffirm any of the existing policies – would possibly have a negligible effect or result in a policy vacuum in certain areas.
- c) Request immediate reviews of all or some of the policies – this would create resourcing issues and take staff away from existing major commitments in the short term (e.g. Shoalhaven LEP 2009, Citywide DCP etc).

**Details/Issue:**

It is a Council resolution that all public policies to be reviewed by Council within 12 months of election. Council has a number of individual planning related policies that would need to be reviewed and these are identified (in italics) and where relevant discussed below:

1. *Development – Built Environment (POL08/380)*
2. *Development – Coastal Areas (POL08/381)*
3. *Development – Hazardous Industries (POL08/382)*
4. *Development – Highways & Arterial Roads (POL08/383)*
5. *Development – Housing in Residential Zones (POL08/384)*
6. *Development – Main Centre Strategy (POL08/385)*
7. *Development – Natural Hazards (other than flood or bushfire) (POL08/391)*
8. *Development – New Development Areas (POL08/392)*
9. *Development – Nuclear Industries and Activities (POL08/393)*
10. *Development – Public Utilities – Electricity (POL08/394)*

Note: These policies were originally adopted by Council in 1990 as part of the general policy document entitled “Shoalhaven Beyond 1990 – Policies for Planning & Development”. The individual policies were reaffirmed by Council in 2004.

11. *Fair Trading – Dedication of Land for Major Infrastructure Projects (POL08/398)*
12. *Kangaroo Valley – Planning Issues & Policies (Min91.3357)*
13. *Lake Conjola Village Zone – Residential Development (POL08/407)*
14. *Requests for Council Support for Rural Road Closures (POL08/399)*
15. *Guidelines for Integrating the Principles of ESD into Council Activities (Min03.777)*

Staff are currently committed to the completion of the Shoalhaven LEP 2009, Citywide DCP and Citywide Growth Management Strategy. The abovementioned policies will be considered as part of the major planning projects. Any revisions or changes will be considered as part of these major projects and if appropriate they may ultimately be

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incorporated into these major policy documents. Other policies that have now been overtaken by the passage of time may be also be rescinded.

*16. Development – Land Retention – Canada Street, Cunjurong Point (Min92.495).*

Comment:

This policy relates to land surrounding Lot 481 DP 823199 Cunjurong Point. This is Crown Land that is under lease to the Community & Churches Children's Camps and consent was previously given for a "recreation facility – children's camp".

At the time of granting consent in the mid 1990's, Council also resolved to "adopt a firm policy to retain the land surrounding the proposed Children's Camp in its natural state and not to provide for future urban development in this locality".

The policy/resolution does not need to be reaffirmed as its intent was reinforced by the State Government's Sensitive Urban Lands Review and will be implemented through the Shoalhaven LEP 2009. The draft LEP proposes to zone the surrounding Crown land as E2 Environmental Conservation consistent with the findings of the Review. As such it is proposed to rescind this policy.

*17. Rezoning – Procedures for Requests (POL08/401)*

Comment:

The State Government substantially amended the procedures for the preparation of a rezoning on the 1 July 2009. Councillors were briefed on the changes 19 August 2009.

Given that Council's existing Policy has been superseded by State Government changes to the rezoning process it is proposed that it be rescinded and a future report be submitted to Council on a new internal process/ procedure for dealing with rezoning requests.

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

Deferring the review of the identified policies will allow resources to continue to be committed to the major planning projects. This will enable staff to focus on the current approach and also deliver a coordinated, consistent outcome.

**Financial Considerations:**

None at present. The identified major planning projects are currently being managed within existing budgets.

**2. Draft Local Environmental Plan No. LP 401 – Reclassification of Land at Nowra – Public Exhibition Outcomes** **File 39248**

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**Purpose of the Report:**

To advise Council of the outcomes of the public exhibition of draft Local Environmental Plan (LEP) No. LP 401 – Reclassification of Land at Nowra and provide options for the finalisation of this component of the draft LEP.

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**RECOMMENDED that in regard to the component of draft LEP No. LP 401 – Reclassification of land at Nowra and Huskisson, that relates to the ‘Civic Precinct’ Nowra, Council:**

- a) **Adopt that component of the draft plan as exhibited; and**
- b) **Following consideration of the subsequent report on the Huskisson site, forward the plan to the Department of Planning in accordance with Section 68 & 69 of the Environmental Planning & Assessment Act 1979 requesting its gazettal, assuming the Parliamentary Counsel’s Opinion on the plan does not change its intent and meaning.**

**Options:**

***Option 1***

Adopt the component of the plan as exhibited that relates to the ‘Civic Precinct’, Nowra, subject to any minor wording changes required by the Parliamentary Counsel, provided the meaning and intent is not changed; and forward to the Department of Planning for gazettal.

***Option 2***

Amend the draft plan to remove the Civic Precinct, Nowra, adopt the plan subject to any minor wording changes required by the Parliamentary Counsel, provided the meaning and intent is not changed; and forward to the Department of Planning for gazettal.

***Option 3***

Not proceed at all with draft LEP No. LP 401.

**Details/Issue:**

The purpose of draft LEP No. LP 401 is to reclassify the ‘Civic Precinct’, Nowra and the ‘Owen Street Carpark’, Huskisson, which are owned by Council, from “community” to “operational” land under the Local Government Act 1993 and thereby enable their sale, lease, licence and/ or redevelopment.

A report on the exhibition arrangements was received for information by the Property Steering Committee on 10 August 2009.

A separate report on the Owen Street, Carpark, Huskisson component of the draft LEP will be submitted to the Development Committee in November 2009 as there were a high number of submissions which are still being addressed. As such this report only deals with the ‘Civic Precinct’, Nowra component of the draft plan.

The Civic Precinct, Bridge Road, Nowra consists of the following parcels of land:

Lots 9 and 10 DP 607132, Lots 8 and 9 DP 605984, Lots 7 and 8 DP 600782, Lot 6 DP 975062, Lot 1 DP 513571, Lot A DP 161574, Lot 5 DP 975062, Lots 10 and 11 DP 606121, Lots 5 and 6 DP 813461, Lot 1 DP 194884, Lots A and B DP 158942, Lots 4 and 5 DP 1112482, Lots 2 and 3 DP 552527, part of Lot 51 DP 209245 and part of Part Lot 52 DP 209295.



The subject land was rezoned to Business 3(g) in 2006 to facilitate a “Civic Precinct”, including the recently completed Shoalhaven Entertainment Centre. Council acquired the various parcels of land between 1980 and 1992 to be used for the City Administration Centre and future civic purposes.

# The draft LEP (see attachment “A”) was publicly exhibited from 15 July to 14 August 2009.

### **Submissions**

As a result of the public exhibition, two (2) submissions were received specifically related to the reclassification of the Civic Precinct at Nowra and both objected to the proposed reclassification, including one from the Shoalhaven Business Chamber.

The summary of issues raised in these submissions is included in the table below. Note that each submission has not been individually summarised below, rather the issues have.

Copies of the actual submissions are provided in the Councillor’s Information Folder for today’s meeting.

<b>No.</b>	<b>Issue</b>	<b>Comments</b>
<b>1</b>	Longer term benefit to Nowra and Shoalhaven to retain as community lands.	Noted.
<b>2</b>	Current open aspect allows for a pleasant presentation and the amenity of land better served if linked/developed similar to Harry Sawkins Park.	Noted, however, strategic direction for this area was implemented through the rezoning of the site from Special Uses 5(a) to Business 3(g) in 2005. The reclassification allows Council to deal in the land i.e. lease, licence or sell the land. The current DCP for the area is under review.
<b>3</b>	Hotel could be located in a better location.	Relates to the future use and development of the site. The current DCP for the area is under review
<b>4</b>	Land should be retained for Civic purposes and not sold to a developer.	The reclassification does not in itself mean that the land will be sold, it provides flexibility in the use of the overall precinct (not just the hotel site). The future sale of any land in the precinct would be considered by Council as a separate exercise.

Submission Overview – Both the submissions received raised concerns about the future use of the subject land for a hotel development. It is suggested that there are better locations for a hotel and that the subject land should be retained for civic and/or other uses (e.g. parkland).

Comment: Council has previously supported the objective of facilitating/encouraging the development of a high quality hotel in the Nowra region and making this site available may help to achieve that objective.

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## **Public Hearings**

As the draft LEP involved the reclassification of “community” land, a public hearing, chaired by an independent person, was required for each site under the Local Government Act 1993.

The Public Hearings for the Nowra component of the draft LEP was held at the City Administrative Centre, Nowra on 3 September 2009 and two community members attended. Those attending were not opposed to the reclassification but made suggestions for its future use.

- # The Hearing was chaired by Mr Viv Straw of GHD’s Canberra Office. His report on the Public Hearing, outlining the issues raised by those attending, is provided as Attachment ‘B’ to this report.

The Public Hearing Report is required to be made publicly available.

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

The reclassification of the subject parcels will enable their sale, lease, licence and/or development. The sale, lease, licence and/ or development of these sites has the potential to provide economic and social benefits to Shoalhaven, dependent on the nature of the future use of these sites and the expenditure of funds gained via the sale, lease and/ or licence of the sites.

However in regard to the Nowra site, there is some concern about what the reclassification will lead to. However it needs to be recognised that the site is zoned Business 3(g) and the majority of it is already classified “operational” and this process is in fact confirming this over the whole of the site. There is merit in the site having an “operational” classification so that Council has flexibility in being able to deal with the whole site and its activities (e.g. Entertainment Centre). The concerns appear to relate to what could occur on the currently undeveloped part of the site. This will be something that Council needs to consider as part of the review of DCP No.119 and any resultant future plans for sale or development.

### **Financial Considerations:**

The reclassification of the subject parcels will enable Council to sell, lease or licence the land which could provide additional funds for Council.

## **3. State Environmental Planning Policy (Affordable Rental Housing) 2009**

**File 31157-07**

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

This report informs Council of the gazettal of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (the SEPP), associated Environmental Planning and Assessment Amendment (Site Compatibility Certificates) Regulation 2009 and Standard Instrument (Local Environmental Plans) Amendment (Affordable Rental Housing) Order 2009.

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A copy of the SEPP and associated legislation will be available for review in the Councillors Room prior to today's meeting and can also be accessed on the NSW Legislation website at:

<http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+364+2009+cd+0+N>

Fact Sheets on the Affordable Rental Housing SEPP can also be accessed on the NSW Department of Planning (the Department) website at:

<http://www.planning.nsw.gov.au/affordablehousing>

An information session on the SEPP was hosted by the Department in August (post gazettal) and Council staff attended.

**RECOMMENDED that the report of the General Manager on the gazettal of the State Environmental Planning Policy (Affordable Rental Housing) 2009, associated Environmental Planning and Assessment Amendment (Site Compatibility Certificates) Regulation 2009 and Standard Instrument (Local Environmental Plans) Amendment (Affordable Rental Housing) Order 2009 be received for information.**

**Options:**

Not applicable.

**Details/Issue:**

It is initially noted that no consultation or opportunity to make comment on the SEPP and associated legislation was given prior to it being published and commencing on 1 July 2009.

***SEPP (Affordable Rental Housing) 2009***

The SEPP aims to encourage home owners, social housing providers and developers to invest in and create new affordable rental housing to meets the needs of our growing population and existing residents.

In particular, the new SEPP aims to:

- Encourage partnerships between private and not-for-profit housing providers;
- Assist in the provision of housing closer to major employment areas, consistent with the State Plan;
- Mitigate against the loss of any existing affordable housing;
- Position NSW to be a beneficiary of major Australian Government housing funding programs;
- Support innovative affordable housing styles, including granny flats and new generation boarding houses; and,
- Deliver good urban design outcomes.

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The SEPP defines affordable housing as follows:

***affordable housing*** means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument

*In this SEPP, a household is taken to be a very low income household, low income household or moderate income household if the household:*

- a) Has a gross income that is less than 120 per cent of the median household income for the time being for the Sydney Statistical Division (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or*
- b) Is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.*

The SEPP consists of seven divisions which each set out a different type of affordable housing and criteria for its development under this SEPP.

The SEPP sets out 'deemed to comply' provisions for some of the divisions which are development standards. If a proposed development meets these development standards then the consent authority cannot refuse consent based on that standard. Where a standard is not specified in the SEPP, Council's development standards will continue to apply. These divisions are outlined below.

#### Division 1: Infill Affordable Housing

Applies to the development of dwelling houses, multi-dwelling houses and residential flat buildings in the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential zone or equivalent zones under Shoalhaven Local Environmental Plan (SLEP) 1985 Residential 2(a1), Residential 2(b1), Residential 2(b2) and Residential 2(c). It has the effect of allowing:

- Residential flat buildings in zones where they are otherwise not permissible (i.e. Residential 2(a1)) provided that at least 50 percent of the dwellings are affordable housing; and,
- Floor space ratio bonuses for residential flat buildings in zones where they are permissible provided that at least 20 per cent of the dwellings are affordable housing. The bonus will increase as more affordable rental housing is provided in the development.

The affordable housing within these developments must be managed by a registered community housing provider for at least 10 years.

The fact the dwellings are affordable housing must also be registered on the relevant land title so that anyone buying the units is aware of this.

Other units within the development can be sold immediately at market value to help subsidise the percentage that must be affordably rented for 10 years.

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### Division 2: Secondary Dwellings

Makes the building of new attached or detached secondary dwellings or 'granny flats' permissible in all residential zones and provides criteria for them to be considered as complying development. Secondary dwellings cannot be subdivided from the principle dwelling.

### Division 3: Boarding Houses

Boarding house development is permissible in all residential and some business zones, and rooms may contain en-suite bathroom and kitchenette facilities. In relation to boarding houses the SEPP:

- Sets minimum and maximum room sizes and requires communal rooms if there are five or more bedrooms, and on-site manager accommodation where there are more than 20 lodgers;
- Includes a cap on car parking and a prohibition of strata subdivision; and,
- Provides a floorspace bonus to encourage boarding houses in areas zoned for residential flat buildings which would otherwise be uneconomic to develop.

### Division 4: Supportive Accommodation

Enables support services (such as counselling and life skills development) to be provided without consent within existing flat buildings and boarding houses so that these buildings can be operated by not-for-profit organisations and charities as long-term housing for homeless people and others requiring support.

### Division 5: Residential Flat Buildings – Social Housing Providers, Public Authorities and Joint Ventures

Relates to public authorities and social housing providers, and it is designed to make social housing providers an attractive partnership proposition for private developers.

Applies to land within 400 metres of land in the B3 Commercial Core, B4 Mixed Use or the equivalent land use zone within Nowra under SLEP 1985 Business 3(d) and Business 3(g). It allows development for the purpose of a residential flat building where it is not permissible under another environmental planning instrument (EPI) and requires a site compatibility statement to be issued by the Director-General of the Department. Such development also requires that at least 50 per cent of accommodation be affordable housing and that it be managed by a registered community housing provider for at least 10 years.

### Division 6: Residential Development – Land and Housing Corporation

Under changes to legislation earlier this year, Housing NSW became the consent authority for its own small-scale public housing developments of 20 or fewer units and up to two-storeys (8.5m high). The SEPP incorporates these provisions, so that affordable housing provisions are now covered by one EPI. In relation to these development proposals:

- Compliance with the Seniors Living Policy: Urban Design Guidelines for infill development is required;
- Does not extend to the demolition of heritage items.
- Housing NSW must notify adjoining landowners and the relevant Council, and take into consideration any feedback provided.

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### Division 7: Group Homes

In changes introduced in February 2009, and incorporated into the new SEPP, public authorities can self-approve group homes of up to 10 bedrooms, doubling the former self-approval threshold of five bedrooms. Group housing proposals by other providers can proceed either as complying development, (if they meet key size and design provisions of the NSW Housing Code) or as local development applications to Council. The SEPP allows the development of group homes in R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, B4 Mixed Use, SP1 Special Activities, SP2 Infrastructure or equivalent zones under SLEP 1985 Residential 2(a1), Residential 2(b1), Residential 2(b2), Residential 2(c), Business 3(g), and Special Uses 5(a).

### ***Environmental Planning & Assessment Amendment (Site Compatibility Certificates) Regulation 2009***

The Environmental Planning and Assessment Amendment (Site Compatibility Certificates) Regulation 2009 requires a planning certificate issued under Section 149 of the *Environmental Planning and Assessment (EP&A) Act 1979* to contain statements that:

- (i) Specify whether there is a site compatibility certificate (affordable rental housing) in respect of a proposed development on land, the period for which the certificate is current and that a copy of the certificate can be obtained from the Department, and
- (ii) Set out any condition of consent required by the SEPP that requires the development to be used for affordable housing.

### ***Standard Instrument (Local Environmental Plans) Amendment (Affordable Rental Housing) Order 2009***

The Standard Instrument (Local Environmental Plans) Amendment (Affordable Rental Housing) Order 2009 amends the Standard LEP Instrument by changing the definition of 'boarding house' and making boarding houses a permissible land use with consent in the R2 Low Density Residential, R4 High Density Residential, B1 Neighbourhood Centre and B2 Local Centre zones.

This will amend the relevant provisions of the current draft Shoalhaven LEP 2009.

### ***Implications for Council***

#### ***Development Contributions***

Where Housing NSW is undertaking development that does not require consent under the SEPP, development contributions are not levied as there are no conditions of development consent requiring their payment. Housing NSW wrote to Council on 17 August 2009 outlining their approach to payment of Section 94 contributions. They advised the following:

- Where Housing NSW self approves developments funded under the Nation Building Economic Stimulus Plan (NBESP), Section 94 contributions will not be paid;
- Where NBESP projects are determined by Council through the development application process, Section 94 contributions will not be paid for the first 20 dwellings but will be paid for the 21<sup>st</sup> and subsequent dwellings up to a maximum of \$5000 per dwelling;

- 
- Where Housing NSW is undertaking 'business as usual' development, normal Section 94 contributions will generally be paid.

### ***Car Parking Provision***

The 'deemed to comply' standards for Divisions 1, 2 and 3 set standards for parking that are significantly less onerous than those contained in Council's relevant development control plans (DCP's). This has the potential to negatively impact on residential areas through increased pressure for on-street parking, particularly in those residential areas where residential flat buildings are not permissible under SLEP 1985 but are made possible by the SEPP, or where developers are granted bonus floor space for residential flat buildings.

### ***Granny Flats***

While Division 2 refers to 'secondary dwellings', the supporting documents issued by the Department refer to secondary dwellings as 'granny flats'. DCP No.91 Single Dwellings and Ancillary Structures Minimum Building Requirements also refer to granny flats but in a differing context: a granny flat is defined as room or suite of rooms for use by a family member(s) of the dwelling occupants in conjunction with the main dwelling that is not fully self contained. It may be appropriate to amend DCP No.91 to rename the term granny flat in DCP91 as 'semi-independent living area' to remove any possible confusion.

### ***Dual Occupancy Development***

It is considered unlikely to see a high level of investment in dual occupancies under the SEPP in lieu of using Council's policies as there is no provision for subdivision under the SEPP, however there may be implications in hazard locations (eg flood affected) where Council's current DCPs take a more restrictive approach.

### ***Section 149 Certificates***

Council's Section 149 (Part 2) certificates will now be amended to include information on whether a 'Site Compatibility Certificate' has been issued under the SEPP in respect of a proposed development under Division 5 on the site. However, Council will be reliant upon the Department providing this information to Council.

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

There are possible positive social and economic impacts that may result through the implementation of this SEPP due to the likely increase in the availability of affordable rental housing, of which there is a current shortage. The introduction of the SEPP may also result in negative social and environmental impacts through the allowance of higher density residential flat buildings in existing low density residential areas covered by the R2 Low Density Residential zoning (equivalent SLEP 1985 zone – Residential 2(a1)) with potentially inadequate provision of parking. Aside from the density implications, there may be detrimental visual, privacy and amenity impacts. Concerns also exist in some hazard locations which otherwise may have been subject to greater restrictions.

The situation will be monitored by Council staff and if necessary a further report will be submitted to Council in this regard.

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**Financial Considerations:**

Under the self approval mechanisms of Division 6 for Housing NSW, Council may not receive development contributions for developments undertaken by Housing NSW. This may impact on Council's ability to accumulate adequate funding for projects funded from development contributions.

**4. Nowra CBD Liaison Committee****File 39962****Purpose of the Report:**

The purpose of this report is to respond to Council resolution of the 14<sup>th</sup> July 2009 MIN 882 that Council call for expressions of interest for membership of a Nowra CBD Liaison Committee for the Nowra CBD Strategy review and DCP No. 95 and seek adoption of the membership, objectives and terms of reference of this committee.

**RECOMMENDED that in respect to the Nowra CBD Liaison Committee:**

- a) **The committee be formed as a sunset committee for the purpose of providing feedback on the Draft CBD Strategic Review, Draft Urban Design Master Plan, Development Control PLAN 95 and the accompanying Contributions Plan.**
- b) **The purpose of the committee would be to provide a forum for exchange of information and opinion during the preparation of the draft Nowra CBD Urban Design Master Plan, Draft Development Control Plan and Draft Contributions Plan.**
- c) **The objectives of the committee would be:**
  - **To ensure that desired outcomes and any limitations including budget constraints are ascertained and documented.**
  - **To ensure that the views of the stakeholders are known and given consideration.**
- d) **Membership would consist of:**
  - **1 representative from CBD Promotions Committee**
  - **2 representative from the Business Chamber of Shoalhaven**
  - **1 representative from Youth**
  - **1 representative from Tourism**
  - **1 arts / heritage advocate**
  - **1 public transport advocate**
  - **1 safer by design/police advocate**
  - **2 community representatives**
  - **Available Councillors and the General Manager**
- e) **Terms of Reference:**
  - **The Committee will make recommendations to Council.**
  - **The Committee will act at all times in accordance with the relevant legislation Local Govt Act and with any written policies and guidelines of the Council.**
  - **The committee will meet at the discretion of Council**



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- **A quorum for the Committee meeting shall be one third of the total number of members excluding Councillors and the General Manager.**
  - **All decisions of the committee shall be made on the basis of a majority decision of the members present.**

**Options:**

As a decision has been made to establish the committee further options would relate to the structure of the proposed committee.

**Details/Issue:**

***Proposed Structure and operation of the Committee***

The Shoalhaven Business Chamber is aware of the intention to establish a committee and has nominated the Chair of the Nowra CBD Promotions Committee and Executive Officer of the Chamber (copy of correspondence included in Councillor's Information Folder). Consideration has been given to the following aspects and recommendations made accordingly.

