

SHOALHAVEN CITY COUNCIL

DEVELOPMENT COMMITTEE

To be held on Tuesday, 2nd June, 2009
Commencing at the conclusion of the Crown Reserve, Community and Commercial Operations
Committee (commencing at 4.00pm).

27th May, 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, 2nd June, 2009 commencing at the conclusion of the Crown Reserve, Community and Commercial Operations Committee (commencing at 4.00pm)** for consideration of the following business.

R D Pigg
General Manager

Membership (Quorum – 7)

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

BUSINESS OF MEETING

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

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

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

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

Cell Phones:

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

LOCAL GOVERNMENT ACT 1993

Chapter 3

Section 8(1) - The Council's Charter

(1) The council has the following charter:

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

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REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 2 JUNE 2009

STRATEGIC PLANNING AND INFRASTRUCTURE

1. Biodiversity Certification of the Shoalhaven Local Environmental Plan 2009 **File 33363-07 (PDR)**

Purpose of the Report:

This report updates Council on the investigations into the potential biodiversity certification of Shoalhaven Local Environmental Plan 2009 (SLEP 2009) and discusses options for the project.

RECOMMENDED that Council:

- a) **Advise the NSW Department of Environment & Climate Change that it will not be pursuing biocertification of SLEP 2009 at this point.**
- b) **Continue to investigate biodiversity certification of SLEP 2009 in the future through an amendment to the plan, if possible.**

Options:

- 1) Council resolve not to pursue biodiversity certification of SLEP 2009.
- 2) Council staff, as a matter of urgency, meet with NSW Department of Environment & Climate Change (DECC) to discuss how to achieve biodiversity certification of the Nowra Bomaderry Structure Plan (NBSP) Study Area component of the SLEP 2009.
- 3) Council investigate biodiversity certification of SLEP 2009 in the future through an amendment to the plan, if possible (if legislation changes).

Details/Issue:

Background

Under provision Section 126G of the *Threatened Species Conservation Act (TSC) Act*, the Minister for the Environment has the ability to confer certification on an Environmental Planning Instrument (EPI) (including an LEP) if the Minister is satisfied that the EPI will lead to the overall improvement or maintenance of biodiversity values, including threatened species. This affectively means that State threatened species issues are dealt with at the Strategic level and not through individual development applications.

Biodiversity certification of an EPI is a voluntary process that lasts for 10 years and aims to:

- Provide certainty to landowners regarding potential land uses
- Streamline the development approval process
- Secure conservation outcomes for high value natural environments
- Remove the requirement for threatened species assessments

The Department of Environment and Climate Change (DECC) provided funding to Council in 2007 to undertake initial threatened species and biodiversity assessments of the potential future living areas in the Nowra-Bomaderry proposed under the Structure Plan to help determine whether biodiversity certification of the area was feasible. DECC then provided the technical assistance to determine an appropriate development footprint for each of the future living areas identified in the NBSP. This was done using the Property Vegetation Plan (PVP) and Biobanking “tools” specified in the *TSC Act* and the Native Vegetation Regulation. The outcomes were discussed with Council staff and adjustments were made to the future living areas that are now known as “release areas” in the draft SLEP 2009. It was also agreed that one small area located at Mundamia would be excluded from biodiversity certification process (not the LEP) as the tools indicated it was environmentally sensitive habitat for the Glossy Black Cockatoo and caused a “red light” response from the tools.

Based on the agreed development/conservation boundaries for the Nowra Bomaderry release areas, DECC determined that the Nowra Bomaderry component of the SLEP 2009 could meet the ‘maintain and improve’ test as long as offsets could be provided, and therefore has the potential to be biodiversity certified.

Update from DECC

Council has been awaiting advice from DECC to determine whether all required biodiversity offsets (to allow vegetation clearing to facilitate development as permitted in the Nowra Bomaderry component of the LEP) can be accommodated via the zoning and protection of Council owned land and/ or private land where land release is to occur. It was initially envisaged that if this was the case, mapping and associated clauses would then be included in SLEP 2009.

However, DECC has advised that the process has been altered with references to biodiversity certification no longer being contained in LEPs. This is the process being followed for Wagga Wagga City Council’s draft comprehensive LEP which is the closest to obtaining biodiversity certification.

The model used for Wagga Wagga is relatively simple with the offsets located on Council land being dealt with by Voluntary Planning Agreements (VPAs) between developers and the Council. This simple model is easily applied to Wagga Wagga and other similar council areas which have limited native vegetation, small offset requirements and fewer landowners in their release areas.

Implications for Shoalhaven

The current model being followed at Wagga Wagga is difficult to apply in Shoalhaven for the following reasons:

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- Its simplicity does not address certain aspects that are relevant to Shoalhaven;
 - There is a greater extent and diversity of native vegetation and threatened species found in Shoalhaven;
 - There are numerous large areas of vegetation required as offsets and the benefit of these to the private landowners in the release areas is potentially difficult to recoup via payment;
 - There is a relatively high number of landowners in each of the release areas.

The only other Council area that is progressing with biodiversity certification at this time is Albury which is also located in the South West Slopes bioregion. This bioregion is one of the most cleared and fragmented in NSW, with much of the remaining vegetation restricted to less productive areas such as steep ridgelines and rocky hills. Other coastal Councils, such as Bega and Eurobodalla which have similar environmental characteristics to Shoalhaven, were provided with funding to investigate biodiversity certification but neither has proceeded with the process.

It is concerning that under the current process there would be no tie in the LEP to biocertification. There will be no maps or clauses in the LEP to inform landowners, developers and the community, that a part of the City is biodiversity certified. This is especially problematic for Shoalhaven as any biodiversity certification would be partial certification only, with the red light area at Mundamia and all areas outside the Nowra-Bomaderry area being excluded.

As biodiversity certification is based on maintaining and improving biodiversity, management plans are likely to be required for the offset areas, particularly those located on Council owned land. This could place a maintenance burden on Council which was proposed to be compensated by payments from the developers that would benefit from the offset through being able to clear vegetation and develop their land. Under the new model where VPAs are required, it is uncertain as to how this would still occur.

Timing is also a concern. The detailed biocertification report outlining the existing vegetation, the offsets required and other details would need to be exhibited with the Draft LEP. While Council has the background information to inform the report, it is uncertain whether DECC has the resources to produce this report in time to exhibit it with draft SLEP 2009. In this regard, Council previously resolved to pursue biodiversity certification only if it did not hinder the progress of the LEP. The current process has the potential to do so. It also has the potential to slow down land release under the LEP as VPAs would potentially need to be negotiated with multiple landowners.

More information is also required on whether the Federal Government would acknowledge the certification under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Federal Government has advised that it is also possible to biodiversity certify LEPs under the EPBC Act at the same time as LEPs are biodiversity certified at a State level. However, Council has not been advised of the process for achieving this and it is likely to require more detailed studies for Commonwealth listed species.

In principle, biodiversity certification is still considered to be a worthwhile process with many benefits for Council, the community and the development industry. However at this point, in order for Council to successfully implement biodiversity certification, a more

workable model is needed that includes integration of the biodiversity certification process into the standard LEP template or other State legislation.

So that the SLEP 2009 process is not delayed by biodiversity certification, it is worth investigating the possibility of biodiversity certification of the LEP at a later date, possibly in conjunction with