- a) Duration
- b) Purpose
- c) Objectives
- d) Membership
- e) Membership Criteria
- f) Terms of reference

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

Council's requirements for State of the Environment report would be enhanced through the creation of the Nowra CBD Liaison Committee.

**Financial Considerations:**

The Committee would meet on an as needs basis. This would be an additional committee of Council.

**5. Shoalhaven Contributions Plan Draft Amendment No 99-Ulladulla Town Centre**

**File 38142-02 PDR**

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**Purpose of the Report:** To inform Council of the outcomes of the recent public exhibition of the Shoalhaven Contributions Plan draft Amendment No. 99 – Ulladulla Town Centre.

**#**

**RECOMMENDED that in relation to the Shoalhaven Contributions Plan Draft Amendment No 99 – Ulladulla Town Centre:**

- a) **Council adopt the draft Amendment as exhibited (attachment "A") with changes detailed in this report;**

- b) Council place a Notice of Adoption in local newspapers and on Council's website within 28 days of adoption of the draft Amendment; and
- c) Council advise those who made submissions on the draft Amendment of this resolution.

**Options:**

1. Council adopt the draft Amendment as exhibited.
2. Council adopt the draft Amendment with changes detailed in this report or other changes.
3. Council not adopt the draft Amendment.
4. Council re exhibit the draft Amendment with changes detailed in this report or other changes.

**Details/Issue:**

**Background:**

Council resolved on 9th June 2009 to publicly exhibit draft Amendment No. 99 – Ulladulla Town Centre for a minimum period of 28 days.

The purpose of the draft Amendment is to authorise Council to require development contributions for key community infrastructure which will be required to adequately cater for the demand from future development allowed under Development Control Plan No. 56 Ulladulla Town Centre (DCP).

**Public Exhibition of the draft Amendment:**

The draft Amendment was placed on public exhibition from 5<sup>th</sup> August to 4<sup>th</sup> September 2009. Notification of the exhibition was placed in the South Coast Register and Milton Ulladulla Times on Wednesday 5<sup>th</sup> August 2009 and affected landowners were notified by mail.

Three submissions were received on the draft Amendment. Table 1 summarises the submissions as well as Council's response to specific issues raised.

**Table 1 – Summary of Submissions**

No.	Comments	Action/ Reply
1	Property Owner - Seeking clarification on draft Amendment and a general zoning/LEP enquiry.	Clarification provided and no further action required.
2	Council's Traffic Section - Objection to South Street lights being included in the draft Amendment on the basis that RTA had previously agreed to fund the signals as part of the joint Council/RTA 1996 Traffic Management Strategy.	Recommended to retain traffic lights in the draft Amendment given that there is no certainty that the RTA will fund the lights. The traffic lights were reported to and supported by Council in June 2008 (MIN08.808). Retaining the project in the draft Amendment will ensure Council is able to provide the traffic facility in the

No.	Comments	Action/ Reply
		future.
3	Council's Urban Design Section - Recommendation to include additional road environment improvement works on Boree Street as part of project 05ROAD0063.	Additional cost estimates to be considered by Council in this report for inclusion in the draft Amendment.

**Changes to the draft Amendment:**

A number of changes have been made to the draft Amendment which include:

Method of Calculating Equivalent Tenements (ETs)

Recent amendments to the 1993 Contributions Plan have used a different methodology to those used in this draft Amendment for calculating commercial development ETs. To maintain a consistent approach to calculating ETs, draft Amendment 99 is recommended to reflect a consistent methodology to other previous amendments (i.e. St Georges Basin Village Centre and Huskisson Town Centre).

This methodology results in an increase in the total amount of ETs and a decrease in contribution rates per property but no change in the total contributions for each capital works project.

Change to Cost Estimates for Contribution Project 03ROAD0063

Council's Urban Design section recommended additional works be included in the scope of works for contribution project 03ROAD0063. Should the recommendation be supported by Council, updated cost estimates incorporated into the draft Amendment result in an increase from \$4,038,037 to \$4,762,067. Consequently, contribution rates for this contribution project will increase by \$166.44 per ET.

Editing

Minor editing changes are recommended to delete repetitive tables and to reflect changes from increasing the estimated cost for contribution project 03ROAD0063. This editing also rectified a calculation error for contribution project 03ROAD0063 which results in additional increase in contribution rates for this project of \$93.81 per ET.

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

Amendment No 99 continues Council's efforts in developing Town Centre Contributions Plans, to ensure equitable cost sharing of essential community infrastructure.

**Financial Considerations:**

The draft Amendment allows Council to collect Development Contributions to assist in the funding of Community Infrastructure within the Ulladulla Town Centre. The draft Amendment identifies 20 projects in the 'schedule of works' which Council will be able to collect and pool contributions. The contribution rates and apportionment are detailed in Table 2 below. Council funding required to match Development Contributions will need to be considered in future capital works budgets.

**Table 2 – Contribution Rates and Apportionment**

<b>Project</b>	<b>Total project cost</b>	<b>Development Share</b>	<b>Council Share</b>	<b>Contribution Rate</b>
Roads and traffic management (05ROAD0062)	\$2,639,126	\$791,738	\$1,847,388	\$606.70
Road environment improvement (05ROAD0063)	\$5,147,921	\$1,544,376	\$3,603,545	\$1,183.43
Service Lanes (05ROAD0064)	\$9,150,286	\$9,150,286	N/A (100% Development Funded)	N/A (Varying rate)
Bus Terminal (05ROAD0065)	\$677,614	\$203,284	\$474,330	\$155.77
Amendment preparation and management (05MGMT0001)	\$130,336	\$130,336	N/A (100% Development Funded)	\$99.87
<b>Totals</b>	<b>\$17,359,431</b>	<b>\$11,704,264</b>	<b>\$5,655,167</b>	

**6. Shoalhaven Contributions Plan Draft Amendment No 77.4 - Planning Area 4 Roads  
File 28709-02**

**Purpose of the Report:** To inform Council of the outcomes of the recent public exhibition of Shoalhaven Contributions Plan Draft Amendment No. 77.4 – Planning Area 4 Roads.

**RECOMMENDED** that in relation to the Shoalhaven Contributions Plan Draft Amendment No 77.4 – Planning Area 4 Roads

- a) Council adopt the Draft Amendment as exhibited; and
- b) Council place a Notice of Adoption in local newspapers and on Council’s website within 28 days of adoption of the draft.

**Options:**

Council may choose to:

- a) Adopt the draft Amendment as exhibited.
- b) Not adopt the draft Amendment.
- c) Adopt or re-exhibit the draft Amendment with changes.

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**Details/Issue:****Background:**

Council resolved on 14th July 2009 to publicly exhibit draft Amendment No. 77.4 – Planning Area 4 Roads for a minimum period of 28 days. The Council report pertaining to this resolution (Development Committee 7 July 2009 item 4 Page 10)

<http://shoalhaven.nsw.gov.au/council/pubdocs/papers/2009/Dev/20090707%20dev.pdf>

and a copy of the draft Amendment

<http://www3.shoalhaven.nsw.gov.au/applications/lepdcps94/Documents/s94/CP077.4/S94DraftAmendmentNo77.4.pdf> is available in the Councillor's Room.

**Planning Area 4 Roads:**

The draft Amendment proposes to:

- Retain and update one road project from the 1993 Contributions Plan; and
- Retain three road projects for the recoupment of the cost of providing these projects in anticipation of new development.

The apportionment and contribution rates for road projects to be included in the draft Amendment are detailed in Table 1.

**Table 1 – Planning Area 4 Proposed Road Projects**

<b>Project</b>	<b>Project Cost</b>	<b>Development Share</b>	<b>Contribution Rate</b>	<b>Council Share</b>
04ROAD2001 Sussex Inlet Rd Network – Benefit Area 1	\$1,293,925	\$184,229	\$440.74	\$836,084
04ROAD2001 Sussex Inlet Rd Network – Benefit Area 2		\$46,824	\$282.07	\$226,787
04ROAD2002 Old Berrara Road, Sussex Inlet – Benefit Area 1	\$210,410	\$196,613	\$7,281.95	\$0
04ROAD2002 Old Berrara Road, Sussex Inlet – Benefit Area 2		\$3,449	\$3,449.34	\$10,348
04ROAD0003 Medlyn Ave, Sussex Inlet	\$123,980	\$32,471	\$2,951.90	\$91,509
04ROAD0004 Badgee Bridge, Sussex Inlet	\$1,166,330	\$417,575	\$2,057.02	\$748,755
<b>Total</b>	<b>\$2,794,645</b>	<b>\$833,850</b>	<b>N/A</b>	<b>\$1,960,795</b>

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Further amendment to this Plan may be required should additional development associated with the One Tree Bay and other development proposals in Planning Area 4 proceed.

**Public Exhibition of the draft Amendment:**

The draft Amendment was placed on public exhibition from 12<sup>th</sup> August to 11<sup>th</sup> September 2009. Notification of the exhibition was placed in the South Coast Register and Milton Ulladulla Times on Wednesday 12<sup>th</sup> August 2009.

No submissions were received.

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

One of the objectives of the Amendment is to ensure equitable cost sharing of essential community infrastructure.

**Financial Considerations:**

The draft Amendment allows Council to collect Development Contributions to assist in the funding of roads within planning area 4. A total of 4 road projects are identified for which Council will be able to collect contributions for, of which 3 will be to recoup the cost of providing these projects in anticipation of new development.

Project 04ROAD2002 Old Berrara Road is associated with rural residential development and is proposed to be fully funded by development. For all other projects, Council funding required to match Development Contributions will need to be considered in future capital works planning.

**7. Shoalhaven Contributions Plan Amendment No 77.2 - Planning Area 2 Roads**

**File 28709-02**

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**Purpose of the Report:** To inform Council of the outcomes of the recent public exhibition of Shoalhaven Contributions Plan draft Amendment No 77.2 – Planning Area 2 Roads.

**RECOMMENDED that in relation to Shoalhaven Contributions Plan draft Amendment No 77.2 – Planning Area 2 Roads:**

- a) **Council adopt the draft Amendment as exhibited; and**
- b) **Council place a Notice of Adoption in local newspapers and on Council's website within 28 days of adoption of the draft Amendment.**

**Options:**

Council may choose to:

- a) Adopt the draft Amendment as exhibited.
- b) Amend the scope of works/estimated cost for particular projects.
- c) Not adopt the draft Amendment.

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**Details/Issue:****Background**

Council resolved on 14th July 2009 to publicly exhibit draft Amendment No. 77.2 – Planning Area 2 Roads for a minimum period of 28 days.

A copy of the original report (Development Committee 7 July 2009 item 4 Page 10) <http://shoalhaven.nsw.gov.au/council/pubdocs/papers/2009/Dev/20090707%20dev.pdf> and the draft Amendment <http://www3.shoalhaven.nsw.gov.au/applications/lepdcps94/Documents/s94/CP077.2/S94DraftAmendmentNo77.2.pdf> is available in the Councillor's Room.

**Planning Area 2 Roads**

The draft Amendment proposes to:

- Delete four Area 2 road projects from the 1993 Plan;
- Retain and update one project from the 1993 Plan;
- Create one new Area 2 road project; and
- Retain three projects for the recoupment of costs of providing these projects in anticipation of new development.

**Table 1 – Planning Area 2 Proposed Road Projects**

<b>Project</b>	<b>Project Cost</b>	<b>Development Share</b>	<b>Contribution Rate</b>	<b>Council Share</b>
02ROAD2001 Culburra Rd/ Prince Edward Ave Recoupment	\$740,940	\$264,593	\$197.90	\$476,347
02ROAD2002 Currarong Rd Recoupment	\$229,150	\$19,576	\$383.84	\$209,574
02ROAD2005 Currarong Bridge and Approaches Recoupment	\$180,390	\$14,297	\$304.20	\$166,093
02ROAD2007 DCP 41 Roads, Callala Bay Updated	\$1,194,316	\$1,194,316	\$13,270.17	\$0

Project	Project Cost	Development Share	Contribution Rate	Council Share
02ROAD0011 East and West Cr, Culburra Beach New	\$1,847,315	\$1,790,034	\$14,320.27	\$57,281
<b>Total</b>	\$4,192,111	\$3,282,816	N/A	\$909,295

**Public Exhibition of the draft Amendment:**

The draft Amendment was placed on public exhibition from 12<sup>th</sup> August to 11<sup>th</sup> September 2009. Notification of the exhibition was placed in the South Coast Register and Milton Ulladulla Times on Wednesday 12<sup>th</sup> August 2009.

- # One submission was received on the draft Amendment and the details of the submission and Council's response are summarised below. The comments relate to project 02ROAD0011 – East/ West Crescent, Culburra Beach which is shown in Attachment A.

Comments in Submission	Action/Response
Requests a review of total contributions in this area (East and West Cres, Culburra Beach). Contributions will be close to the \$20,000 threshold per ET and s64 charges of approximately \$15,000 per ET apply to this area.	Contributions are relatively low with the exception of this one road project.  The road only services a small number of lots so a high contribution rate is required to facilitate the project. The inclusion of the project was made at the request of a landowner.
More detailed cost estimates should be provided in Amendments to ensure transparency.	Noted – Cost estimates are based on concept plans. Council are happy to provide this information as it becomes available.
Council's apportionment of costs for project 02ROAD0011 should be 14.7% not 3.1%. Each lot should be considered an existing dwelling/lot.	This is a consistent methodology used to calculate apportionment for other road projects and has no effect on the contribution rate or total amount of ETs.
The plan also indicates that 100% of traffic generation will be attributable to development. It is claimed the proposed roads will be accessed by a significant number of properties south and south-east of the subject area as East and	It is anticipated that properties to the south of the contribution area will continue to access East Cres via Araluen Way.



Comments in Submission	Action/Response
West Crescent will become a shorter more direct route to Culburra CBD and Nowra.	
Detailed estimate of how Council obtained it's calculation of the 129ET's should be provided for this and all other contribution plans. Otherwise, the process is not transparent.	Noted – Without a detailed study for the area, Council staff need to make assumptions as to the development potential of the land.
The necessity for the connection between Silvermere St and East Crescent is strongly questioned. Does not provide access to any additional properties, will be difficult to construct to a suitable standard, creates two unsafe intersections at Silvermere St and East Crescent, and provides a “rat run” for road users through the growth area of East and West Crescents.	It is anticipated that properties on East Cres will use this section of road rather than crossing the culvert and exiting via West Cres.
If Council is not willing to remove the link between Silvermere St and East Crescent, the properties numbered 9 and 11 Silvermere St should be added to the contribution area (plus their development potential) as they will obtain direct benefit from a road along their side boundary.	<p>While these properties may benefit from the proposed road, they do not create a demand for the road.</p> <p>Contributions are applied to those properties that create a demand for the road not those who benefit from it.</p>
Western side of East Crescent and eastern side of West Crescent have been conditioned in recent DA's to have one-way cross fall to drainage reserve for hydraulic purposes. Cost estimate should be amended as concrete edge strip will be cheaper to construct than kerb and gutter.	Alternative works to be considered by Council as part of this report.

Comments in Submission	Action/Response
<p>Cost estimate includes \$450,000 for “cut and spoil” and \$150,000 for “cut and fill”, which is over 43% of the cost of works. Cost is unwarranted and should be around \$50,000.</p>	<p>Cost estimate given by Council engineers.</p> <p>Considered reasonable without further studies being done (ie. Geo-tech report).</p>
<p>Location of the proposed creek crossing between East and West Crescent is also questioned</p>	<p>Location of crossing will form an intersection with the proposed link road to Silvermere Street which is safer from a traffic perspective.</p>
<p>Rates used by Council seem relatively high compared to contractor prices.</p>	<p>Rates based on data held by Council.</p>
<p>Reasoning behind a 20% “on cost” item is strongly questioned</p>	<p>On-cost allowance is considered reasonable given that the project is at concept stage and there is a greater complexity in design.</p>
<p>Why is the on-costs figure for Callala Stage 3 only 10% and survey and design 5%</p>	<p>Project subject to more detailed design.</p>
<p>Council’s estimate for survey, design and administration of 10% is also an expensive cost for this item of work. This adds up to an additional \$138,255 of survey and design for 700m of road.</p>	<p>Standard allowance applied.</p>
<p>The Council, through the s94 plan, should also be funding electricity supply through this area.</p>	<p>Council does not levy for electricity supply. This needs to be provided by the landowners.</p>

Council may consider changes to the scope of works or cost estimates to project 02ROAD0011. In doing so, new design/cost estimates would need to be incorporated into the plan and be reported back to Council.

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

Contributions provide equitable cost sharing for infrastructure required for new development.

**Financial Considerations:**

The draft Amendment allows Council to collect Development Contributions to assist in the funding of roads within Planning Area 2. A total of 5 road projects are identified for which Council will be able to collect contributions, of which 3 will be to recoup the cost of providing these projects in anticipation of new development.

Project 02ROAD2007 is proposed to remain fully development funded. For all other projects, Council funding required to match Development Contributions will need to be considered in future capital works planning.

**8. Jerberra Estate Rezoning Investigations****File 2653-04****Purpose of the Report:**

- To inform Council of outcomes of a meeting held with Department of Planning (DoP) and Department of Environment & Climate Change (DECC) in accordance with Council's resolution of 12 May 2009.
- To present options for limited development in and around the area identified primarily for biodiversity conservation in 'BES Option 2'.
- To seek Council's direction to enable the environmental study to be completed and a Section 65 certificate sought from DoP.

**RECOMMENDED that Council**

- a) Determine whether to pursue a community title outcome, a Torrens title outcome, or a combination of both;**
- b) Proceed with finalising the environmental study and seek a Section 65 certificate from Department of Planning (DoP) to exhibit a draft Local Environmental Plan based on the above;**
- c) Provide a written update to the landowners on the status of the rezoning investigations; and**
- d) Arrange a briefing for landowners when advice has been received from DoP in relation to the draft Local Environmental Plan.**

**Options:**

Council direction is required on options for achieving development, conservation and equity outcomes to enable the environmental study to be completed and a section 65 certificate sought from DoP. The key issues relate primarily to the areas within and around the fringe of the area previously identified for conservation in 'BES Option 2', specifically:

- To what extent if any, dwellings can be accommodated in the area identified for conservation in 'BES Option 2' – essentially the existing substantial structures identified in the 2004 audit and/or other potential dwelling sites.

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- Maximising environmental outcomes through planning and development controls, and options for tenure and land management including consideration of a community title approach over parts of the estate. This may not be the most practical but could better meet the objectives of one dwelling per lot generally in the western sector of the estate i.e. the proposed residential area.
  - Equity: should owners who have cleared without consent and constructed unauthorised structures benefit over owners who have not; should there be 'winners' and 'losers' or should a land pooling option be advanced.

Comment: If Council wishes to maximise the dwelling yield within the Estate, any options that have the potential to deliver conservation outcomes and equity will need to be considered. Verbal advice from DECCW is that a community title approach would provide greater certainty that conservation objectives would be met in the long term. Council's direction is required in relation to the above issues to enable the environmental study to be completed and a section 65 certificate sought from DoP to exhibit a draft LEP.

#### **Details/Issue:**

#### ***Issues Affecting the Proposed Conservation Area***

On 12 May 2009 Council resolved to: *"accept that its preferred option is not achievable due to the State Government position and pursue the compromise option with DoP and DECC to explore avenues for regularising existing unauthorised structures and dealing with equity issues in areas that may be zoned for environmental conservation ('E' zones)."*

A summary of a meeting with DoP and DECC staff on 23 June 2009 is provided below and is followed by an outline of threatened species and bushfire issues affecting lots with category 3 structures (i.e. potentially comply with the BCA as a dwelling) identified in the 2004 audit. Development scenarios, including potential additional dwelling sites, are then presented for the areas in and around the proposed conservation area in 'BES Option 2'.

#### ***Meeting with DoP and DECC on 23 June 2009***

# In accordance with Council's resolution of 12 May 2009, Council staff met with the Department of Planning (DoP) and the Department of Environment & Climate Change (DECC) on 23 June 2009. The focus of the meeting was primarily the land identified for conservation in 'BES Option 2'. The following issues were raised at the meeting:

- A number of substantial structures are located within the area identified for conservation. See Attachment "A" (shows lots with substantial structures as identified in the 2004 audit and the area proposed for conservation in 'BES Option 2').
- DECC staff had previously indicated that the Department is not necessarily opposed to allowing some development in the area proposed for conservation, in reference to existing structures.
- The prospect of regularising existing unauthorised structures in the conservation area raises major equity issues. Landowners who have not erected unauthorised structures should not be disadvantaged in favour of those who have.

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- Given the nature of the threatened species constraints, under certain circumstances provision of some limited development in this area could facilitate positive environmental, social and economic outcomes.
  - Simply rezoning the land for environmental conservation would not necessarily secure the land's environmental values or resolve the tenure of the land. A range of other measures could be considered to facilitate positive outcomes.
  - Satisfying the NSW Rural Fire Service's bushfire planning requirements would be a major consideration for the conservation area. It is likely that bushfire asset protection zones (APZ) could not be provided within the existing property boundaries. The implication of this is that either a restriction on the title would be required over adjoining properties, or adjoining properties would need to be acquired by a land owner, so that APZ's could be maintained in perpetuity. This issue is discussed later in the report.
  - There may be substantial resistance from landowners on social and financial grounds.

The following points summarise the outcomes of the meeting:

- DECC is willing to consider a proposal provided there is no further loss of habitat in the area identified for conservation in 'BES Option 2' and appropriate arrangements are in place to ensure this occurs.
- DoP indicated that detailed mapping/analysis would need to identify any potential additional dwelling sites and that cost sharing/equity issues should be explored further.
- A range of planning and development controls, voluntary conservation agreements, property vegetation plans etc could be considered.

It was concluded that Council would undertake further analysis of potential dwelling sites within the proposed conservation area. This assessment would then form the basis of a submission to the Department and provide a practical way forward for the preparation of a draft LEP for consideration.

The development scenarios outlined in this report have not yet been presented to DoP or DECC for comment at this stage. Subject to gaining State Government support, a range of other issues would need to be considered including, but not limited to bushfire, effluent disposal, traffic, and economic feasibility. These matters would be written as objectives and clauses in the draft Local Environmental Plan.

### ***Flora and fauna constraints and related bushfire planning requirements affecting category 3 structures identified in the 2004 audit***

An analysis of the flora and fauna constraints affecting each of the category 3 structures identified in the 2004 audit is provided in Table 1. Other potential dwelling sites are discussed later in this report.

#### Assumptions about development footprints

Development footprints discussed below are generally based on a 20m x 20m building envelope and minimum bushfire asset protection zones (APZs). It has been assumed that onsite effluent disposal areas would generally be located within the APZ, i.e. that no

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additional clearing would be required for this purpose. This will need to be reviewed in more detail at a later stage in the process.

The APZs are based on Table A3.3 of the NSW Rural Fire Service's *Planning for Bushfire Protection, 2006*. Minimum APZ for level 3 construction. A larger APZ would be needed for lower construction levels. For example, where a dwelling is downslope or level with forest, the following APZs/construction levels are required:

- APZ of 20m to <29m for construction level 3
- APZ of 29m to <40m for construction level 2
- APZ of 40m to 100m for construction level 1

A bushfire assessment including details of APZ dimensions and dwelling construction standard(s) would need to be submitted by landowners at development application stage.

# Table 1 is provided as Attachment "B" - Threatened species constraints and implications of APZ requirements in respect of existing category 3 structures identified in 2004 audit.

### ***Analysis of potential additional dwelling sites and development scenarios***

At this stage, the key issues that need to be addressed to enable the rezoning investigations to progress relate to the areas within and around the fringe of the area previously identified for conservation in 'BES Option 2'. The area previously identified as 'primarily for residential development' in 'BES Option 2' will be considered in a separate report to Council at a later stage.

# Possible development scenarios in and around the fringe of the area identified for conservation in 'BES Option 2' are presented in Table 2 and Maps A to F provided in Attachments "C" and "D". The Estate has been divided into areas to allow each to be considered in detail and it also allows the land pooling option to be considered separately for each area.

Potential dwelling sites are identified for consideration in each area. The location of potential additional dwelling sites was based on further analysis of BES's threatened species habitat data. This analysis examined the degree of overlap between the various habitat trees and the buffers around these recommended by BES. The resulting map is provided in Councillors' Information Folder for today's meeting.

Possible scenarios for developing potential dwelling sites include:

- Consolidation and resubdivision to create larger private lots with a dwelling entitlement for each.
- Community title subdivision, where private lots (with sufficient area for APZs and effluent disposal) are provided for each dwelling and the remaining land is collectively owned and managed. Management of the shared property would be the responsibility of an association which made up of all the individual lot owners.

Community title could be considered as a solution for part(s) of the Estate or for Jerberra Estate as a whole. It is acknowledged that there could be practical issues associated with both scenarios.

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Subject to threatened species issues being resolved, detailed consideration of a range of other issues would be required and could potentially rule out some potential development sites identified in this analysis.

Table 2 summarises potential development scenarios in and around areas proposed for conservation in 'BES Option 2' is provided in Attachment "D".

With the exception of Area E, the potential additional development sites are largely located in areas identified as "moderate level constraint" and avoiding as far as possible areas of "moderate to high level constraint" as mapped by BES in 2007.

In the case of Area E, the south-western corner was categorised as "moderate to high level constraint" due to its potential habitat connectivity with adjoining land. Three potential dwellings sites could be considered close to Inglewood Crescent in an area that is partly disturbed. By confining any development to the area immediately adjoining Inglewood Crescent, it may still be possible to retain some of the connectivity identified by BES. Access would need to be off Parnell Road to avoid disturbing the Biconvex Paperbark and the Endangered Ecological Community (EEC) to the north of Area E. If DoP and DECC do not support these three potential dwelling sites, the options for resolving the tenure of land in Area E would be limited.

If sites E.1 and E.2 were to be allowed, lots 147-149 would need to be re-subdivided to provide sufficient area for effluent disposal.

#### Comment

DoP and DECCW have not reviewed these development scenarios at this stage and the agencies would need to support the potential additional dwelling sites. The likelihood that they would be supported would hinge largely on the ability to achieve conservation outcomes as well as social and economic objectives.

Minimising the extent of clearing around each dwelling is just one consideration for achieving environmental outcomes and there is a limit to the extent that any development could be accommodated without having a significant impact on surrounding environments. Other factors include:

- Edge effects associated with clearing and development including changes to the microclimate, predation of native fauna by domestic cats and dogs, and foxes, colonisation of other pest species such as rabbits which can degrade the environment and compete with native fauna, changes to hydrology and nutrient regimes, weed invasion, increase in noise and artificial lighting.
- Fragmentation of habitat – isolation and/or reduction in the width of areas can affect biodiversity at a broader scale. Smaller/narrower areas of bushland are also more prone to the edge effects described above.

To maximise the dwelling, consideration needs to be given to a range of planning and development controls and alternative land ownership and management options including:

- Zoning, development controls, conditions of consent etc.

- 
- Landowner involvement and commitment: Voluntary conservation agreements (VCA); property vegetation plans (PVP). Note that VCAs attract a reduction in rates for landowners.
  - Tenure of conservation areas: private, community title, or public. Verbal advice from DECCW in relation to another matter suggests that it is more likely to be supportive of allowing development in and around conservation areas if these conservation areas are managed as part of a community title scheme. If a community title approach were to be pursued, consideration could be given to a common effluent system approach for the smaller lots which might otherwise have insufficient area for onsite effluent disposal.

### **Other issues in the proposed conservation area**

**Effluent disposal:** properties in the proposed conservation area are generally sufficiently large to accommodate onsite effluent disposal for each individual lot provided appropriate objectives and controls are incorporated into the draft LEP and Development Control Plan.

**Bushfire:** Council is required to consult with the NSW Rural Fire Service as part of the rezoning process. A preliminary assessment, including consultation with the NSW RFS, was completed by BES in 2006. The nature of the development proposal has changed substantially since then, with much larger areas of bushland now proposed. The 2006 bushfire assessment would need to be reviewed and further consultation undertaken with the NSW RFS to ensure any proposed development is consistent with the current Planning for Bushfire Protection Guidelines,

### **Issues Affecting the Proposed Residential Area**

**Threatened species constraints** in the proposed residential area and legal implications, e.g. potential for Species Impact Statements (SIS) to be required at development application stage where identified threatened species habitat may need to be removed to accommodate development and APZs etc.

**Effluent disposal:** The proposed residential area generally contains smaller properties, for which onsite effluent disposal is a key issue. It is possible that some properties may have insufficient area to accommodate onsite effluent disposal given their size and other site and soil constraints. The onsite effluent disposal reviews undertaken for Jerberra Estate suggest that a Common Effluent System (CES) approach should be considered, particularly in relation to the smaller properties within Jerberra Estate. A CES option could only be considered under a community title approach. Alternatively, appropriate objectives and measures could be incorporated in the draft LEP and DCP and each application assessed by Council on its merits. This latter approach may be easier to administer and be more achievable but may rule out some of the smaller allotments.

**Bushfire:** Bushfire issues would primarily concern lots in close proximity to areas of retained bushland. Bushfire issues would be reviewed for Jerberra Estate as a whole (refer to comments above).

**Equity:** Whether landowners within this area should be required to participate in any broader land pooling / community title scheme. A potential benefit for these properties to be part of a community title scheme is the opportunity for a CES approach to be



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implemented, which could potential support a higher density of development than otherwise possible.

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

A range of Torrens title and community title options have been presented in this report in an attempt to achieve a balance between conservation and development. Economic feasibility would be assessed as part of completing the environmental study once the outcomes (dwelling yield, road layout, stormwater treatment etc) are more clearly defined.

**Financial Considerations:**

Council has spent almost half of the \$350,000 borrowed to fund the Jerberra Estate rezoning investigations and landowners are now in the 4<sup>th</sup> year of a 10-year repayment program. Expenditure on other aspects of the rezoning investigations cannot occur until the threatened species issues are resolved with DoP and DECC and we have an indication of the level of development that might be supported.

E J Royston

**DIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE**

R D Pigg

**GENERAL MANAGER**

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## **REPORT OF GENERAL MANAGER**

### **DEVELOPMENT COMMITTEE**

**TUESDAY, 6 OCTOBER 2009**

#### **DEVELOPMENT AND ENVIRONMENTAL SERVICES**

9. **Policy Review - Development & Environmental Services Group - Reaffirmation of Development Control Plans and Policies to be Incorporated into Shoalhaven Development Control Plan 2009** **File 33571-02**
- 

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

The purpose of this report is to reaffirm a number of Development and Environmental Services (DES) Group's Development Control Plans (DCPs) and Policies that are being incorporated into the Shoalhaven DCP (SDCP) 2009.

**RECOMMENDED that Council reaffirm Development and Environmental Services Group's Development Control Plans and Policies listed below and consider any required revisions to these plans in conjunction with the Shoalhaven Development Control Plan 2009:**

#### **DES Group's DCPs**

- **DCP - Car Parking Code (DCP 18)**
- **DCP - Culburra Beach - (DCP 48)**
- **DCP - Dual Occupancy Guidelines (DCP 57)**
- **DCP - Exempt and Complying Development (DCP 89)**
- **DCP - Foreshore Areas - Residential Development (DCP 62)**
- **DCP - Home Activity Guidelines (DCP 109)**
- **DCP - Huskisson - Foreshore Business Development Zone 3(g) - Duncan Bowen Fegen and Nowra Streets - (DCP 99)**
- **DCP - Medium Density Housing (DCP 71)**
- **DCP - Nowra CBD - Streetscape Guidelines for Paving and Tree Planting (DCP 80)**
- **DCP - Signage Strategy - Section 2 Development Guidelines for Advertising Signs (DCP 82)**
- **DCP - Single Dwellings and Ancillary Structures - Minimum Building Requirements (DCP 91)**
- **DCP - Subdivision Code - Amendment No1 - (DCP 100 )**
- **DCP - Tourist Development in Rural Areas (DCP 63)**
- **DCP - Yatte Yattah - Policy to Control Development within the Vicinity of the Eagle View Farm Piggery (DCP 113)**
- **Demolition of Buildings Containing Asbestos - Conditions of Development Consent**
- **Development Applications - Industrial Development - Retailing Space**

- 
- **Dogs - Keeping of Dogs in the Calymea Street and Albatross Road Area (Nowra) and Interim Guidelines - Citywide**

#### **DES Group's Policies**

- **Aged Persons Accommodation Guidelines**
- **Bed and Breakfast Guidelines**
- **Building Line - Penguins Head Road Culburra**
- **Building Lines (front) in South Nowra Industrial Areas**
- **Buildings - Flinders Estate - Zincalume Roofs**
- **Buildings - Reflective Building Materials - Use in Coastal and Rural Areas**
- **Buildings - Temporary Moveable Dwellings for Aged or Disabled Persons - Standards - LAP**
- **Caravan Parks - Design Guidelines for Permanent Occupancy of**
- **Food - Commercial Home Catering**
- **Community Consultation Policy - for Development Applications (including subdivision) and the Formulation of Development Guidelines and Policies**
- **Food Premises Policy**
- **Garage Sales**
- **Markets - Operation of Markets**
- **Outdoor Eating**
- **Relocation of Second-hand Dwellings**
- **Sand Dunes - Risks of Building on**
- **Stationary Food Van/Vehicles on Existing Operating Service Station Sites**
- **Stormwater Protection on Construction Sites**
- **Support for Variations of DCP 43 - Landscape Buffer Requirement - Old Southern Road South Nowra**
- **Tree Management Policy**
- **Wharves and Jetties**

#### **OPTIONS:**

The following options are available to Council:

- a) Reaffirm the DCPs and related policies unchanged, pending the completion of the SDCP 2009 and consider any revisions or changes as part of the overall SDCP 2009 project - this is the preferred option; or
- b) Not reaffirm the existing DCPs and related policies and provide further direction - would possibly result in a policy vacuum in certain areas until SDCP 2009 is adopted and made effective.

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

Council has a requirement to review all existing policies within twelve (12) months of election. DES Group's DCPs and Policies that are not being incorporated into the SDCP 2009 have all been reviewed, reported to Council and those that are no longer applicable have been rescinded and others reaffirmed throughout 2009.

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A number of DES Group's DCPs and Policies, that are to be incorporated into SDCP 2009, were intended to be reported to Council concurrently with the reporting of the SDCP. They are now being reported to Council to be reaffirmed.

**ECONOMIC, SOCIAL & ENVIRONMENTAL (ESD) CONSIDERATION:**

ESD considerations are addressed within each individual policy document.

**FINANCIAL CONSIDERATIONS:**

Not applicable in the context of this report.

10. **Development Application - Commercial Additions - Restoration, Reconstruction, Minor Internal Works, Demolition of Old Bakery and Use of Building as Commercial Premises - Lot 4 DP 631087 - 67 Princes Highway, Milton. Applicant: Cowman Stoddart Pty Ltd. Owner: GP & NE Starkey.**

**File DA09/1696**

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**PURPOSE OF THE REPORT:**

The development application seeks acceptance of car parking credits for the past commercial use of the building prior to the commencement of Interim Development Order No 1 (IDO No 1) and Shoalhaven Local Environmental Plan 1985 (SLEP 1985), together with continued utilisation of existing on-site parking that does not meet DCP 18 Car Parking Code. The application also seeks to have the one car park shortfall waived under the conservation incentives of DCP 18 as the building is a heritage item under SLEP 1985.

The owner of the property is a retired Development and Environmental Services Group employee of Council and in the interest of transparency the matter is being reported to the Council to consider the use of conservation incentives in accordance with the policy.

**RECOMMENDED that in respect of DA09/1696 for Commercial Additions - restoration, reconstruction, minor internal works, demolition of old bakery and use of building as commercial premises, Lot 4 DP 631087, 67 Princes Highway, Milton that:**

- a) **The applicants submission in relation to car parking credits be accepted;**
- b) **That in order to maintain the heritage value of the site the existing parking off the highway be allowed to remain as a minor variation to DCP 18 Car Parking Code;**
- c) **That the applicant be required to pay Section 94 contributions for the additional parking demand of one car space for the proposal; and**
- d) **The application be determined under delegated authority.**

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## **OPTIONS:**

Council may:

- a) Resolve to accept the applicant's proposal for existing car parking credits and the proposal to retain the existing two car spaces off the highway as a variation to DCP 18 Car Parking Code on the basis of the conservation incentives in the code but require contributions for the additional demand created by the proposal of one car space (recommended option); or
- b) Resolve to accept the applicant's proposal for existing car parking credits and the proposal to retain the existing two car spaces off the highway as a variation to DCP 18 Car Parking Code and waive the requirement to pay contributions for the additional demand of one car space on the basis of the conservation incentives in the code for heritage items; or
- c) Resolve not to accept the applicant's proposal for existing car parking credits on the basis that the commercial use of the premises ceased in the 1970's, nor the proposal to retain the existing two car spaces off the highway as a variation to DCP 18 Car Parking Code and require that Section 94 contributions be paid for the 10 car spaces for the proposed development; or
- d) Resolve to waive all the car parking requirements for the proposed development on the basis of the conservation incentives of DCP 18 Car Parking Code; or

## **DETAILS/ISSUE:**

### **Background**

The site is occupied by a single storey masonry building with a weatherboard extension at the rear. The building is known locally as "the old Bakery" in reference to one of its former uses as Thompson's Bakery up until the late 1970's. The building was first constructed in 1873 and has been used for a variety of uses including originally as a shop/dwelling, telegraph station, bank, tailors shop, doctors surgery and bakery.

The building is an item of environmental heritage under SLEP 1985.

### **Proposal**

The submitted development application proposes restoration, reconstruction and minor internal works to the existing heritage building, demolition of existing dilapidated old bakery oven structure and use of the building as commercial premises.

# Refer to **Attachment 'A'** for a copy of the development application plans.

### **The Site**

The subject land is located in the CBD of Milton between the Milton Theatre and the Coast Real Estate Building with the Council Car Park at the rear.

# The subject land is zoned 3(a) Business (Retail) Zone under the SLEP 1985 (see **Attachment 'B'**).

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

### Policy Issues

Under DCP 18 Car Parking Code the commercial use of the premises would require the provision of ten (10) car parking spaces onsite or the payment of Section 94 contributions in lieu of provision on site.

However, the building has been used for a number of commercial uses since its construction in 1873, the most recent being as a baker from approximately 1930 to the 1970's. As this use was permissible under IDO No 1 (1964) and SLEP 1985 the issue of existing uses does not arise and therefore there is no requirement to consider whether the use has been abandoned.

# The applicant has provided a detailed submission on the issue of car parking and this is included in **Attachment 'C'**.

In relation to parking credits the application relies on clause 3.6 of DCP 18 which states: "A parking credit may be available where it is proposed to develop a site, which is already occupied by an existing development. However, a parking credit is not available in situations where the parking needs of the existing development have been met on-site, whether or not the parking has been provided in a formal or informal manner. Furthermore, if it is intended to change the use of an existing building and the new use requires more parking than the old use, a parking credit is available for the original use, even though floor space may not change."

The applicant has provided a detailed assessment of the parking generated by the existing and proposed development, considering the existing parking provision on site. The calculation table suggests a shortfall of one car space with the proposed development:

### **Extract from Applicants Statement of Environmental Effects**

**Table 3 Calculation of additional car parking generated as a result of change of use and additional areas to be used as commercial floor space**

	<b>Requirements Gross Floor Areas by Room</b>	<b>Gross Floor Area by existing floor space</b>	<b>Gross Floor Area by proposed commercial use</b>
<b>Residential Use</b>			
<i>Existing Residential Use - 3 bedrooms plus utility/living rooms</i>	<i>As per DCP 91 - 2 spaces behind building line</i>	<i>2 spaces</i>	
<i>Total Residential Spaces Required</i>		<i>2 spaces</i>	<i>Nil</i>
<b>Commercial Use</b>			
<i>Old Shop (front room of building) and hall way</i>	<i>18.08 m<sup>2</sup> + 4.3 m<sup>2</sup> = 22.38 m<sup>2</sup></i>	<i>22.38 m<sup>2</sup></i>	<i>22.28 m<sup>2</sup></i>
<i>3 rooms in front building</i>	<i>12.98 m + 13.48m + 12.17 m 38.63 m<sup>2</sup></i>	<i>Residential Use - accounted for above</i>	<i>38.63 m<sup>2</sup></i>
<i>Bathroom</i>	<i>11.06 m<sup>2</sup></i>	<i>11.06 m<sup>2</sup></i>	<i>11.06 m<sup>2</sup></i>

<i>Original enclosed verandah between front building and old bakery room</i>	18.44 m <sup>2</sup>	18.44 m <sup>2</sup>	18.44 m <sup>2</sup>
<i>Bedrooms to rear of premises</i>	11.46 m <sup>2</sup> + 21.33 M2 = 32.79 m <sup>2</sup>	<i>Residential Use - accounted for above</i>	32.79 m <sup>2</sup>
<i>Old Bakery workroom and walkway</i>	44.39 m <sup>2</sup> + 7.74 m <sup>2</sup> = 52.126 m <sup>2</sup>	52.13 m <sup>2</sup>	52.13 m <sup>2</sup>
<i>Verandah</i>	65.23 m <sup>2</sup>	65.23 m <sup>2</sup>	65.23 m <sup>2</sup>
<i>Total Commercial Spaces Required</i>		169.24M2 @ 1 space per 24 m = 7.05 spaces	240.56M2@ 1 space per 24 m 10.02 spaces
<b>TOTAL NUMBER OF SPACES REQUIRED</b>		2 residential + 7.05 commercial = <b>9.05 spaces</b>	<b>10.02 spaces</b>
<b>ADDITIONAL SPACES REQUIRED</b>		<b>10.02 spaces - 9.05 spaces credit = 0.97 spaces (say 1)</b> <i>required in addition to that available on site, which is two spaces currently provided in the driveway accessed from the Princes Highway.</i>	

# The logic of this assessment is considered appropriate to the proposal and it is accepted that up to two car parking sites have been provided on site. There is no vehicular access to the rear of the site from the Council car park, therefore, there is no opportunity to provide any onsite parking at the rear (as well any such proposal would remove existing parking from the car park). The location of a “beehive well” that has heritage significance at the side of the building prevents any additional parking being provided from the highway (as shown on site plan in **Attachment ‘A’**)

The existing parking on site does not comply with DCP 18 in that it is not possible to enter and leave the site in a forward direction, while this is not desirable it is not possible to comply with the car parking code without having a detrimental impact on the heritage values of the existing development. It is considered acceptable to allow the existing car parking to remain utilising the conservation incentives of clause 3.11 of the code.

# The applicant is requesting that the 1 car space shortfall identified in the above calculation table be waived under clause 3.11 of the code and their justification is included in **Attachment ‘C’** with their conclusion:

*“...it is considered that the use of clause 3.11 as a conservation incentive to reduce the parking provision by one space is a positive one that will indeed act as an incentive to a development proposal that will not only see the ongoing conservation of an identified heritage item, but the partial reconstruction of a portion of the building which otherwise would likely be lost.*

*The extent of parking the subject of the conservation incentive is minimal, being only one space of the total 10.02 spaces such development would ordinarily require. As such, the extent of reduction sought is less than 10% of that required.*

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*The proposal to formalise the existing car parking provision will maintain the relevant heritage values which have been identified for the site, and ensure that the heritage setting is appropriately maintained.”*

While it is agreed that the acceptance of the existing parking onsite is appropriate to maintain heritage values of the site it is difficult to accept that the payment of car parking contribution for one space would impact on the commercial viability of the project and the ongoing protection of the heritage item. It should also be acknowledged, that consideration has been given to the heritage nature of the building in accepting the parking credits and parking arrangement that is contrary to DCP 18. This in itself is a conservation incentive.

### **Community Consultation**

In accordance with Council's Community Consultation Policy the development application was notified as advertised development and one submission was received. The submission raises a number of issues but in relation to the car parking issues makes the following points:

- There should be only one car space accepted as existing off Princes Highway as there has only be one car parked there since 1989;
- The commercial development has been abandoned since 1979 and therefore car parking contributions should be paid for the whole of the proposed development and that the payment of the contributions would not impact the development financially based on the likely financial return for commercial rents in Milton;
- Extra parking is desperately needed in Milton;
- The existing parking off the highway should be converted to parking for the disabled for both this development and the use by the Milton Theatre; and
- Other developments have had to pay contributions and the owners of this development should not receive unwarranted preferential treatment.

The issues raised have been discussed within the body of the report where relevant

### **FINANCIAL CONSIDERATIONS:**

Not applicable in the context of this report.

### **CONCLUSION**

It is considered that the applicant has adequately demonstrated that the existing development benefits from parking credits for seven spaces and that two spaces are provided on-site. It is not considered that the application adequately demonstrates that the payment of car parking contribution for the one car space shortfall (currently \$6,952.36) would impact on the financial viability of the project and it must be acknowledged that the acceptance of the current parking arrangement contrary to DCP 18 requirements is in itself a financial incentive.



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11. **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**
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**PURPOSE OF THE REPORT:**

DCP 26 and its associated plan envision the provision of future development envelope and a driveway/market square over an existing building on the applicants land. The DCP and associated plan were not updated with the development of the Village Green resulting in development and access pathways that do not correspond with the DCP and the associated plan.

The subject application is reported to Council for policy direction in relation to DCP 26 - Milton Commercial Area as:

1. The proposed development footprint is not in accordance with the DCP plan; and
2. The subject proposal impacts on the potential provision of future pedestrian access linking the Settlement Shopping Centre with the Milton Village Green.

**RECOMMENDED that:**

- a) **Council permit the applicant to utilise the existing covered awning located north of the proposed shops for the purpose of providing future pedestrian linkage with the Village Green subject to a 2m wide pedestrian Right of Way being registered with Land Titles providing public access from the western boundary of Lot 1 DP 735827 to Wason Street, Milton; and**
- b) **The application be determined under delegated authority;**

**OPTIONS:**

Council may:

- a) Require the development 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; or
- c) Permit the applicant to utilise the existing covered awning located north of the proposed shops for the purpose of providing future pedestrian linkage with the Village Green subject to a 2m wide pedestrian Right of Way being registered with Land Titles providing public access from the western boundary of Lot 1 DP 735827 to Wason Street, Milton (recommended option).

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## DETAILS/ISSUE:

### Background

Currently the adjoining landlocked owner to the east - Morton [Lot 1 DP 736269] enjoys rear access to their property via a gentleman's agreement with Mr. Blackburn.

Council was approached by Mr Blackburn and Mr Morton in relation to possible opportunities for linking the Settlement development at Milton with the Village Green in 2008. Councillors would be aware that currently pedestrian access from the properties owned by Mr Blackburn and Mr Morton to the Village Green is not available.

- # Council resolved on 22 April 2008 to accept a proposal of allowing car parking credits for Mr. Blackburn and Mr. Morton based on the requirement for a permanent pedestrian Right of Way [ROW] providing access from Wason Street to the Village Green and that the construction be at the various property owner's expense. A copy of the resolution is included in **Attachment 'A'**.

Subsequent negotiations over costs between Mr Blackburn and Strategic Planning & Infrastructure broke down with Mr Blackburn withdrawing his request on 24 October 2008.

### 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.

### Current Proposal

- # The applicant is proposing to construct four [4] new shops and toilet for the disabled adjacent and parallel to the south east corner of his site with a brick parapet and roofed veranda facing into the rear service area. See **Attachment 'B'** for location and plans.
- # The applicant contends that pedestrian access from his land to the Village Green is made possible via an existing covered veranda, approximately 2m wide located between the existing and proposed shops that abut the western boundary of Morton's land. The proposal provides the possibility of a future dog leg route through Morton's land to the Village Green access gate located approximately 4.0m south of the covered veranda. A sketch of how this might be provided is shown in **Attachment 'C'**.

### Strategic Planning Comment

The proposed development is not entirely consistent with the DCP, however the proposed development does allow for pedestrian access between the Village Green, Mr Blackburn's and/ or Mr Morton's land.

Consistent with Council resolution of 22 April 2008, pedestrian access between the subject site and the Village Green should be provided via a Right of Way. Safe pedestrian access through the site should also be provided for.

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

The provision of a pedestrian link between the Village Green and Mr Blackburn's land is in keeping with the broad intent of the DCP and would improve accessibility and commercial opportunities to all properties sharing the pedestrian links.

## **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 'D'**.

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.

Whilst a slight dogleg pathway is not considered ideal from a visibility/safety perspective, the proposal enables a future pedestrian link to be provided between Mr Blackburn's land and the Village Green subject to future negotiation with the owner of the land in between.

The suggestion that shops 1 and 2 be moved northwards to create a pedestrian way though the building between shops 2 and 3 to better align with the access Village Green access gate is not supported by Mr Blackburn as it would effectively reduce the development to three [3] shops and he considers it would make his development unviable. This exact scenario was dealt with in Mr Blackburn's previous three [3] shop and pedestrian access proposal addressed by Strategic Planning in 2008 that was subsequently withdrawn.

## **12. Community Consultation Policy for Development Applications (including Subdivisions) and the Formulation of Development Guidelines and Policies (Amendment No 6) File 8139**

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

The purpose of this report is to obtain Council's endorsement to publicly exhibit the amendments proposed to the "Community Consultation Policy for Development Applications (including Subdivisions) and the Formulation of Development Guidelines and Policies" (referred to as Community Consultation Policy in this report). The amendments propose to incorporate consultation and notification requirements affecting

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Regional Development Applications (RDAs) and other additions for purposes of clarification and consistency with Council's current practices.

**RECOMMENDED that:**

- a) **The Community Consultation Policy for Development Applications (including Subdivisions) and the Formulation of Development Guidelines and Policies (draft Amendment No 6) be publically exhibited for a period of 30 days;**
- b) **The public exhibition includes notification to Community Consultative Bodies; and**
- c) **A further report be made at the conclusion of the exhibition period.**

**OPTIONS:**

- a) That Council adopt the recommendation; or
- b) That Council does not adopt the recommendation and provides direction to the General Manager.

**DETAILS/ISSUE:**

Effective from 1 July 2009, a category of RDAs in NSW became effective under amendments to the *Environmental Planning and Assessment (EP&A) Act 1979*, *EP&A Regulations 2000* and the *State Environmental Planning Policy (SEPP) Major Development 2005*. RDAs are development proposals of regional significance (including subdivision applications) which (among other criteria), may fall within sensitive coastal locations and invoke community interest. RDAs are lodged, notified and assessed by Council. Council's Section 79C assessment report will be forwarded to the NSW Southern Region Joint Regional Planning Panel (JRPP) for consideration. A decision of the RDA will be made by the JRPP. Council will then issue the consent or refusal and further notify the applicant and those who had made submissions of the JRPP's determination.

Council's Community Consultation Policy provides guidance for the notification and consultation of Development Applications (DAs) under Part 4 of the *EP&A Act 1979*.

**Proposed Amendments to Council's Community Consultation Policy**

- i) **Explanation of RDAs**  
The draft amendments to the Community Consultation Policy propose to include a clause that briefly explains RDAs.
- ii) **Notification period of RDAs**  
It is proposed that RDAs will be notified for a minimum period of thirty (30) days except where State legislation requires a longer notification period. Where extended periods over thirty-days are being proposed, the period of extension

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must have regard to Council's obligation to finalise its Section 79C assessment report within seventy (70) days from lodgement of application.

**iii) Who will be notified**

In establishing who to be notified for RDAs, this report proposes that the method of notification will be the same as it currently applies for notifying local DAs, in accordance with Table 1 of the attached draft Policy. The notification will also be in accordance with applicable State legislative requirements.

**iv) Consultation meetings**

Consultation meetings for RDAs may be undertaken in various forms appropriate to the circumstances as outlined in clause 3.5 of the draft Community Consultation Policy. The provisions of this clause may apply depending on the circumstances of the RDA.

**v) Presentation at JRPP meeting**

A notation is being included in the draft amendments that persons (or persons on behalf of bodies) who made a submission on an RDA during the designated public exhibition period, may request to address the JRPP and that such requests can be made direct to the JRPP secretariat prior to the meeting).

**vi) Elected Council may wish to provide additional report to the JRPP separate from the Section 79C assessment report**

In maintaining transparency between the Section 79C reporting and any perceived political influence in the assessment of an RDA, the draft amendments to the Community Consultation Policy proposes to include a clause that explains that the Section 79C assessment report that will be forwarded to the JRPP for consideration will include the consideration of submissions received during the designated public exhibition period of the RDA. In addition, the elected Council may consider submissions relating to RDAs in a separate committee process and may wish to separately provide a report to the JRPP (separate from the Section 79C assessment reporting).

**vii) Electronic RDA Lodgement Requirement**

The draft amendments to the Community Consultation Policy requires that for RDAs that the information be submitted in electronic format (CD-Rom in ISO 9660 standard or DVD in UDF format) as well as hard copies. A minimum of two (2) disks and five (5) hard copies in either A3 or A4 size are required to be lodged.

**viii) Section 96 Modifications for RDAs**

A notation relating to Section 96 Modifications for RDAs is proposed to be included explaining that such applications will be assessed in accordance with the legislative requirements and referred to the JRPP for consideration, decision and determination.

**ix) Inclusion of flowchart explaining RDA process**

A flowchart explaining the RDA process is proposed to be included into the draft amendments to the Community Consultation Policy to assist in understanding this new provision under the *EP&A Act 1979*.

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**x) Other minor amendments**

The draft amendments to the Community Consultation Policy also proposes to include a number of minor amendments in order to be consistent with Council's current practices, as follows:

- The public display of information relating to RDAs on Council's on-line DA Tracking facility. A notation is also being included that the RDA register is available on the State Government's website at [www.jrpp.nsw.gov.au](http://www.jrpp.nsw.gov.au).
- A clarification on the term "submissions" that are currently being made publicly available on DA Tracking which includes submissions made by Member of Parliament (MPs) and/or Councillors on behalf of residents.
- General minor changes for consistency and clarification purposes throughout the document.

A copy of draft Amendment No 6 to Council's Community Consultation Policy is included in the Councillors' Information Folder.

**ECONOMIC, SOCIAL & ENVIRONMENTAL (ESD) CONSIDERATION:**

There are no direct economic, social or environmental (ESD) issues associated with the proposed amendments to Council's Community Consultation Policy.

**FINANCIAL CONSIDERATIONS:**

There are no direct additional costs associated with the proposed amendments to Council's Community Consultation Policy other than administrative costs associated with the advertising and notification of the draft Policy for public exhibition.

- 13. Development Application for proposed Monthly Produce Markets to be held 2nd Saturday of each month at Jindy Andy Mill Complex - 719 Greenwell Point Road, Pyree - Lot 101 DP 629485. Applicant: Sharnah Coulthart. Owner: Sally Marshman. File DA09/1995**
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**PURPOSE OF THE REPORT:**

A Development Application has been submitted to Council for a produce market to be held in the grounds of the Jindy Andy Mill complex on the 2<sup>nd</sup> Saturday of each month.

The proposal does not strictly comply with Council's Policy on Operation of Markets in that the applicant is not a non-profit organisation as required in clause 4 of the Policy and this would be the second market in the locality of Pyree. The matter is being reported to Council as it involves consideration of two policy issues and as such direction is sought from Council on these policy matters prior to the determination of the application.

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**RECOMMENDED that in respect of DA09/1995 for the proposed monthly produce market to be held 2nd Saturday of each month at Jindy Andy Mill Complex - 719 Greenwell Point Road, Pyree - Lot 101 DP 629485:**

- a) **A variation of Council's Policy on Operation of Markets specifically in relation to clause 4 - Who May Apply be supported thereby permitting the applicant to conduct the market;**
- b) **A variation of Council's Policy on Operation of Markets specifically in relation to Attachment C - Economic Considerations be supported allowing a second market in the locality of Pyree in accordance with the Policy requirement that it be a local produce market; and**
- c) **That the application be determined under delegated authority following the submission of a traffic impact assessment.**

#### **OPTIONS:**

The Council may:

- a) Resolve to support both variations as recommended; or
- b) Resolve not to support the variation as to who may apply and require strict compliance with the Operation of Markets Policy. This will result in the applicant withdrawing the application or it being refused; or
- c) Resolve not to support the variation to allow a second market in the locality. This will result in the applicant withdrawing the application or it being refused; or
- d) Resolve not to support either variation to the Policy. This will result in the applicant withdrawing the application or it being refused.

#### **DETAILS/ISSUES**

##### **Background**

The site is occupied by a number of single storey buildings approved for commercial purposes such as tourist accommodation, arts and craft shops and restaurant. There is a two storey building (Upper Numbaa Barn - former Berry Estate Grain Mill) on the site that is an item of environmental heritage under SLEP 1985.

##### **The Site**

- # The subject land is comprised of Lot 101 DP 629485, 719 Greenwell Point Road, Pyree - see **Attachment 'A'**. The site is on the corner of Greenwell Point Road and Jindy Andy Lane with access to the site being gained from Greenwell Point Road. The land has an area of approximately 3.345 hectares.

The subject land is zoned 1(g) (Rural "G" (Flood Liable) Zone) under the Shoalhaven Local Environmental Plan 1985 (SLEP 1985) and is identified as being subject to periodic inundation by floodwaters. Amendment No. 6 to the SLEP gazetted 20 June 1986 adds to clause 39 (schedule 9) by allowing the use of The Jindy Andy Mill as a commercial art gallery and craft centre.

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The proposed market is permitted only under clause 39c of SLEP 1985 which allows the temporary use of land otherwise not zoned to permit the conduct of a market providing it does not occur on more than 28 days per year.

### **Proposal**

The submitted development application proposes the use of an area measuring approximately 23m x 15m for a local produce market on the second Saturday of each month from 8.30am to 1.00pm. Car parking is to be provided via the existing gravel and grass parking areas and an overflow car park which is located in front of the tourist cabins to the west of the proposed market.

The proposal does not involve the use of any buildings, apart from amenities, and no construction works are proposed.

# Refer to **Attachment 'B'** for additional details on the above.

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

#### **Policy Issues**

The objectives of the Operation of Markets Policy adopted by Council is to control and regulate the operation of markets, consider the concerns of the community, reduce the adverse effects of markets on the amenity of the local area from traffic, recognise the importance of markets as a source of income and to encourage a "make it, bake it, sew it, grow it" criteria.

1. The application does not meet the requirements of clause 4 – Who May Apply as the applicant is not a local based non-profit organisation.

#### **Applicant's Comment:**

*"The Mill Produce Fair is a group of 15 local food producers and business operators at the Jindy Andy Mill who wish to promote and sell local produce to locals and visitors to the area. Income from stallholder fees will go back into the running of the market, i.e. insurance premiums, cleaning, advertising, marketing and promotions."*

#### **Comment:**

The site is approved for commercial use as an arts and crafts centre and is currently being used for that purpose. The proposed market is to be located on private land and operated by a group of local based producers. While it is reasonable to restrict the use of public land to non-profit organisations, it is less clear as to why the same restriction would be placed on privately owned land. The reasoning behind the restriction appears to be based on where any profits from the operation of the market would go, which is not particularly relevant to any impact a market may have on a local area. These potential impacts are well covered in the remainder of the policy and therefore, the variation is supported.

2. The application does not meet the requirements of Attachment C – Economic Considerations in that there is already one market approved in the Pyree locality, being the Pyree Village Arts & Crafts Markets that operates on the 4<sup>th</sup> Sunday of each month.



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**Applicant's Comment:**

*"The Mill Produce Fair is not a market as such, it is a produce fair that will only sell local region produce including fresh produce and value-added produce i.e. jams. The markets do not compete with each other as they are two weeks apart and the Pyree Market sells arts and crafts while the proposed market will sell produce."*

**Comment:**

The proposed market meets the requirements listed in the Operations of Markets Policy where there is a second market in a locality. It is in a reasonably isolated position in relation to shops and therefore, is unlikely to impact on the financial viability of the nearest shops that are located at East Nowra and Greenwell Point. The proposed market has a policy of "Make it, Bake it, Grow it" and not allowing craft stalls, therefore it will not compete with the existing Pyree Craft market. Based on the above reasons, the variation is supported.

**Traffic Impact Assessment**

The applicant has not provided sufficient information to enable Council to assess potential traffic impacts from the proposed market. As the site is located on a section of Greenwell Point Road that has a poor crash history and where there are sight constraints in both directions, the applicant has been requested to provide additional information and to undertake a traffic assessment to enable Council to assess the potential impact. When this assessment is received, the assessment of the application can be finalised.

**Community Consultation**

The submitted development application was notified to nearby/adjoining property owners in a 500m radius from the subject land and to the Greenwell Point Community Group "Get to the Point Program Inc." during the period 12 August 2009 to 2 August 2009. The application was also advertised in the South Coast Register on 12 August 2009 and 19 August 2009. No submissions were received.

**FINANCIAL CONSIDERATIONS:**

Not applicable in the context of this report.

**14. Review of Council's Compliance Policy****File 34946****PURPOSE OF THE REPORT:**

The purpose of this report is to seek the adoption of a revised Compliance Policy in accordance with the provisions of Council 'Policies - Referral To Council' Policy, adopted at Council's Ordinary meeting 25 August 2009.

**RECOMMENDED that Council adopt the revised Compliance Policy as shown in the Councillors' Information Folder.**

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**OPTIONS:**

- a) Adopt the revised Compliance Policy as presented; or
- b) Provide direction to staff on modifications to the proposed policy.

**DETAILS/ISSUE:**

In reviewing the Compliance Policy, a number of changes were identified and are shown in the draft Compliance Policy in the Councillors' Information Folder.

The key changes to the Compliance Policy include:

- Deletion of clause 15, on methodology. This clause was deleted as the reviewing staff considered that it did not provide the necessary plain English explanation of the processes involved.
- Easier to read Flow Chart on page 8.
- Minor changes to the allocation table on page 12.
- The inclusion of a note on page 14 expanding on officer's responsibilities when encountering unauthorised development.
- Changing the period for review of the Compliance Policy in clause 27, to 4 years, bringing it into line with the next cycle of local government elections generally.
- Minor changes to Appendix 1 in terms of clarification and reference to officer appointments titles reflecting the restructure within Ranger Services.
- Renumbering clauses and some format changes.

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

The Compliance Policy will be available in electronic format.

**FINANCIAL CONSIDERATIONS:**

There are no financial considerations to be considered in this review.

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15. **Development Application - Mobile Telecommunication Base Station (comprising a 40m high monopole and associated headframe with 3 panel antennas and 6 tower mounted amplifiers, an equipment building, security fencing and associated landscaping. DP 1113050 Callala Bay Road, Callala Bay. Applicant: NGH Environmental. Owner: Shoalhaven City Council.**

**File DA09/1516**

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**PURPOSE OF THE REPORT:**

The submitted development application seeks approval for a mobile phone telecommunications facility on land owned by Shoalhaven City Council at Callala Bay.

This matter is being reported to the Council due to the need for transparency of process in the assessment and determination by Council of a development application relating to Council owned land. This is in accordance with the recommendations of the Independent Commission Against Corruption (ICAC). Specifically, ICAC, in their report "Corruption risks in the NSW development approval process: Position Paper" made the following statement with respect to potential conflicts of interest where there is a perception that Council as the consent authority has a conflict of roles between its different function as land owner and land use regulator:

*"consent authorities should take steps to manage conflicting development and regulatory roles. The appropriate approach will depend upon the type and scale of development."*

In accordance with the table provided in the ICAC position paper the application is being referred to Council for determination.

**RECOMMENDED that in respect of DA09/1516 for the proposed mobile telecommunications base station at DP 1113050, Callala Bay, the application be approved as a deferred commencement consent subject to the following matters being satisfactorily resolved:**

- a) **Provision of open form powder coated security fencing (i.e. no chain wire/weldmesh fencing) around the site;**
- b) **Re-location of the vehicle access and associated turning head so it is adjacent to the south eastern boundary of the site;**
- c) **Modification of the external design of the equipment shelter to improve and enhance the buildings external appearance/presentation having regard for the sites location at the entry point to Callala Bay; and**
- d) **Modification of the submitted landscape plan to:**
  - i) **Increase the quantity/density of landscaping in the vicinity of the sites north western boundary;**
  - ii) **Ensure that proposed landscaping will have no impact on the existing Shoalhaven Water trunk main that is adjacent to the sites south western boundary (i.e. plantings are clear of the trunk main and will allow access for maintenance and/or repair) and provision of advice from a**

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suitably qualified landscape consultant that the species proposed have non evasive roots and will not pose a risk to Council's assets;

- iii) Ensure compliance with the requirements of Appendix 5 of 'Planning for Bushfire Protection 2006' and the Rural Fire Service 'Standards for asset protection zones';
- iv) Provide details on the location of all existing and proposed plantings, species (listed by botanical name and common name), quantities of each species, pot sizes, the estimated size of the plant at maturity and a maintenance plan for a minimum period of 26 weeks.

and subject to the above being satisfied, compliance with conditions contained 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 has an unsatisfactory visual impact and will have adverse health impacts).

It will be noted from the following report, staff have concerns in regard to Council's ability to defend a decision based on adverse health impacts (point b above).

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

##### **Proposal**

The submitted development application proposes the installation of a Next G mobile phone telecommunications base station comprising:

- A 40m high concrete monopole and a associated headframe with 3 panel antennas and 6 tower mounted amplifiers giving the structure a total height of approximately 41.3m;
- An equipment building (2.28m x 3.28m x 2.99m high);
- Security fencing (2.4m high);
- Access and turning bay;
- Landscaping; and
- Associated power supply works and fibre optic cable works.

# Refer to **Attachment 'B'** for a copy of the development application plans which incorporate revisions that have been made by the applicant during the applications assessment.

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## The Site

- # The subject land is located on the northern side of the Callala Bay township and comprises a parcel of land legally described as DP 1113050 and the adjoining road reserve area (see **Attachment 'C'**). The proposed development site is located within the Callala Bay road reserve (eastern side) and has a total area of 190m<sup>2</sup> of which DP 1113050 comprises 66m<sup>2</sup>. The site is cleared of vegetation, with all existing established vegetation adjoining the site to be retained. Additional vegetation has recently been planted within the road reserve area adjacent to the site as part of Shoalhaven City Council's program for the enhancement of the entrances into towns and villages. The adjoining land to the east and west of the subject land (outside the road reserve area) is undeveloped and heavily vegetated.
- # The subject land is zoned 1(d) (Rural "D" (General Rural) Zone) under the Shoalhaven Local Environmental Plan 1985 (SLEP 1985) (see **Attachment 'D'**).

## Background

For a number of years, Council staff have been working closely with mobile phone carriers with the objective of providing improved mobile phone coverage and service to the Callala Bay and Callala Beach area. A number of potential sites in and around both villages have been investigated and discounted for reasons including:

- High visibility from foreshore areas;
  - Site owners not interested; and
  - Proximity to residences, schools and/or playing fields.
- # In addition, existing mobile phone tower sites have been investigated for potential amplification but have failed due to their inability to achieve the desired coverage objectives. Refer to **Attachment 'E'** for alternate site locations that have been investigated by the applicant.

The last site to be investigated prior to the lodgement of this current application was the Emmett Street sports ground. Telstra proposed to replace an existing light pole in the sports ground with a new lighting structure incorporating a mobile phone antennae. This proposal did not allow for co-location, was adjacent to a primary school and located in an area used by a large number of children for sporting events. As such, Council recommended that Telstra investigate other sites that were beyond the urban area. Telstra investigated alternative sites, and has advised that all sites investigated failed to achieve the desired coverage due to obstructions associated with the natural terrain. Telstra subsequently advised Council that it had selected the Callala Bay Road Reserve site as its preferred site and requested Council consider an application for owner's endorsement to lodge a Development Application on this site. Council at its meeting on 20 November 2007 resolved (Min 1720) that Council:

- a) *Endorse its owner's consent for the lodgement of a development application in respect to the proposed mobile phone monopole to be located within the Callala Bay Road reserve adjacent to the Village of Callala Bay entrance as depicted on the submitted accompanying plans;*
- b) *Support the location of the mobile phone monopole subject to the ownership transfer to Council with free usage for Telstra.*

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The above agreement was on the basis that the endorsement of the application form as owner did not bind Council into any future support for the application and Council's conclusion, in this regard, could only be made following a full and comprehensive s79C assessment report being finalised.

The current application was received by Council on 29 April 2009. Once received, it was notified in accordance with Council's Community Consultation Policy and a range of additional information was requested from the applicant. As a result of submissions received a Residents Briefing Meeting was held at Callala Bay on 22 July 2009. The applicant has subsequently provided additional information to support their submitted application and address concerns raised in the objections received.

### **Community Consultation**

In accordance with Council's Community Consultation Policy the development application was notified as follows:

- Individual property owners were notified of the proposal (within a 850 metre radius of the site - 728 letters sent). The notification period was from 20/5/09 to 17/6/09;
- The proposal was advertised in the Local Press (South Coast Register) on 20/5/2009 and 3/6/09; and
- Application and supporting documentation were on display at Council's City Administrative Centre, Nowra as well as on Council's website.

In addition to the above a Residents Briefing Meeting to discuss the proposed development was held on Wednesday 22 July 2009 at the Callala Bay Community Centre. Approximately 80 people attended this meeting.

# A total of nineteen (19) submissions were received by Council during the formal notification period (three of which have come from the same property owner). Fourteen (14) of these submissions objected to the proposed development (this including the 3 from the same property owner) and five (5) submissions supported the proposed development. At the Residents Briefing Meeting a further seven (7) days from the meeting date was allowed for residents to provide comments. A further twelve (12) submissions were received by council during this additional period. Nine (9) objected to the proposed development and three (3) supported the proposed development. A summary of all the issues raised is provided in the Section 79C Assessment attached to this report (see **Attachment 'F'**) with discussion of the main issues provided below.

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

#### **Assessment - Section 79C of the EP&A Act:**

A full assessment of the application having regard to the matters for consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act) is provided in the attached Section 79C(1) Assessment. The following provides details and comments on the main issues associated with the development application as currently submitted:

#### **1. Electro magnetic emissions and associated health impacts**

A number of the submissions received by Council have raised concerns with the emission of radiation from the tower (electro magnetic emissions-EME) and associated health impacts the proposal may have.

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### **Applicant's Comment**

The applicant in their submitted Statement of Environmental Effects and additional supporting information has advised that:

*“Outputs would be well below the limits defined by the Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2001 issued by the Australian Communications Authority (ACA)....Telstra, for the implementation of this base facility, is committed to the safety of the general public as well as that of its own staff. Sophisticated design software ensures that not only do Telstra implemented radio facilities comply with the ACA mandated requirements, all radio frequency transmissions are as low as reasonably achievable consistent with providing good quality radio based services.*

*The Radiocommunications Standard 1999 adopted by the Australian Communications Authority (ACA) requires mobile phones and mobile phone base stations to comply with the exposure limits in the Interim Australian and New Zealand Standard 2772.1 (Int): 1998. All base stations must comply with this standard.*

*Radiofrequency electromagnetic energy (RF EME) levels have been estimated for the proposal based on the maximum cumulative EME level of all carriers. The estimates are expressed as a percentage of the ACA mandated exposure limits (100% being the maximum allowable exposure limit). The estimation assumes worst case scenario. That is with:*

- o base station transmitters operating at maximum power (no automatic power reduction),*
- o Simultaneous telephone calls on all channels,*
- o An unobstructed line of sight view to the antennas.*

*The maximum cumulative level of exposure at 1.5m above the ground level is estimated to be at a distance of approximately 273m. The level complies with the limit established by the standard declared by the Australian Communications Authority as is 0.061% of the general public exposure limit of 200  $\mu\text{W}/\text{cm}^2$ , which is applicable for RF EME generated by cellular phone base stations. In practice a worst-case scenario is rarely the case. Trees, buildings and other infrastructure are present in the immediate vicinity, and cellular networks automatically adjust transmit power to suit the actual telephone traffic. For these reasons, the predicated level will often be considerably higher than actual levels.*

*Although the site is located close to the township of Callala Bay, the assessed levels are well within safe criteria. The closest house to the tower is approximately 90m away and a preschool is located more than 250m away.”*

### **Comment**

In addition the applicant has advised that the maximum EME produced is much less than the EME levels from a range of household sources. Details provided indicating that the levels produced by such devices as a microwave oven, cordless phone bases, 2-way radios (walkie-talkies), and a single wireless device such as a cordless phone jack produce exposure levels greater than 1% of the general public exposure limit. While devices such as keyboards, a door bell, car and garage remote controls and a

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cordless game controller all produce EME levels which are higher than the maximum produced by the proposed development.

The Australian Government's Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) is the Federal Government agency charged with the responsibility for protecting the health and safety of people, and the environment, from the harmful effects of radiation. Documentation that they currently have available contains the following statements in relation to mobile phone base station antennas:

*"Mobile phone base stations and telecommunications towers produce weak radiofrequency (RF) electromagnetic energy (EME) exposure levels. The weight of national and international scientific opinion is that there is no substantial evidence that RF emissions associated with living near a mobile phone base station or telecommunications tower poses a health risk.*

*Current research indicates that...RF radiation is not known to have any adverse health effects.*

*While human studies to assess the possibility that RF exposure increases the risk of cancer are few in number, laboratory studies do not provide evidence to support the notion that RF fields cause cancer.*

*No adverse health effects are expected from continuous exposure to the RF radiation emitted by the antennas on mobile telephone base station towers."*

While it is acknowledged that the table of predicated maximum EME levels provided by Telstra for this proposed facility shows that the highest EME level is reached at a distance of 273m from the proposed facility (this being the distance from the site to Callala Bay Pre-School) and will be 0.061% of the exposure limit. It also needs to be acknowledged that this level is 1,639 times less than the exposure limit for continuous exposure of the general public to radiofrequency EME from mobile phone base stations in the standard declared by the Australian Communications Authority.

Mobile phone base stations such as the one proposed are required to comply with the public exposure limits in the ARPANSA standard. Surveys and research undertaken by ARPANSA have shown that base stations operate well below exposure limits specified in the ARPANSA standard. As part of the applications assessment advice was sought from Council's Communication and Electrical Services Manager who has outlined that the figures that have been provided with this application assume a near worst case scenario and in practice the EME levels will be less due to:

- Trees and buildings obstructing line of sight to the antennae; and
- Not all transmitters, in normal conditions, running at maximum power at the same time.

In addition, a review of Land and Environment Court judgements relating to the provision of telecommunication facilities (similar to what is currently proposed) has indicated that the court has found that it was not appropriate for them to set aside or disregard the existing safety standards (i.e. the ARPANSA standard) nor is it appropriate for the court to create its own standards. As such, the court has ruled that it is appropriate for safety standards to be set by authorities with special expertise



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such as ARPANSA. The above being reflected in a decision (*Telstra Corporation Limited v Hornsby Shire Council (2006) NSWLEC 133*) where the court specifically in relation to EME levels and whether the proposed levels will harm the health and safety of residents stated that Councils should adopt the ACMA standard (i.e. the ARPANSA standard) when measuring and determining EME levels, given that it was the ACMA that has the responsibility for ensuring that exposure limits do not adversely affect the health and amenity of the community.

The proposal as submitted is compliant with current regulations/requirements in relation to EME emissions, with the predicated EME levels being significantly below the Australian Communications and Media Authority Standard. As such, it is considered that the development application should not be refused on the grounds of Electro magnetic emissions and associated health impacts.

## 2. Visual amenity impacts

A number of the submissions received by Council commented on the negative visual impact the tower, equipment shed and fencing would have given its location at the entry to Callala Bay.

### **Applicant's Comment**

The applicant has undertaken a visual impact assessment. This included consideration of issues such as scale, shape, material selection, presence of existing infrastructure, position in the skyline and shielding available. The applicant advising that:

*"It is understood that the visual impact of the tower, shelter and fence are a key issue for many members of the community, particularly considering the location of the site near the entrance to Callala Bay. The importance given to this issue by the applicant is demonstrated by:*

- *Consideration of visual impact as a key issue in the SEE*
- *Provision of photomontages to the consent authority and members of the community in order to demonstrate the anticipated impact and measures taken to reduce it*
- *Assessment of the impact on the fore, mid and background views in the SEE*

*It is clear from the assessment that there will be limited visibility of the tower, given the height of the tower, the screening effect of tall trees and landforms, to the majority of the Callala Bay area and its residents. A greater impact is present for residents nearby, who may see the on-ground infrastructure from their property. As the site is on the edge of the residential development, this involves a limited number of houses. The placement of the infrastructure between two trees has been undertaken to minimise this impact as much as possible. It also minimises the view for motorists, as they pass the site in the 50-80km transition zone. Since the selection of the site, two additional elements have been constructed on Callala Bay Road which include a series of power poles and an entrance to Callala Bay sign. The additional infrastructure suggests that the visual impact of these structures has been deemed acceptable. While it is acknowledged that the proposed pole and associated infrastructure will add to the visual impact of this locality, the applicant considers that the justification for the project, to improve mobile coverage to the area, warrants consideration of the additional visual impact in this area."*

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As a result of concerns raised at the Residents Briefing Meeting the applicant amended the proposal to include additional measures to address the visual impact concerns. Specifically:

- The colour selection of materials has been revised. The new plans now showing that the equipment building and tower will be painted forest green with black cyclone fencing to be used for the compound fence; and
- A landscape plan has been prepared in consultation with Council Landscape Architect. This aiming to minimise close up/direct views of the tower and equipment compound.

### **Comment**

It is acknowledged that the proposal will be in a highly visible location at the entry point to Callala Bay and will be visible from certain vistas in the surrounding area (i.e. for houses located closest to the site). While it is accepted that the pole will be visible, it will be partially screened by the existing vegetation. Currently there are a large number of trees in close proximity to the site which will not be impacted upon by the proposal.

The most significant visual impact of the proposed facility will be as you enter Callala Bay along Callala Bay Road from the northwest (i.e. for vehicles travelling into Callala Bay). It is however considered that with the inclusion of additional measures as advised by the applicant above (i.e. landscaping around the site, revision of the colour selection of materials) as well as requiring some further modifications to the proposed development such as:

- Providing open form powder coated security fencing instead of the currently proposed chain wire/weldmesh fencing around the site;
- Relocation of the vehicle access and associated turning head so it is adjacent to the south eastern boundary of the site. This allowing for the provision of landscaping and additional beautification works adjacent to the site and in close proximity to Councils entry treatment works (i.e. Callala Bay sign); and
- Modifying the external design of the equipment shelter so as to improve the buildings presentation/external appearance (i.e. currently presents to Callala Bay Road as a shed/box and as such has not been appropriately designed to blend in with its surrounding).

The visual impact of the proposal will be greatly reduced. In terms of the closest residential properties (approximately 96m from the proposed development), while the tower and its associated infrastructure will be seen, the view will be partially screened by the provision of new plantings around the site and the existing vegetation and its associated canopy.

From a distance (i.e. 500m to 5km from the site) views of the proposed structure will be restricted by the existing vegetation and natural topography. Given the presence of large amounts of the existing established vegetation, it is considered that the eye would not be drawn to the structure therefore the proposal will not significantly alter the landscape or impact upon the existing visual amenity from a distance.

While it is acknowledged that the proposed development will have a visual impact on this locality, it is considered that the improved phone and wireless internet coverage that this development will provide to the area warrants consideration of the additional visual

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impact. As such, it is considered that subject to the amendment of the submitted plans to incorporate the changes outlined above the development application should not be refused on the grounds of visual impact.

### 3. Need to investigate alternative sites

- # The applicant as part of their assessment process has considered a number of alternative sites. Their submitted Statement of Environmental Effects outlining that ten (10) alternative sites have been investigated. In addition, as a result of community comments and concerns an additional four (4) sites have been investigated (see **Attachment 'E'**).

#### **Applicant's Comment**

The applicant has advised that generally mobile phone towers to achieve adequate coverage need to be located on naturally high terrain as they operate from line of site. In addition they have outlined that there are a number of requirements that need to be addressed in site selection process. These including but not limited to:

- landowners consent;
- consideration of adjacent sensitive land uses;
- visual amenity, design feasibility;
- ability to co-locate in the future;
- environmental impacts;
- conformance to appropriate RF coverage objectives; and
- ability to achieve community and council preferences.

In terms of Callala Bay the applicant has stated that:

*“Callala bay is considered to be a difficult locality in identifying a suitable site for a mobile phone base station facility...In terms of site selection, Callala Bay also has the disadvantage of being located in a coastal depression with low forested hills immediately surrounding the township.... Extensive consideration has been given to investigating alternative sites, adopted through a rigorous site selection process and includes investigation of relevant planning issues and consultation with stakeholders. This planning process has included multiple site visits and meetings by Telstra contractors... several other were also investigated but were considered unsuitable from the outset and therefore have been omitted...”*

The applicant has also given consideration to the co-location on existing facilities; advising:

*“Because radio signals more or less follow line of site, co-location with existing towers located along the west of the site (e.g. Little Forest Trig, within Morton national Park) or outside of the depression (such as the Coonemia Tower to the north) have been investigated but considered unfeasible. This is due to the other towers either being located too far from the target coverage area or the radio signals being blocked by the natural topography of the local hills.”*

- # A summary of the applicant's findings in relation to each of the fourteen (14) sites investigated is provided in **Attachment 'G'** to this report.

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### **Comment**

The code applying to telecommunication facilities encourages the use of existing sites to mitigate the effects of facilities (i.e. on the landscape). Based on information that has been provided by the applicant Council staff are satisfied that sufficient investigation of alternative sites has been undertaken. The current site appears to provide the best opportunity for coverage while addressing Council's previous suggestion of finding sites that were beyond the urban area.

#### **4. Road safety**

The proposed development is to be located within the Callala Bay road reserve. The original plans submitted with the application included the installation of guardrail/crash barrier adjacent to the development so as to shield it from vehicles travelling on Callala Bay Road. The guard rail as initially proposed did not comply with RTA Design Criteria. The applicant has subsequently deleted the guardrail/crash barrier from the proposal.

#### **Applicant's Comment**

*"The purpose of the guard rail shown on the concept drawing was not asset protection. The guard rail had been suggested previously as a measure to improve motorist safety. The final location of the facility and its proximity to two large trees and the entry sign now suggests that it is not required for motorist safety." As such "The guard rail no longer forms part of the proposal".*

#### **Comment:**

Council's Traffic and Transport Unit has reviewed the submitted plans and has advised that the guard rail/crash barrier as originally proposed is not required to address road design standards as sufficient "clear zone" (determined to be between 5.0-5.5m from the edge of the travelled lane in accordance with Austroads Rural Road Design Guide) currently exists to the closest non-frangible object (i.e. the equipment shelter). The shelter is to be located approximately 8m from the existing edge of seal. Accordingly, the Traffic and Transport Unit recommends that guard rail is not required to address road design standards, and therefore have no objection to its deletion from the proposal.

### **FINANCIAL CONSIDERATIONS:**

Not applicable in the context of this report.

### **CONCLUSION**

This matter is being reported to Council for transparency of process in the assessment and determination of a development application relating to Council owned land.

Following a comprehensive assessment of the matters for consideration under section 79C of the EP&A Act, 1979, it is considered that Option A (i.e. adoption of the recommendations in the report) is the preferred course of action in this matter. This conclusion is based on the grounds that the proposed development, based on information that has been supplied, complies with all aspects of the applicable commonwealth legislation relevant to telecommunications development proposals and will provide a benefit to the local community which outweighs any adverse visual impact the proposed development may have. Recommended conditions of consent have been drafted and are provided in **Attachment 'A'**.

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16. **Proposed extension to the existing 15 hole Golf Course comprising three additional holes - Lot 7010 DP 1035145, Scott Street (Staples Street), Shoalhaven Heads. Applicant: Shoalhaven Heads Golf Club Limited. Owner: Department of Lands.**

**File DA08/2312**

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**PURPOSE OF THE REPORT:**

In accordance with Council's resolution of Tuesday 8 September 2009, this report is to advise Council of the status of the Development Application in respect to the Shoalhaven Heads Golf Club.

**RECOMMENDED that:**

- a) **The report on the status of Development Application DA08/2312 is submitted for Council's information;**
- b) ***In accordance with Council's resolution of 16<sup>th</sup> December 2008 (min. 1688), "a full S79C assessment be prepared for Council's consideration" once all the relevant information has been received and assessed***

**OPTIONS:**

N/A

**DETAILS/ISSUE:**

The application for the construction of an additional three-hole extension to the existing (15-hole golf) course on the subject land was lodged on the 16 September 2008. Information submitted with the Development Application included a Fauna and Flora (F&F) Assessment that was prepared by Hayes Environmental.

Council's Threatened Species Assessment concluded that, given the proposed clearing of approximately 8ha of Bangalay Sand Forest Endangered Ecological Community (EEC) vegetation, the submitted F&F Assessment was considered inadequate when compared with the survey methods recommended by the Department of Environment, Climate Change and Water (DECCW).

Council's S5A Seven-part Test found that the proposal would likely have a significant impact on the ECC and that a Species Impact Statement (SIS) would be required before Council could finally determine the application. The Golf Club was subsequently advised of the requirement to provide an SIS on the 14 October 2008.

At that time, the Club officials made it known that they disagreed with the requirement and that they would pursue an alternative resolution.

A meeting between the applicant, staff and the Deputy Mayor and Chairman of the Development Committee was held on 21 November 2008. Council's internal protocol of

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referring the matter to the DECCW for an independent comment, when there is a difference of opinion between the applicant and staff, was discussed.

Council's protocol (adopted 28 August 2007) provides for referral to DECCW for an independent, third party comment in such circumstances. Accordingly, staff referred the matter to DECCW.

### **Department of Environment, Climate Change and Water**

In a letter dated 20 February 2009, the DECCW reaffirmed its previous advice of the 12 December 2008, being that the proposed development is likely to significantly impact on the Bangalay Sand Forest Endangered Ecological Community and that the submitted survey and assessment of the impacts on threatened biodiversity does not provide sufficient information for assessment purposes.

### **Meeting between the Golf Club and DECCW**

The Club sought a meeting with DECCW officers in Queanbeyan and requested that Council be represented by its Development Manager. The meeting was held on 12 March 2009 and the Club's Environmental Consultant also attended.

The Club was advised that clearing of the EEC would automatically trigger the need for an SIS. However, the complexity of the SIS could be reduced providing the consultant conducted further targeted surveys on listed fauna. The understanding was that, if the results from the targeted surveys could remove the need for the SIS on individual fauna species, then the SIS process on the EEC would be greatly simplified.

The representatives of DECCW invited the Club to seek the Director General's requirements for the preparation of the SIS once the additional surveys were completed and an amended Seven Part Test was presented.

The Club agreed to conduct the additional fauna surveys and an amended Seven Part Test. A Targeted Fauna Survey dated June 2009, including an Assessment of Significance under S5A of the Environmental Planning and Assessment Act 1979, was subsequently submitted to Council on the 17 June 2009, and an addendum to the Flora and Fauna Report was submitted to the Council on 14 August 2009.

### **Independent Peer Review - EnviroKey**

Given the continued concern regarding different professional views, an independent peer review of Potential Impacts to Threatened Species, Ecological Communities and their Habitats dated August 2009 was undertaken on behalf of Council by EnviroKey and was received by Council on the 28 August 2009.

In its conclusion, EnviroKey stated that there is no doubt that the clearing of 8ha of Bangalay Sand Forest EEC could be regarded as highly significant and that local population could be placed at risk of extinction. According to EnviroKey, additional entities such as the Powerful Owl and the Grey-headed Flying Fox should be included in the assessment and this would be consistent with precautionary principles. There is also opportunity for additional information to be gained from targeted surveys in relation to the significance of microchiropteran bats and the Gang-gang Cockatoo.

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In line with the precautionary principle, EnviroKey recommended to Council that the applicant be advised to seek the Director's General requirements from the DECCW for a Species Impact Statement (SIS) for the proposed activity pursuant to S111 of the Threatened Species Conservation Act 1997. Council should also be aware that any SIS must comply with any requirements notified by the Director General of DECCW.

On 4 September 2009, a meeting was convened by the Director of Development and Environmental Services between the Club, its consultant, Council staff and the independent environmental consultant conducting the peer review. This meeting was held to discuss Council's consideration of the amended assessment of significance prepared by Hayes Environmental and the peer review of both Council's and the Club Consultant's threatened species assessments undertaken by Steven Sass of EnviroKey dated 28 August 2009.

Based on those discussions and the peer review performed, Council confirmed that the proposal is likely to have a significant effect on the Bangalay Sand Forest Endangered Ecological Community (EEC), pursuant to section 5A of the *NSW Environmental Planning & Assessment Act 1979*, and that a Species Impact Statement (SIS) would be required before Council could determine the application.

Based on the precautionary principle, the SIS should give consideration to fauna for which the EEC provides suitable habitat including the Powerful Owl, Grey-headed Flying Fox, microchiropteran bats and Gang-gang Cockatoo. Council advised the applicant to seek the requirements of the Director-General of the NSW Department of Environment, Climate Change and Water for the Species Impact Statement.

#### **FINANCIAL CONSIDERATIONS:**

Not applicable in the context of this report.

#### **CONCLUSION**

At this point in time, Council understands that the applicant is in consultation with the Director General of the DECCW and that an SIS will be submitted in due course to support the development application.

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

R.D Pigg  
**GENERAL MANAGER**

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## **REPORT OF GENERAL MANAGER**

### **DEVELOPMENT COMMITTEE**

**TUESDAY, 6 OCTOBER 2009**

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

### **17. Interim Measures - Managing Land Degradation in the Heritage Estates, Worworing Heights** **File 1446-10**

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

To inform Council of community concerns about alleged activities occurring in the Heritage Estates which are degrading the land and diminishing its environmental value; and to seek direction on implementing strategies to try minimise or control these activities.

**RECOMMENDED that the report of the General Manager (Strategic Planning and Infrastructure) concerning managing land degradation in the Heritage Estates, Worworing Heights be received for information.**

#### **Options:**

1. Maintain the current level of enforcement through periodic patrols by Council Rangers similar to other areas in the City. Degradation of the Heritage Estates land is likely to continue if additional strategies are not considered and implemented.
2. Seek input from relevant stakeholders including DECC and NSW Police regarding possible signage, monitoring and enforcement, and education strategies and associated resourcing issues.

#### **Details/Issue:**

Council has recently received representations from members of the public, including the Basin Villages Forum, raising concerns that claim the Heritage Estates is being degraded by activities such as tree removal and the use of a grader to widen tracks for trail bikes. The matter has also received a significant amount of recent attention in local media. Copies of submissions are provided in Councillors' Information Folder.

The matter has been initially investigated by Council Rangers. No evidence was found of a grader being used, but there was extensive damage caused by trail bikes and vehicles, numerous trees had been removed, and there was also illegally dumped rubbish in a number of places. Numerous trees had been removed by persons collecting firewood. There was no evidence that these activities had been undertaken by the landowners, the vast majority of whom live outside Shoalhaven. See photos provided in Councillors Information Folder.



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The network of trails and tracks within the Heritage Estates, which traverse private and public land, has expanded markedly in recent years due to the level of vehicle and trail bike use. Many of these tracks have become so eroded they are no longer accessible by 4WD leading to the creation of new tracks through areas of sedge land vegetation. Erosion of these tracks is likely to be contributing to sedimentation in Erowal Bay and the tracks/gullies are hazardous, particularly in wet weather. See photos and aerial photos provided in Councillors' Information Folder.

Council Rangers undertake routine patrols of the Heritage Estates, subject to staff availability and budgetary constraints. Council Rangers have investigated various illegal dumping sites in the Heritage Estates over the years. In the majority of cases there is insufficient evidence to identify and prosecute the illegal dumpers, although at least one clean-up notice has been issued leading to the removal of the rubbish by the offender. Numerous cars have been dumped in the Heritage Estates over the years. These are periodically removed.

#### Resolution of land tenure

As reported to Council on 7 July 2009, neither the NSW nor Commonwealth Governments are prepared to commit to Government acquisition at this point in time. On 14 July 2009 Council resolved to:

- a) *Advise landowners of the outcome of representations and meet with landowner representatives to discuss possible options;*
- b) *Again make further strenuous representations to relevant State and Federal Ministers pointing out that the property owners in the Heritage Estates, Worroving Heights, are being treated unfairly and being denied natural justice by not having the provision of compensation.*

The above resolutions are currently being actioned. However, it is unlikely that the land tenure will be resolved in the short term. In the meantime, Council's ability to prevent/minimise illegal activities in the Heritage Estates is limited by resources and the tenure of the land.

Strategies that could be considered in the interim are discussed below.

#### **Signs**

Signs could be erected at the main access points advising about the potential penalties for:

- Illegal dumping;
- Damaging or removing habitat protected under the *Threatened Species Act 1995 (TSC Act)* and the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* without approval;
- Trail bike riding – can be prohibited on public land under section 632 of the Local Government Act 1993, where a \$110 penalty notice applies for non compliance with a sign prohibiting such activities. Both the NSW Police and Council Rangers have the jurisdiction to enforce the restrictions displayed on such signs.

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- The location of the signs would need to be confirmed by Council's surveyors to ensure they were not placed on private land.

Council could consider approaching the relevant agencies in respect of the signage regarding the *NSW Threatened Species Act 1995 (TSC Act)* – the Department of Environment, Climate Change & Water (DECCW); and the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* - the Department of the Environment, Water, Heritage & the Arts (DEWHA).

### **Options for controlling access**

There are currently five or six main access points from the roads that surround the Heritage Estates (one is currently blocked by a fallen tree). Access to the area is gained via informal tracks at the following locations:

- From The Wool Road onto the Birriga Avenue road reserve.
- From Naval College Road across a combination of the Birriga Avenue road reserve, privately owned lots and lot 315 DP 8591 (which is owned by Council).
- From Erowal Bay Road at three or four access locations (one track is currently blocked by a fallen tree). The western-most entry (nearest to Erowal Bay) passes through a Council reserve (lot 1 DP625153) and is used by Council to provide access to the water main which serves Erowal Bay and Wrights Beach. The others appear to align with road reserves.

See photos provided in Councillor's Information Folder.

The road reserves in the Heritage Estates were dedicated as "public roads" on 31 March 2006. A public road is one that provides a right of free passage to members of the public (refer to sections 5 and 6 of the Roads Act). This includes providing free access to all members of the public including those intending to commit illegal or unauthorised activities.

As such, the only track that could legally be blocked/gated is the one which Council uses to access the water main off Erowal Bay Road. Two gates would be required to control access to the Council reserve: at the entry from Erowal Bay Road; and at the entry point within the Heritage Estates. This would prevent vehicular access to the Council reserve only.

Under the Roads Act Council could apply to the relevant Minister to close the public roads. (See Division 1, Part 4). If such an application was successful (and there would be no guarantee that it would be) gates or barriers could then be installed to prevent vehicular access to the area.

Such an approach would raise a number of issues, not least, the reaction of the landowners. In determining any such application, the relevant Minister would amongst other things, consider public submissions including those from the landowners, many of whom would be expected to rigorously oppose any such proposal. As such, there would be a significant risk that any application to close the roads in the Heritage Estates would not be supported by the Minister and even if it were, it is possible that the landowners would seek compensation from Council.

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For the reasons outlined above, the option of formal road closure is not recommended at this point in time. This option would need to be reconsidered if the land is identified for compulsory acquisition for inclusion in the National Park system.

### ***Monitoring & enforcement***

Another strategy is to exercise the regulatory powers of Council, DECCW and possibly NSW Police. This could involve targeted operations combined with an appropriate media strategy to ensure that the public was aware of the enforcement operation(s). The matter has already been raised at the Police Partners meeting. It is recommended that Council liaise with relevant representatives from DECCW and NSW Police about options in this regard and associated resourcing issues.

### ***Education***

#### Advice to landowners

In 2006 the landowners requested Council's advice on whether they were able to undertake slashing/clearing/land maintenance. Research was subsequently undertaken and the advice provided to the landowners has been that "*...no further clearing, slashing, mowing or "maintenance" of land should be undertaken without the appropriate approvals. Any landowner intending to carry out any work involving the clearing of vegetation without development consent should obtain their own independent legal advice.*" The full advice is provided on Council's website at:

<http://shoalhaven.nsw.gov.au/council/pubdocs/communityissues/Heritage/Clearing%20Internet.pdf>

This advice is considered to be in the best long term interests of landowners, particularly as the land contains habitat that is protected under NSW and Federal legislation. Since issuing this advice the level of clearing and slashing has greatly reduced.

As Council would be aware, correspondence was recently sent to the landowners updating them on Council's efforts to resolve the land tenure. The letter also reiterated the previous advice to not undertake clearing, slashing, or mowing etc without the necessary approvals.

#### Community education

Education targeting nearby communities and schools could compliment other measures. Information about the adverse impacts of trail bike riding could be distributed through local schools, service stations and other appropriate retail outlets.

People could be encouraged to only purchase firewood that has been collected legally.

Community Consultative Bodies (CCB's) could be encouraged to raise awareness in the local community about these issues.

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

The options for Council to prevent illegal activities from occurring in the Heritage Estates are constrained by the tenure of the land. The options outlined are considered to be interim measures until such time that the tenure of the land is resolved. Government acquisition of the land would overcome many of the current limitations for managing the land, whilst alleviating the financial impacts on the landowners.

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**Financial Considerations:**

The cost of any monitoring/enforcement operations would depend on the level of availability and demand for staff resources.

Provision of signs at six (6) locations would be expected to cost in the order of \$3,300 (approx. \$1800 for the signs plus \$1500 for surveying to ensure signs were correctly placed).

The cost of installing two gates to prevent vehicular access to the Council reserve (Lot 1 DP625153) is estimated to be in the order of \$8600.

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**18. Draft Shoalhaven Contributions Plan 2010 - Proposed Administrative Changes**  
**File 39338-02**

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**Purpose of the Report:** To update Council on the proposed main administrative changes from the current Shoalhaven Contributions Plan 1993 for inclusion in the draft Shoalhaven Contributions Plan 2010.

**RECOMMENDED that:**

- a) Council adopt an annual indexation for proposed construction and recoupment of contribution projects based on Sydney CPI for inclusion in the draft Shoalhaven Contributions Plan 2010;
- b) Council regularly review the land valuations of proposed contribution projects that require land acquisition in the draft Shoalhaven Contributions Plan 2010; and
- c) Council adopt the changes to the calculation of rates for various forms of development as detailed in this report for inclusion in the draft Shoalhaven Contributions Plan 2010;

**Options:**

Council may choose to:

- a) Endorse the recommendations as detailed in this report; or
- b) Seek amendments to the recommendations as detailed in this report; or
- c) Not endorse the recommendations as detailed in this report.

**Details/Issue:*****Background***

Council at its meeting of 14th August 2009 (MIN 09.1056) resolved that:

- a) *Council endorse the proposed format of the Shoalhaven Contribution Plan 2010 to be based on Planning Areas.*
  - b) *Council write to the Minister for Planning and seek provision of outstanding information requested from the Department of Planning as a matter of urgency as this could impact on Council's ability to meet the 30 December 2009 deadline to make the plan publicly available, including on Council's website.*
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- c) *Council be updated on the progress of the Shoalhaven Contribution Plan 2010 on a regular basis.*

The report pertaining to the above resolutions is provided in the Councillor's Information Folder.

To action part b) of the above resolution, correspondence was sent to the Minister for Planning on 15th August 2009. At the time of writing this report, no response had been received by Council.

To action part c) of the above resolution, a Councillor Briefing was held on 10th September 2009 to discuss the proposed main administrative changes from the current Shoalhaven Contributions Plan 1993 for inclusion in the draft Shoalhaven Contributions Plan 2010. The Briefing was attended by Clrs Ward, Watson and Fergusson, relevant Council staff, Newplan representative (consultant appointed to peer review the draft Plan) and Department of Planning representatives.

### ***Main Administrative Changes***

The main administrative changes proposed and discussed at this Briefing are summarised below.

#### *Current Indexation*

# Indexation is required as an interim price escalation tool between review of contribution projects to buffer the cost of inflation and building material cost increases. Currently, Council uses the Implicit Price Deflator – New Engineering and Construction (supplied by annual subscription from the Australian Bureau of Statistics) however, this indexation is not recommended for inclusion in the draft Plan for the following reasons:

- Does not directly relate to land value changes;
- Not readily accessible to the public;
- It tracks Australian wide price increases and does not necessarily reflect local price increases. A summary comparison of local indexation rates for the last 11 years is provided as Attachment "A"; and
- Does not replace recoupment indexation (Recoupment indexation is required to be levied in accordance with Sydney CPI).

#### *Proposed Indexation*

It is proposed that an annual indexation for proposed construction and recoupment of capital works projects be based on Sydney CPI.

#### *Regular Land Reviews*

It is proposed that Council regularly review land valuations of proposed contribution projects that require land acquisition.

#### *Current Project Rates – Method of Calculation*

Project rates in the current Plan determine how contributions are levied for the various forms of development demands (i.e. residential, commercial, etc). The project rate base used by Council is Equivalent Tenement (ET) which is based on calculating demand from water supply and traffic generation and applied to all projects in the current Plan. Proposed changes to these calculation approaches are recommended to simplify and consistently apply this approach across all forms of development.

These rates are generally determined at subdivision and credit is given for past consent rates. It should also be noted the relevant community infrastructure levied for different forms of development change according to associated demand (i.e. residential development has different demands to commercial/industrial development).

*Proposed Residential Project Rates*

# The proposed residential project rates for inclusion in the draft Plan are as follows. The current residential project rates can be viewed in Attachment “B”.

<b>Development Type</b>	<b>ETs Applied</b>	<b>Relevant Community Infrastructure Levied</b>
Single detached/rural dwelling	1.0	<ul style="list-style-type: none"> <li>• AREC (Active recreation)</li> <li>• CFAC (Community facilities)</li> <li>• DRAI (Drainage)</li> <li>• FIRE (Fire)</li> <li>• MGMT (Plan Management)</li> <li>• OREC (Passive recreation)</li> <li>• ROAD (Road &amp; traffic )</li> </ul>
Multi unit - 1 bedroom	0.4	
Multi unit - 2 bedroom	0.6	
Multi unit - 3 bedroom	0.8	
Multi unit - 4 bedroom	1.0	

In addition to these changes, the draft Plan proposes to:

- Calculate dual occupancy and subdivision for the creation of additional lots at a single dwelling rate (i.e. a dual occupancy dwelling on a Torrens Title or dwelling on a subdivision lot to be charged 1 ET respectively). This change is based on the need to have a consistent approach to calculate ETs for subdivision and dual occupancy developments;
- Remove the reference for residential development on land zoned 2(a1) and 2(a2) to be exempt from contributions as this requirement now applies to most residential land after the subdivision consent process. In circumstances where this exemption does not apply, it is proposed that a notice be placed on relevant Section149 Certificates that development contributions are required prior to Construction Consent;
- Levy OREC (Passive recreation) contribution projects in rural areas as Council only levies such contributions for district and citywide passive recreation projects; and
- Not levy contributions for residential land defined in Council’s LEP as a “1964 holding” (as per the current Plan).

*Proposed Tourism Project Rates*

# The proposed tourism project rates for inclusion in the draft Plan are as follows. The current tourism project rates are detailed in Attachment “C”.

Tourism Accommodation Development	ETs Applied	Relevant Community Infrastructure Levied
1 bedroom unit/motel room/cabin/caravan park site/per Bed & Breakfast bedroom greater than 300m <sup>2</sup> or 3 guest bedrooms	0.4	<ul style="list-style-type: none"> <li>• AREC (Active recreation)</li> <li>• CARP (Car park)*</li> <li>• DRAI (Drainage)</li> <li>• FIRE (Fire)</li> <li>• MGMT (Plan Management)</li> <li>• OREC (Passive recreation)</li> <li>• ROAD (Road &amp; traffic )</li> </ul>
2 bedroom unit	0.6	
3 bedroom unit	0.8	
4 bedroom plus unit	1.0	

In addition to these changes, the draft Plan proposes to:

- Increase levies for a short-term caravan park and motel room from 0.25ET to 0.40ET per site based on the need for Council to provide community infrastructure regardless of the level of overall annual use. This change will consolidate the different rates for 1 bedroom unit/motel room/cabin/caravan park site into one standard rate. This increase will result in an average \$500 - \$600 increase in levies for a short term caravan park site or motel room compared to the current Plan;
- Require levies for bed and breakfast developments for guest bedroom greater than 300m<sup>2</sup> or more than 3 bedrooms as development smaller than this is exempt under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2000.
- Levy AREC (Active recreation) and OREC (Passive recreation) for all tourism accommodation projects as it not possible to predict which community infrastructure tourism accommodation developments will use;
- Levy contributions for tourism manager's residence and Hotels respectively as residential and commercial projects;
- Not levy contributions for community facilities which tourism accommodation developments generally do not use; and
- \*CARP (Car park) to continue to be based on car parking code (as per the current Plan).

#### *Commercial Project Rates*

# The proposed commercial project rates for inclusion in the draft Plan are as follows. The current commercial project rates are detailed in Attachment "D".

Commercial Development per Individual Lot	ETs Applied	Relevant Community Infrastructure Levied
Retail (per 10m <sup>2</sup> gross floor area)	1	<ul style="list-style-type: none"> <li>• CARP (Car park)*</li> <li>• DRAI (Drainage)**</li> <li>• FIRE (Fire)</li> <li>• MGMT (Plan Management)</li> <li>• ROAD (Road &amp; traffic )</li> </ul>
Office (per 100m <sup>2</sup> gross floor area)	1	
Hotel/Restaurant (per 15m <sup>2</sup> gross floor area)	1	

In addition to these changes, the draft Plan proposes to:

- Levy MGMT (Plan Management) on an ET unit rate and not the current practice of applying a rate to total Gross Floor Area (m<sup>2</sup>) of the development area;
- \*CARP (Car park) to continue to be based on car parking code (as per the current Plan); and
- \*\*DRAI (Drainage) to continue to be based on m<sup>2</sup> (as per the current Plan).

#### *Industrial Project Rates*

# The proposed industrial project rates for inclusion in the draft Plan are as follows. The current industrial project rates are detailed in Attachment "E".

ETs Applied	Relevant Community Infrastructure Levied
1 (per 200m <sup>2</sup> of land to be developed)	<ul style="list-style-type: none"> <li>• DRAI (Drainage)**</li> <li>• FIRE (Fire)</li> <li>• MGMT (Plan Management)</li> <li>• ROAD (Road &amp; traffic )</li> </ul>

In addition to these changes, the draft Plan proposes to:

- Levy MGMT (Plan Management) on an ET unit rate and not the current practice of applying a rate to total Gross Floor Area (m<sup>2</sup>) of the development area; and
- \*\*DRAI (Drainage) to continue to be based on m<sup>2</sup> (as per the current Plan).

#### *Exemptions*

The following exemptions proposed for inclusion in the draft Plan are as follows:

- Department of Housing, local government and community housing development; and
- State Agencies and Council projects that are for community development;

Residential care facility development other than facilities provided by Government Agencies, will be considered commercial development and will only be levied contributions for drainage, car parking, roads, fire and plan management.



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### *Discounts*

The notion of a discount for SEPP Seniors Living 2004 and SEPP (Affordable Rental Housing) 2009 developments for inclusion in the draft Plan was discussed at the Councillor Briefing held on 10th September 2009, and a previous Briefing held on 22nd February 2007. The inclusion of such a discount is based on previous feedback from the Department of Planning's Part 3A assessment of the Bayswater Retirement Living Village and the assumption that residences of this development and other similar development may not fully utilise community infrastructure provided by Council.

Feedback from the Councillor Briefings has not supported inclusion of such a discount on the basis that such development will create demand on community infrastructure proposed to be discounted.

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

Development of the draft Shoalhaven Contributions Plan 2010 will involve best practice industry standards which include making the Plan available on the internet and on CD format to minimise the need for printing hard copy documents. A fundamental principle of the Plan is to provide equitable sharing of the costs for essential community infrastructure.

### **Financial Considerations:**

The proposed draft Shoalhaven Contributions Plan 2010 will allow Council to collect Development Contributions to assist in the funding of key community infrastructure within the Shoalhaven Local Government Area. The draft Plan 2010 will provide a 'schedule of works' which Council will be able to collect contributions and detail Council matching funds. This will assist Council's long-term capital works planning.

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, 6 OCTOBER 2009**

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

1. **Development Application - Commercial development containing a supermarket, six (6) retail shops, associated car parking area for seventy five (75) cars, alterations to the existing traffic network, works within the Weston Street road reserve, signage and associated landscaping. Lots 1477, 1478, 1479, 1480, 1482, 1483, 1484 DP12278 and Lot 1 DP1094219, No.8-22 Weston Street, Culburra Beach. Applicant: Cowman Stoddart Pty Ltd. Owner: Siblow Pty Ltd and Shoalhaven City Council.**

**File DA09/1144**

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**PURPOSE OF THE REPORT:**

The submitted development application seeks approval for the construction of a commercial/retail development and a range of associated works (i.e. car park construction, public infrastructure improvement works within Weston Street and Redbank Lane, signage and associated landscaping). The works proposed to occur on both privately owned land and on land owned by Shoalhaven City Council.

This matter is being reported to the Council as it involves consideration of policy and technical issues. These being:

- Non compliance with provisions contained in Council's adopted Development Control Plan No.30 - Culburra Commercial Area (DCP 30);
- Consideration of a proposed Voluntary Planning Agreement (VPA); and
- Alterations to the existing traffic network in Weston Street and Redbank Lane.

As such, direction is sought from Council on the above matters prior to determination of this application.

In addition, as the submitted application involves Council land and works on Council land, there is a need for transparency of process in the assessment and determination by Council of the development application as there could be a perception that Council as the consent authority has a conflict of roles between its different function as land owner and land use regulator.

**RECOMMENDED that;**

- a) **The variations to Development Control Plan No.30 - Culburra Commercial Area as requested that relate to the internal access road/servicing, building footprint, setbacks and parking for vehicles towing caravans/trailers be supported;**
- b) **The one way traffic proposal being one way, west to east along Redbank Lane and one way, east to west, along Weston Street, Culburra Beach be supported;**

- c) **The angled car parking in Weston Street is constructed so it is nose in angled car parking (i.e. as shown on plan reference no MS2078);**
- d) **The Voluntary Planning Agreement between Shoalhaven City Council and Siblow Pty Ltd (dated 15 September 2009) that is associated with DA09/1144 be supported and Council resolves that due to the following reasons:**
  - (i) **The developer (being the registered proprietor of the relevant land) is the only entity capable of dedicating that land to Council;**
  - (ii) **The developer is the only entity which can carry out works to provide a material public benefit as an offset against s94 Contributions it will be required to pay; and**
  - (iii) **If Council accepted only land and works equivalent to the amount of the s94 contributions, the works would not be complete and the facilities would not be functional.**

**It is accepted that 'extenuating circumstances' exist and the Council considers a satisfactory result would not be achieved by inviting tenders for works covered under the Voluntary Planning Agreement.**

- e) **Council resolves that the Voluntary Planning Agreement with Siblow Pty Ltd (associated with DA09/1144) and any other associated documents may be executed by or on behalf of the Council in accordance with cl 165 of the Local Government Regulation by the General Manager.**
- f) **The development application be determined under delegated authority in accordance with the conclusions and recommendations contained in this report.**

#### **OPTIONS:**

Council may:

- a) **Resolve to support in principle the application and adopt the recommendations of this report as outlined above and/or modify the recommendations; or**
- b) **Resolve to refuse the application (i.e. on the grounds that Council does not support the requested variations to Development Control Plan No.30 – Culburra Commercial Area and/or the Voluntary Planning Agreement provided with the application and/or the proposal to introduce one way traffic into both Weston Street and Redbank Lane); or**
- c) **Write to the applicant requesting them to amend the proposal and, subject to the matters being satisfactorily resolved, the application be determined under delegated authority or a further report be submitted to Council for its consideration.**

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

##### **Proposal**

The submitted development application proposes:

- a) **The construction of a commercial/retail development comprising:**

- A supermarket with a gross floor area of 1,250m<sup>2</sup>;
  - Six speciality shops with a combined gross floor area of 372 m<sup>2</sup>;
  - Associated signage areas;
  - Car parking for 109 vehicles (74 off-street vehicle spaces within land currently owned by both the developer and Shoalhaven City Council and 35 vehicle spaces within the Weston Street Road Reserve area);and
  - Associated landscaping, engineering and drainage works.
- # A copy of the current development application plans are provided in **Attachment 'A'** to this report.
- b) A Voluntary Planning Agreement (VPA) pursuant to Section 93F of the Environmental Planning and Assessment Act 1979 (EP&A Act). This agreement enabling the developer to construct the car park associated with the development over Council land (i.e. three lots being Lot 1482 and 1484 DP 12278, (No. 18 and 22) Weston Street and Lot 1 DP 1094219 (No.16) Weston Street and within the Weston Street Road Reserve). In return the developer will agree to:
- Dedicate land to Council at no cost (i.e. Lot 1483 DP 12278 (No.20) Weston Street, Culburra and Part Lot 1480 DP 12278 (No.14) Weston Street, Culburra). This land currently being owned by the proponent;
  - Construct the proposed car park which will contain 74 off-street spaces at no cost to Council over the proponents dedicated land and the adjoining Council land. This car park to be retained in Council ownership; and
  - Construct 35 angled vehicle spaces (31 car spaces and 4 motorcycle spaces) and undertake associated works (i.e. landscape, engineering, etc) within Weston Street.
- # A copy of the VPA is provided in **Attachment 'B'** to this report. Copies of the plan are available in the Councillors Information Room.
- c) Alterations to the existing traffic network through the introduction of one way traffic movement, west to east, along Redbank Lane and one way traffic movement, east to west, along Weston Street.

### The Site

- # The subject land is located within the Culburra Beach township and comprises 8 parcels of land legally described as Lots 1477, 1478, 1479, 1480, 1482, 1483, 1484 DP12278 and Lot 1 DP1094219, No.8-22 Weston Street, Culburra Beach and the adjoining road reserve area (see **Attachment 'C'**). The site is located on the southern side of Western Street approximately 50m east of Canal Street East and backs onto the established Culburra Beach Central Business District area. The site having dual street frontages to both Weston Street to the north and Redbank lane to the south, and has a total area of approximately 4,590m<sup>2</sup>. Of the land to which the development application relates Shoalhaven City Council owns 3 of the 8 allotments, not including the road reserve areas (see **Attachment 'C'**). The subject land currently contains no established natural vegetation as the site has previously been disturbed as a result of development. Four (4) of the lots contain existing buildings (i.e. 3 dwelling houses and 1 squash centre), three (3) contain car parking (two of which are a council car park) and one is currently vacant. The adjoining land to the east and west of the subject site is a mixture of land that has been developed for commercial/retail uses or is currently vacant.
- # The subject land is zoned 3(a) (Business "A" (Retail) Zone) under the Shoalhaven Local Environmental Plan 1985 (SLEP 1985) (see **Attachment 'D'**).



## **Background**

For a number of years, the proponent has been having discussions with Council staff in relation to the ability of the subject site to be developed as a commercial/retail development as is currently proposed. Council was formally approached in 2005 as to whether it was prepared to sell land in Weston Street to enable the development of a supermarket. As a result of this approach further negotiations occurred, including discussion of the possibility of construction of car parking by the proponent on Council land and a portion of the proponents land with Council retaining ownership of the constructed car park area. As a result of these discussions a report was submitted to the Property Steering Committee and then Council at its meeting on 28 November 2006 where it was resolved (MIN06.1505) that:

*“the General Manager continue to negotiate the sale of Council land to Siblow Pty Ltd in regard to the proposed Supermarket and Retail Development for Lots 8 – 22, Weston Street, Culburra.”*

Following further negotiations Council at its meeting on 27 February 2007 resolved (Min 07.312) that:

*“the General Manager undertake further investigations and progress negotiations with the proponent Siblow Pty Ltd for the Proposed Retail and Supermarket Development - Weston Street, Culburra Beach, on terms and conditions as discussed in Confidential Committee of the Whole.”*

Further discussions were had with the proponent and at its meeting on 25 June 2007 Council considered a further report from the Property Steering Committee where it resolved (Min 07.951) that:

*“a) The General Manager be authorised to sign an application to allow consent for the proponent of the Proposed Retail and Supermarket Development - Weston Street, Culburra Beach to lodge a development application which will provide for angle parking;  
b) A further report in respect of the matter of the angle parking be considered by the Council Property Steering Committee prior to the development application being determined.”*

An additional report was considered by the Property Steering Committee and then Council at its meeting on 20 January 2009 where it was resolved (Min 09.46) that:

*“Council refer the draft VPA to Department of Local Government for comment and Council provide owner’s consent to the Development Application to enable public exhibition and consideration of the Development Application, one way street proposal and Voluntary Planning Agreement.”*

The current application was formally received by Council on 11 February 2009. Once received, it was notified in accordance with Council’s Community Consultation Policy and a range of additional information was requested from the applicant. The applicant has subsequently provided additional information to support the currently submitted application.

## **Community Consultation**

The development application, VPA and proposed road changes have been notified as follows:

- Individual property owners were notified of the proposal (within a 200 metre radius of the site – 131 letters sent). The notification period was from 11/3/09 to 15/4/09;

- The proposal was advertised in the Local Press on three occasions (South Coast Register on 11/3/2009, 25/3/09 and The Nowra News on 2/04/09); and
- The development application, VPA, information on the proposed road changes and supporting documentation were on display at Council's City Administrative Centre, Nowra as well as on Council's website.

Two (2) submissions have been received by Council during the notification period. One from a private land owner in Weston Street and one from the Culburra Beach Progress Association. Both submissions received did not object to the proposals, however raised some concerns about several aspects of the development. A summary of the issues raised is provided below:

- Inadequate public toilet facilities provided;
- Concerns with garbage management;
- Concerns with the developments drainage and impact on Weston Street;
- No provision for parking of trailers, boats and caravans;
- Electricity provision needs to be able to cope with additional loads;
- Local contractors need to be used;
- Changes to existing signage; and
- Traffic impact statement submitted underestimates the seasonal traffic flows.

# A response to each of the above is provided in **Attachment 'E'**.

## **POLICY ISSUES:**

### **Development Control Plan No. 30 – Culburra Commercial Area (DCP 30)**

The subject land is within the area affected by DCP 30. This DCP was adopted by Council in November 1988 and has been amended on one occasion. DCP 30 aims to co-ordinate future development within the commercial area, provide centralised off street car parking, provide pedestrian linkages and provide guidelines for streetscape improvements. Specifically in relation to the subject site DCP 30 contains provisions on internal access roads/servicing, building footprints as shown in the plan that supports the DCP, setbacks to Weston Street and provisions relating to parallel parking spaces for larger vehicles (i.e. cars towing caravans/boats). DCP 30 does however contain provision for variations to its requirements when they assist with the implementation of the plan.

Each of the variations sought by the applicant under the current proposal is discussed below:

- a) Internal Access Road-Servicing: DCP 30 aims to provide access to the rear of all commercial developments for servicing. The current proposal seeks to construct the car park in part on the undeveloped section of the road reserve (i.e. extension to Redbank Lane) that has been identified by DCP 30 as providing alternative service vehicle access to 4 existing properties that front Prince Edward Avenue (i.e. Lot 1464 and 1465 DP 12278 and Lot 1 DP 1014186 and Lot 2 DP 582205 – see **Attachment 'F'**).

Applicant's Comment: The applicant in their submitted Statement of Environmental Effects has advised that:

*"The proposed retail development seeks to utilise the Redbank Lane service road situated to the south of the development site so as to provide access for service vehicles to the loading dock area. This is consistent with DCP 30.*

.... The section of the service lane road reserve where parking is proposed is currently not utilised by the commercial premises that adjoin this service lane to the south. These adjoining commercial premises include the "Culburra Liquor Shop" and a small retail development comprising two shops – a hairdresser and takeaway food store. It is unlikely that these commercial developments will require access to this service lane in the immediate future given both sites currently enjoy frontage to Prince Edward Avenue. In addition both sites currently have structures that encroach onto this adjoining road reserve that would restrict construction within this road reserve.

An alternative car park layout is provided .... This option has been prepared to demonstrate how the proposed car park could be re-constructed by Council at a future date to provide access for service vehicles to these adjoining commercial developments, should the need arise.

This plan demonstrates that a 12.5 metre service vehicle could manoeuvre and service the adjacent commercial premises. Sufficient area is available for a service truck to turn, and stop to unload; while permitting other vehicles to pass. The provision of this service lane and loading area will reduce the available offstreet parking area to 66 spaces. Given the proposal however involves the provisions of 35 angled parking spaces in total along Weston Street; any loss of offstreet parking will be compensated by the provision of this additional street parking – if and when this service lane is ever required to be provided."

Council's Comment: The justification provided by the applicant for the no provision of service road access to the rear of 4 properties at this time is considered justified as the affected properties have re-development potential given the age of the existing development on the land. Any re-development of this land will require the service road construction as part of any development consent issued for each affected property. In addition the affected land, although in Council ownership, currently has structures that encroach on to the road reserve area that will require demolition.

An alternative car parking arrangement has been provided by the applicant that demonstrates that service vehicle access (12.5m rigid truck) to the rear of the 4 affected properties can still be provided should the need arise in the future. This plan reduces the size of the off-street car parking area to 66 car spaces (decrease of 8 car spaces). However as this current proposal includes the provision of 35 angled parking spaces in Weston Street, any loss of off-street car parking will be compensated for through the provision of this additional car parking. As such, it is considered that this requested variation, at this time, is not unreasonable and will aid in achieving a centralised off street car parking area as well as improvements to the streetscape, this implementing the other components of DCP 30.

No objections to the currently proposed off street car parking layout have been received by Council from adjoining land owners that will be directly impacted by the non provision of the service road.

- b) Building Footprints: DCP 30 is supported by a plan that contains additional design detail. This plan in part shows indicative building footprints, the location of roads, car parking, etc (see **Attachment 'F'**). The current proposals building footprint does not comply with those identified on the supporting plan.

Applicant's Comment: The applicant in their submitted Statement of Environmental Effects has advised that:



*“The DCP plans do not make provision for the demolition of the squash courts building and their redevelopment. The existing DCP adopted by Council in 1987 (becoming effective in 1988). There has been no significant review of the provisions of this DCP since that time, (other than minor amendments).*

*This proposal seeks to establish a supermarket of sufficient size to meet the requirements of the current day Culburra community. At present Culburra is serviced by a small supermarket with a floor area of only about 250m<sup>2</sup>. This supermarket is too small to compete with retail developments in Nowra. It is therefore proposed to relocate this small store into a larger complex that will be able to supply a broader range of goods and services to that currently provided in the smaller supermarket. Such will provide a greater level of service for the community of Culburra Beach.*

*The overall increase in floor area associated with the proposal in conjunction with the demolition of the existing squash courts when compared to the DCP 30 floor space provisions is not considered to be unreasonable. The impact of such an increased floor area in terms of traffic generation and impact on the surrounding road network is discussed in this SEE. The findings of the Traffic Impact Assessment that supports this SEE are that the development will not generate a level of traffic that would adversely impact on the carrying capacity of the local road system.*

*The proposal also makes adequate provision for off-street car parking in a manner that is in keeping with the intent of the DCP and in compliance with Council's off street car parking guidelines.*

*Furthermore the scale of the development, by remaining single storey in height, will remain in keeping with the overall bulk and scale as existing development within the locality.*

*Indeed having regard to the appearance of existing development along this street, the proposal represents an improvement in the streetscape quality of this locality.”*

Council's Comment: At the time when DCP 30 was prepared there appears to have been no consideration given to the demolition of the existing squash court building due its construction (i.e. brick) and overall size. As such the building footprints that have been shown provide for the retention of that structure and car parking on the land adjacent to service that development. The plan that supports the DCP also seeks the creation of an additional access way/laneway between Redbank Lane and Weston Street through the middle of the proposed development site (i.e. on the land to the east of the existing squash court building). Under current legislative requirements this land would need to be acquired. The acquisition of this land is not identified as a project to be funded with contributions levied in accordance with Council's Section 94 Contribution Plan. Even if it was included there has not been sufficient redevelopment within the Culburra commercial centre and it is considered that there will not be sufficient development in the future to fund the acquisition.

Overall it is considered that the proposed development whilst not complying with the building footprints on the plan that supports DCP 30, is of a scale of that will not adversely impact on the overall amenity of this locality while still achieving the aims and objectives of DCP 30 (i.e. assisting in the provision of a centralised off-street car parking area, encouraging development in keeping with the size of Culburra). Further, the plan that supports the DCP is considered indicative and the plan supports the proposed land use.

- c) Setbacks: The plan that supports DCP 30 shows a setback to any built structure of up to 6.5m from the Weston Street property boundary. The current proposal does not comply with setbacks indicated on the plan that supports the DCP. The plans as currently submitted with the development application showing the building setback 1.2m to the Weston Street property boundary.

Applicant's Comment: The applicant in their submitted Statement of Environmental Effects has advised that:

*"The proposal seeks to provide a setback to Weston Street boundary of around 1.4 metres, in line with the setback established by the existing development at the corner of Canal Street East and Weston Street. The proposal is therefore consistent with the prevailing setback of development established by this existing commercial development.*

*... the proposal will still attain the objectives of the DCP which relate to this aspect. The proposal seeks to orientate the main commercial and pedestrian focus from Weston Street towards the proposed off street car park. This is consistent with the thrust of the DCP (Clause (i)). As a result the main pedestrian activity in this locality will occur between the car park and the proposed development. The Weston Street frontage will become a secondary focus for pedestrian activity. The need to provide for a broad pedestrian footpath along this footpath therefore diminishes.*

*Notwithstanding this, the proposal still proposes to provide a three (3) metre pedestrian path along the Weston Street frontage of the site. This will ensure pedestrian linkages are retained reducing the potential for conflict between pedestrians and traffic. The provision of angled parking along Weston Street (not envisaged by the DCP) also enables further tree planting to be undertaken along the street within the "saw-tooth" kerb alignment.*

*This approach therefore makes provision for a more integrated approach with respect to streetscape works along this road frontage, in terms of on-street parking, landscaping and pedestrian linkages than that envisaged by DCP 30.*

*Given much of the development site is taken up with the provision of car parking (as required by Council's development guidelines), there is a need to maximise the options for development for the remainder of the commercial zoned land. The provision of additional street setbacks diminishes the area available for development. Such setbacks however are not necessary given the commercial zoning that applies to both sides of Weston Street; and as many of the sites along the northern side of Weston Street are now being used for commercial as opposed to residential use."*

Council's Comment: The justification provided by the applicant for the current proposals no compliance with the setback requirements is considered satisfactory as other commercial developments within Weston Street have a similar setback to that currently proposed. However, with a reduced setback, there is a need to ensure the building has an improved presentation to Weston Street. While the proposed development will be a visual improvement on what currently exists, (incorporates some elements that will assist in breaking up this elevation such as the provision of an awning structure and will have a general bulk and scale that is consistent with the existing streetscape), it is considered that given the prominence of this elevation (i.e. 54m frontage) the developments presentation to Weston Street requires further enhancement if a reduced setback is to be supported. Currently, the Western Street elevation consists mainly of concrete tilt up panel walls with limited glass infill and as such provides limited visual interest (i.e. articulation of the façade, use of different materials, etc) or opportunity for passive surveillance. In this

regard, the specialty shops that are located adjacent to the northern boundary of the site could enhance their presentation through the provision of additional windows. The use of different materials could also be used along the northern elevation of the supermarket component. In addition, it is considered that the fire exit that is to be provided in the north western corner of the site should be repositioned so it is wholly contained adjacent to the western boundary of the site (i.e. not provided along the Western street frontage within the 1.2m setback).

While landscaping has been incorporated into the setback provided along Weston Street to reduce/soften the visual appearance of the proposed development, this in isolation is not considered sufficient as the plantings proposed are not of a size that will provide relief and given the size of the proposed landscaped area may find it difficult to establish themselves without sufficient ongoing maintenance.

- d) Parking for Vehicles Towing Caravans / Boats: DCP 30 outlines that a small number of parallel parking spaces should be provided at the eastern end of the proposed car parking areas for vehicles towing caravans and boats. The plan that supports DCP 30 shows an embayment for larger vehicles within the centralised car parking area that is to be provided by the proponent as part of this development (see **Attachment 'F'**). The current proposal does not provide any car parking for longer vehicles off-street.

Applicant's Comment: The applicant in their submitted Statement of Environmental Effects has advised that:

*"There is adequate area within Weston Street (along the northern kerb alignment) itself for the parking of cars towing caravans/trailers. In this regard, such motorists would generally prefer not to enter restricted parking areas where possible reversing manoeuvres may need to be undertaken. Accordingly, it is recommended that a short section of kerb-side parking be specifically signposted as being allocated for use by such vehicles directly adjacent to the subject site by an indention within an existing 8 m wide footway. Further, there is adequate area for the parking of such vehicles within Canal Street East to the west of the subject site if required. In consideration of these comments and incorporating the recommendation provided in relation to vehicles towing caravans/trailers, it is the opinion of this Practice that the stated non-compliances with DCP 30 are acceptable in this instance."*

Council's Comment: The justification provided by the applicant for the current proposals' non-compliance with the requirement to provide long vehicle parking is considered reasonable as the alternative car parking arrangement that has been provided by the applicant with the service lane to the rear of the 4 affected properties that front Prince Edward Avenue provides the ability to have two long vehicle spaces. However, the number of off-street car spaces provided will be reduced to 64 (decrease of 10 from that currently proposed). As previously discussed, given this current proposal includes the provision of 35 angled parking spaces in Weston Street, any loss of off-street car parking will be compensated for through the provision of this additional car parking. Alternatively, Council's Traffic and Transport Unit has advised that an opportunity exists to provide long vehicle parking within Canal Street East which is approximately 50m from this development. This issue is discussed further below.

Conclusion: Council's Strategic Planning Group has provided comment in relation to the proposed variations and has advised that they have no concerns with the changes proposed as part of this application. Council's Strategic Planning Group also advises that it is their intention to review DCP 30 as part of an overall review of the Citywide DCP once the

Citywide DCP becomes effective. This is as discussed at a Councillor Briefing on the City Wide DCP held on 9 September 2009.

It is considered that the applicant has provided sufficient justification for each of the variations to DCP 30 and has detailed how the proposal will still meet the aims and objectives of the DCP. However, it is believed that amendments should be made to the northern façade of the building to enhance the developments presentation to Weston Street (i.e. provision of additional windows, articulation of the façade, use of different materials).

### **Voluntary Planning Agreement (VPA)**

The proponent as part of this application has submitted a VPA pursuant to Section 93F of the EP&A Act. The VPA making provision for (summary only):

- The dedication of land owned by the proponent to Council (i.e. Lot 1483 DP 12278 (20 Weston Street Culburra and Part Lot 1480 DP 12278 (14 Weston Street Culburra)) at no cost to Council;
- The construction of a public car park (containing 74 spaces), at no cost to Council, on Council's land and land currently owned by the proponent as outlined in the dot point above; and
- Construction of angled parking spaces for 31 cars and 4 motorcycles along the Weston Street frontage of the development and the frontage of the public car park within the road reserve.

The draft VPA when originally received was reported to Council through the Property Steering Committee and on 20 January 2009 Council resolved (Min 09.46) that the draft VPA be referred to the Department of Local Government for comment and that Council provide landowners consent to allow the lodgement of the development application so as to enable public exhibition and consideration of the development application, one way street proposal and VPA.

Advice subsequently received back from the Department of Local Government was that *"the arrangement that Council is seeking to enter into with a private partner is considered to be a type of arrangement that is excluded from the public-private partnership legislation."* This is due to the fact that the proposed arrangement relates to developer contributions arising out of the operation of Part 4 of the EP&A Act.

In accordance with legislative requirements, the VPA has been exhibited concurrently with the development application. No comments were received by Council during this exhibition period that related to matters concerning the VPA. In addition, it is considered that the draft VPA that has been submitted is in compliance with Council's Policy on Voluntary Planning Agreements (POL08/417).

To ensure Council's interests under the VPA are protected, the VPA was reviewed and subsequently amended by Councils Legal Services Section. The amendments made are not substantial and do not need to be re-exhibited. The latest amendments to the VPA have been provided to the applicant who has advised that they are acceptable.

In addition, advice has been received from Councils Legal Services Section in relation to the requirement for the VPA to be subject to the tendering provisions in accordance with Section 55 of the *Local Government Act 1993* (LG Act). Section 55(1) of the LG Act, in part, requiring Council to invite tenders for the following types of contracts:

- contract to carry out work that, by or under any Act, is directed or authorised to be carried out by the council,
- contract to perform a service or to provide facilities that, by or under any Act, is directed or authorised to be performed or provided by the council,

Section 55(3) of the LG Act, in part, provides that s55 (and therefore the requirement to invite tenders) does not apply to the following contracts:

- a contract for the purchase or sale by a council of land;
- a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders;
- a contract involving an estimated expenditure or receipt of an amount of less than \$100,000 or such other amount as may be prescribed by the regulations.

The VPA as is currently submitted is, in effect, a contract to carry out works or provide facilities as directed or authorised by Council and would fall under the types of contract in s55(1) for which tenders must be invited. However it is considered that the 'extenuating circumstances' exemption in s55(3) of the LG Act applies and as such the VPA is exempt from the tendering provisions of the LG Act due to the 'extenuating circumstances' and as such it is considered that a satisfactory result would not be achieved by inviting tenders for works covered under the Voluntary Planning Agreement as:

- The developer is the only person capable of dedicating the land as outlined in the VPA to Council;
- The developer is the only person who can carry out the works to provide a material public benefit as an offset against Section 94 contributions that would otherwise be required to be paid; and
- If Council was only to accept the land and works equivalent to the amount of Section 94 contributions, the works would not be complete and the facilities would not be functional.

In these circumstances, the developer who is claiming the Section 94 offset is effectively the only entity which can carry out the works to provide the material public benefit as an offset against Section 94 Contributions they would otherwise be required to pay, with the invitation of tenders in this instance not achieving a satisfactory result. In these circumstances, Council should resolve prior to entering into the VPA that it will not call for tenders because of the 'extenuating circumstances'.

Council's Strategic Planning Group have reviewed the amended VPA and have raised no concerns subject to compliance with the recommendations of Council's Legal Services Section as overviewed above.

### **Alterations to the existing traffic network**

The proposed development is seeking to alter the existing traffic network through the introduction of one way traffic movement, west to east, along Redbank Lane and one way traffic movement, east to west, along Weston Street (see **Attachment 'A'**). Currently both Weston Street and Redbank Lane provide for two way traffic movement. The proposed changes were considered by the Shoalhaven Traffic Committee (STC) at its meeting on 21 April 2009 and then Council at its meeting on 28 April 2009 where it was resolved (Min 09.525):

*“That the General Manager (Director Strategic Planning & Infrastructure) be advised that the Shoalhaven Traffic Committee has no objection to the proposed one way traffic flow and car park layout, for the proposed development in Weston Street, Culburra as detailed on plans MSD1016-1-4, subject to the following items raised by the Shoalhaven Traffic Committee and the items raised by the Traffic Unit Manager in his verbal report to the meeting:*

- a) The angle parking in Weston Street being reversed to allow for rear to kerb parking;*
- b) Reconfiguration of the kerb and trolley bay and provision of four disabled car parking spaces to the western side of the car park immediately north of Redbank Lane;*
- c) Removal of the two stamp treatments proposed for the corner of Canal Road and Redbank Lane and for the corner of Weston Street and Redbank Lane;*
- d) Modification of the eastern car park access to physically restrict traffic from exiting at this location, noting this provides opportunity for additional car parking on street;*
- e) Signs and Lines plan being amended to address the above issues and being submitted to a future meeting of the Shoalhaven Traffic Committee. “*

The proposed alterations to the existing traffic network in Weston Street and Redbank Lane have been exhibited concurrently with the development application. No comments were received by Council during this exhibition period that related to matters concerning the proposed changes to the existing traffic network. Council’s Traffic and Transport Unit have advised that they support the proposal to introduce one way traffic in Weston Street and Redbank Lane as exhibited.

The comments provided below relate only to the outstanding issues that it is considered require further Council consideration.

- a) Angle Parking in Weston Street: The applicant’s submitted design for the car parking proposed in Weston Street provides for nose in angled car parking. The STC as outlined in the resolution above (point a) resolving to change the angled parking proposed in Weston street so it is rear to kerb parking.

The applicant’s traffic consultant has subsequently advised in relation to the requested modification that a change to reverse in angled car parking:

- would make it more difficult for elderly and less mobile drivers who would have trouble reversing in to the spaces; and
- would encourage people to use the footpath for loading goods into vehicles, as opposed to using the car park for this purpose.

Council’s Traffic and Transport Unit has advised that they do not agree with the requested change as resolved by the STC (i.e. they are in favour of nose in angled car parking in this area as is currently proposed). Their advice stating that even if ‘occasionally’ some shoppers push trolleys out on to the road way in Weston Street (this being the main concern expressed by NSW Police, Roads and Traffic Authority (RTA), and State Parliament Representative on STC), the proposed car parking arrangements complied with applicable standards and as such there would be no direct conflict with through traffic. The Traffic and Transport Unit also noted that there could be fewer occurrences of shoppers using trolleys in Weston Street if the car park layout was not deliberately designed to be sympathetic to use of trolleys external to the site, which was what NSW Police, RTA, and State Parliament Representative on STC were suggesting. Council has previously debated this issue in other areas of the Shoalhaven Local Government Area and has supported consistency throughout the region based on nose in angled car parking.

At the STC meeting on 21 April 2009, a range of views were expressed on the matter, with the STC voting that the direction of the angled car parking proposed in Weston Street be changed to reverse in. Given Council staff concerns with the provision of reverse in parking at this location this matter is included in the report to Council so it can determine their preference of the direction of angled car parking.

It is further recommended that the saw tooth design of the angled car parking be removed and replaced with straight kerb and gutter design (i.e. straight kerb and gutter linking the first and last space). This allowing for cost effective maintenance. Once Council has resolved the direction of angled car parking, the applicant shall be requested to amend the plans to address all outstanding issues including the provision of a revised signs/lines plans.

It should however be noted that if Council resolve that the applicant provide nose in angled car parking (i.e. contrary to the STC resolution), the matter will be required to be reported back to STC for their consideration, and there may be opportunity for RTA to appeal the decision.

- b) Long vehicle parking: The lack of long vehicle parking (i.e. parking for vehicles towing boats, trailers, etc) is noted as an issue. An opportunity exists for Council to make available funding to allow for the further widening of Canal Street East so as to provide additional parking including parking for long vehicles (see **Attachment 'A'**). However, it is considered this is a separate matter for Council, exclusive of this development application. It is therefore recommended Council consider this additional funding, particularly in light of community feedback on the lack of long vehicle parking in the area. If Council concurs that works are necessary, it would be more cost effective for it to provide the additional funds required up front with the works being undertaken in conjunction with those works to be provided by the developer in Canal Street east as part of the VPA, as opposed to an independent construction effort in the future. Current sign posting arrangements proposed for Canal Street East are still valid, however if Council chooses to provide the additional funds required to achieve the widening on Canal Street East to accommodate long vehicles in the area, then sign posting arrangements will need to be modified to suit, and resubmitted for approval by STC.
- c) General changes required: A number of general changes to the submitted plans relating to the works in the road reserve are required. These include the provision of ramped thresholds in Redbank Lane, the provision of a 2m wide footpath on the southern side of Redbank lane, the provision of bicycle parking, the extension of line marking in Weston Street into Canal Street East and a notation on the signs/lines plan indicating that thermo plastic markings will be used. The above works to be provided at no cost to Council and conditioned on any issued development consent.

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

Economic, social and environmental considerations are addressed in this report and will also be addressed in the full Section 79C report that will be finalised prior to the applications determination.

In summary, it is considered that the development as proposed will enhance the Culburra Beach Central Business District Area and will provide a social benefit to its residents through the provision of additional services and facilities for which residents may now need to travel outside the area for (i.e. to the Nowra CBD). It will also be of economic benefit to the local area during the construction phase through the provision of work opportunities for local

contractors as well as providing additional ongoing employment opportunities for up to 20 people.

Any environmental impact from the proposed development will be minimal as the development proposes to incorporate rainwater reuse and will provide on site detention sufficient to contain the 100 year Average Recurrence Interval design event. In addition, a gross pollutant and sediment trap for the proposed off-street car park area is to be provided so as to ensure water leaving the site from the car parking area is reasonably screened.

### **FINANCIAL CONSIDERATIONS:**

Financial consideration needs to be given to the submitted VPA as well as the proposed alterations to the existing traffic network. Each of these is discussed separately below:

# Voluntary Planning Agreement: The works covered by the VPA should have no immediate implication for Council's capital works program as all the works are proposed to be undertaken by the developer at no cost to Council. Should the developer default on the delivery of the works (i.e. design or construction) Council has the ability to call on a bank guarantee that the VPA requires the proponent to lodge with Council, to complete the works. Council would then be responsible for the completion of that work, although the timing would be at its discretion. **Attachment 'G'** provides a summary of the proposed works that are considered to directly benefit Council/the community as against possible benefit to the proponent. Consideration has also been given to Section 94 contributions that Council has levied and received since 1993 for the recoupment of monies spent on the existing formed Council car park at No.16 and 18 Weston Street. The proposed development based on the currently submitted car parking layout providing car parking for 74 vehicles on site (i.e. not within the road reserve area) which is sufficient to accommodate the 69 spaces required by the development as well as the 5.5 car spaces for which Council has received Section 94 developer contributions in the past.

Alterations to the existing traffic network: The proposed changes to the existing traffic network will require changes to the regulatory signage and line marking within Weston Street, Redbank Lane, Canal Street East and the intersection of Weston Street/Fairlands Street. The above works to be conditioned on any issued development consent and will be provided at the proponents cost (i.e. at no cost to Council). An updated signs/lines plan will be reported back to STC for approval prior to the commencement of any construction within the road reserve area.

Funding will however be required for the widening of Canal Street East to provide long vehicle parking. No design work has been done at this time and as such no estimate is available. However, it has been advised that this work will only involve the widening of the existing unformed shoulder area and the erection of associated regulatory signage.

### **CONCLUSION**

This matter is being reported to Council for direction on policy and technical issues as well as to ensure transparency of process in the assessment and determination of a development application that relates in part to Council owned land.

In relation to each of the specific issues the following provides a summary:



- The proposed variations from Councils adopted DCP 30 - Culburra Beach as outlined above are considered reasonable given the general aims and objectives of the plan will still be met. However, it is considered that the northern façade of the proposed building needs to be further enhanced through the provision of additional windows, articulation, use of different materials and/or a combination of these methods. All other aspects of the development either comply with the DCP requirements or may be suitably conditioned in any issued development consent.
- The submitted VPA is considered acceptable and will provide a material public benefit for the Culburra Beach community. This conclusion is based on the grounds that the VPA complies with all legislative requirements with the works proposed by the VPA not impacting upon Council's capital works program. Consideration should be given to resolving prior to entering into the VPA that tenders will not be called for because of the extenuating circumstances.
- The alterations to the existing traffic network through the introduction of one way traffic movement, west to east, along Redbank Lane and one way, east to west, along Weston Street are considered acceptable with requirements for associated works such as construction standards and regulatory signage to be conditioned on any issued development consent.

E J Royston

**DIRECTOR, STRATEGIC PLANNING AND INFRASTRUCTURE GROUP**

Tim Fletcher

**DIRECTOR, DEVELOPMENT AND ENVIRONMENTAL SERVICES**

R.D Pigg

**GENERAL MANAGER**

**ADDENDUM REPORT OF GENERAL MANAGER**

**DEVELOPMENT COMMITTEE**

**TUESDAY, 6 OCTOBER 2009**

**DEVELOPMENT AND ENVIRONMENTAL SERVICES**

1. **Development Application for Medium Density Development (9 x 3 bedroom single storey dwellings) with associated car parking - Lot 337 DP 1077197 - Sullivan Street, Worrigege. Applicant: Christopher Robson. Owner: Bayou Land Pty Ltd. File DA09/1893**
- 

**PURPOSE OF THE REPORT:**

An application has been received for the development of 9 x 3 bedroom single storey medium density dwellings. The proposal does not meet the following areas of Council's Development Control Plan 71 Medium Density Housing:

- Acceptable solution A1 in Design Element 3.1.3 Site Density;
- Performance criteria P6 in Design Element 3.2.1 Streetscape;
- Acceptable solution A2 in Design Element 3.2.1 Setbacks;
- Acceptable solution A4 in Design Element 3.3 Building Siting & Design;
- Performance Criteria P2 in Design Element - 3.3.4 Car Parking Provisions and Dimensions; and
- Performance Criteria P3 in Design Element - 3.3.4 Car Parking Provisions and Dimensions.

The matter is being reported to Council as it involves consideration of multiple policy issues. Assessment of the applicant's alternative solutions is not supported by staff and the applicant has requested that the matter be referred to Committee for consideration. As such direction is sought from Council on these policy matters prior to the determination of the application.

**RECOMMENDED that: in respect of DA09/1893 for the proposed medium density development (9 x 3 bedroom single storey dwellings) with associated car parking - Lot 337 DP 1077197 Sullivan St, Worrigege;**

- a) **A variation of Acceptable Solution A1 in Design Element - 3.1.3 Site Density of Council's Development Control Plan 71 – Medium Density Housing be supported;**
- b) **A variation of Performance Criteria P6 in Design Element - 3.2.1 Streetscape, Building Appearance and Front Setbacks of Council's Development Control Plan 71 – Medium Density Housing not be supported;**
- c) **A variation of Acceptable Solution A2 in Design Element - 3.2.1 Streetscape, Building Appearance and Front Setbacks of Council's Development Control Plan 71 – Medium Density Housing be supported;**

- d) **A variation of Acceptable Solution A4 in Design Element - 3.3 Building Siting and Design of Council's Development Control Plan 71 – Medium Density Housing be supported;**
- e) **A variation of Performance Criteria P2 in Design Element - 3.3.4 Car Parking Provisions and Dimensions of Council's Development Control Plan 71 – Medium Density Housing not be supported;**
- f) **A variation of Performance Criteria P3 in Design Element - 3.3.4 Car Parking Provisions and Dimensions of Council's Development Control Plan 71 – Medium Density Housing not be supported;**
- g) **That the application be determined under delegated authority.**

#### **OPTIONS:**

- a) Resolve to support the recommendation and require compliance with Development Control Plan 71 – Medium Density Housing; or
- b) Resolve to support the application as submitted.

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

##### **Proposal**

- # The application proposes to construct nine single storey brick dwellings with tile roofs. Each of the proposed dwellings have three bedrooms, one bathroom, one laundry, lounge/dining area and kitchen. All units are provided with a single car garage, except unit 5 which has a double car garage. Stacked visitor parking is proposed in front of eight of the nine dwellings. Refer to **Attachment 'A'**.

##### **Background**

- # The applicant has undertaken a number of medium density developments in the Worrige area with an increasing number of variations to DCP-71 sought for each development. Due to the number of variations sought for this development, the applicant was requested to submit a performance assessment of the proposal against DCP 71. The assessment was submitted to Council on 18 August 2009 and a revised site plan removing the stacked parking was submitted on 28 August 2009. Refer to **Attachment 'B'**.

A number of further discussions were had during the assessment process with the applicant about non compliance with the performance requirements and acceptable solutions of DCP 71. The D&ES Group Director, Development Manager and assessment staff at various times recommended that the application be amended by reducing the number of units by one, revising the design of the development so vehicles could enter and exit in a forward direction, and relocating visitor spaces so they are not located in front of the building line. The applicant advised that the application would not be amended.

##### **The Site**

The subject site is located within a 2(c) residential zoned area (under SLEP 1985) within the locality of Worrige. The site is bounded on three sides by Sullivan St to the east,

Riveroak Rd to the north and Almondpark Rd to the south. The land slopes gently from its south western corner to its north eastern boundary, is currently vacant contains no established trees/vegetation and has an area of approximately 2,567m<sup>2</sup>. The majority of new development occurring in close proximity to the subject site is single storey detached residential dwellings. There is a park/reserve opposite the site on the eastern side of Sullivan St.

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

### **Policy Issues**

Development Control Plan No. 71 – Medium Density Housing (DCP 71): An assessment of the submitted proposal against the applicable development standards contained in DCP 71 has indicated that the proposal does not comply with the requirements /acceptable solutions as detailed below:

- 3.1.3 Site Density: The submitted proposal does not meet acceptable solution A1. Acceptable solution A1 provides a table showing the site area required for each dwelling based on its floor area. In the Statement of Environmental Effects, the applicant has calculated the site area on 9 medium sized dwellings (though the submitted plans identify 3 large and 6 medium sized dwellings). An assessment of the submitted floor plans has identified the dwellings as 5 large and 4 medium sized requiring a total site area of 2610m<sup>2</sup> while the property is only 2567m<sup>2</sup>.

*Applicant's Comment:* The site area required for a medium dwelling of 85m<sup>2</sup> is 170m<sup>2</sup> and a large dwelling of 86m<sup>2</sup> is 240m<sup>2</sup> giving a site area difference of 90m<sup>2</sup> for a 1m<sup>2</sup> increased floor area. The increase in site area required should be gradual and based on site area required per 1m<sup>2</sup> floor area. Using a gradual increase in site area required per floor area for each unit, the proposal meets the site area required. The site is clearly not over developed as landscaping requirements have been met.

*Comment:* Though there may be merit in the applicant's suggestion, the DCP gives no guidance on when, if or how gradual increases should be calculated. However, as Unit 1 is less than 1.5m<sup>2</sup> over the 85m<sup>2</sup> limit and there is adequate separation between each unit and the landscaping and private open space provisions have been met it is reasonable to consider it a medium sized dwelling for the purposes of calculating site area. This then gives 5 medium and 4 large dwellings requiring a site area of 2520m<sup>2</sup> which meets the acceptable solution. The variation as submitted is supported.

- 3.2.1 Streetscape, Building Appearance and Front Setbacks: The submitted proposal and revised proposal do not meet performance criteria P6 which states that parking and garages do not dominate the frontage of the development. The revised plans locate a visitor parking space in front of each of the eight units with street frontage.

*Applicant's Comment:* The market prefers road frontage where possible. The single access driveways proposed are on low volume straight streets with good visibility.

*Comment:* Eight of the units are provided with a single garage. The additional visitor parking spaces required by DCP-71 are proposed to be provided next to the single car garage and in front of the building line of each unit resulting in eight units having parking spaces in front of the building line and in close proximity to the front property

boundary thereby dominating the street frontage. Three of the parking spaces are also at an angle to the street which may result in an unsafe situation as vehicles reverse across the footpath at an angle where pedestrian and traffic movements cannot be easily monitored. The proposal as submitted is not supported and the design should be amended so that the majority of parking spaces are provided behind the building line and are perpendicular to the road to permit safe manoeuvring on and off the site.

- 3.2.1 Streetscape, Building Appearance and Front Setbacks: The submitted proposal does not comply with Acceptable Solution A2 for primary front setbacks. The applicant has not nominated primary (5.5m setback) and secondary (3.5m setback) frontages for the development. Generally the proposed dwellings fronting onto Riveroak Rd and Almond bark Rd (considered to be the primary frontage) are setback 5.5m, with a portion of unit 2 setback 4.6m onto Riveroak Rd and a portion of unit 7 setback 4.8m onto Almond bark Rd. The secondary frontage setbacks onto Sullivan St are 5.5m and 5m (unit 7), 5.5m and 4.8m (unit 6), 5.5m and 4m (unit 4) and 4.6m (unit 3).

*Applicant's Comment:* The articulation of the buildings increases the visual interest and suits the streetscape. The encroachment is minor and is offset by the increased setbacks on the secondary frontage. The buildings frontage and entries address the street.

*Comment:* The encroachments as proposed by the applicant are considered to be 'point encroachments' with the majority of the frontages of dwellings 2 and 7 being setback the 5.5m required. It is considered that the proposed development in the area of the non-compliance will still be able to achieve the underlying objectives of this clause (i.e. new development enhances and makes a positive contribution to the character of the existing streetscape) and complies with the performance criteria (P1, P2, P3, P8 and P9) in that the design of the development with detached dwellings is compatible and sympathetic to existing development. The front setbacks proposed for the dwellings are not identical with adjoining dwellings within the development with the proposed setbacks creating street variety and interest. The variation as submitted is supported.

- Clause 3.3 Building Siting & Design: The submitted proposal does not comply with Acceptable Solution A4 of 3.3.1 in that one dwelling (unit 9) encroaches into the 1.5m minimum setback requirement for walls that have windows to a habitable room. This section of the dwelling proposed to be setback a minimum of 1m from the western boundary to the lounge room.

*Applicant's Comment:* The applicant has acknowledged the proposal's non compliance with the rear setback acceptable solution though the applicant has not supplied any supporting documentation to demonstrate compliance with the performance criteria for this part of the application.

*Comment:* The encroachment as proposed by the applicant (i.e. 1m setback) is considered to be acceptable in that there is no significant loss of amenity to surrounding dwellings. The majority of this face of the dwelling (11m in length) is setback 2.43m (allowable 1.5m) with the remaining 3.7m setback 1m from the boundary being 25% of the length of that face. The encroaching window is orientated

towards the north-west to provide northern sunlight into the lounge room. Some privacy will be provided by the adjoining 1.8m high colourbond fence that is proposed along the western boundary with the variation at this point providing some articulation of the building along this elevation. The variation as submitted is supported.

- Clause 3.3.4 Car Parking: The submitted proposal does not comply with Performance Criteria P2 & P3 of Clause 3.3.4 which requires that the design of driveways and car parking areas are to have regard to the safety of pedestrians, cyclists and vehicles (P2) and vehicles are able to enter and exit the site in a forward direction and stack parking arrangements are avoided (P3).

*Applicant's Comment:* The design provides single access driveways of short length to most of the units and therefore, the danger of people reversing down long driveways has been eliminated. In addition DCP 57 and integrated housing designs permit stacked parking and therefore, so should DCP 71. Providing car parking spaces out the front of units improves security, convenience and visual surveillance. Council has approved numerous other medium density developments with direct road frontage.

*Comment:* The design proposes seven driveways with nearly all vehicles being required to reverse onto the street. The revised plan submitted on 28/8/09 removed the stack parking component. However, the parking layout is not acceptable as visitor spaces are located in front of the units with minimal separation between the parking space and the front property boundary. Three visitor spaces (units 3, 4 & 6) do not fit in front of the dwelling and so have been orientated at an acute angle to the footpath. This requires drivers to reverse across the footpath at an angle that reduces safety as visibility of oncoming traffic and pedestrians is impaired. Vehicles should be able to exit the site at an angle perpendicular to the road whilst travelling in a forward motion so that adequate visibility is afforded in both directions. The access to units 4, 5 & 6 of Sullivan St is considered to be potentially unsafe due to the angled parking (units 4 & 6), width of driveway and shared driveway access. This is of particular concern as Sullivan St is a collector road in the estate with a pedestrian footpath.

No units, except unit 5, are able to safely exit the site in a forward direction. While Council has approved other medium density developments with dwellings having direct road frontage and vehicles reversing onto the street, this design results in nearly 90% of vehicles having to reverse onto the street in a potentially unsafe manner and it is considered not to meet the performance criteria of this element of the DCP. This variation as submitted is not supported.

### **Community Consultation**

In accordance with Council's Community Consultation Policy, the development application was notified to adjoining and adjacent land owners (75m buffer) during the period 17/8/09 to 1/9/09 and no submissions were received.

### **FINANCIAL CONSIDERATIONS:**

Nil.

## **CONCLUSION**

The application is made as medium density development but fails to provide adequate justification for not meeting the design elements of the DCP resulting in numerous variations proposed that do not adequately address the performance requirements and acceptable solutions particularly in regard to traffic and pedestrian safety.

Whilst certain of the variations sought can be supported, it is considered that the cumulative effect of all the variations sought is unreasonable and will contribute to undermining core elements of medium density housing policies encompassed in DCP 71.

The nature and form of the proposed development is more closely aligned with conventional residential subdivision and houses. However, the proposal is based on a density of 1 dwelling/lot on considerably less than 300m<sup>2</sup> rather than Council's minimum lot size of 500m<sup>2</sup>. It is noted that for integrated housing, Council requires an average lot size of at least 350m<sup>2</sup>.

Therefore, the gradual creep of lowering the development standards contained within DCP 71 by lodging multiple variation requests should be addressed not on an individual application basis but rather by an overall review of the policy itself to ensure that the development standards are aimed at achieving the forms of developments that Council wish to encourage.

Tim Fletcher

**DIRECTOR, DEVELOPMENT AND ENVIRONMENTAL SERVICES**

R.D Pigg

**GENERAL MANAGER**

## **CONFIDENTIAL BUSINESS PAPER AGENDA**

### **GENERAL MANAGER**

- 1. Land & Environment Court Appeal - DA08/1258 - 75 site Caravan Park, Manyana, Owner/Applicant: Berringer Road Pty Ltd**

**Reason**

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

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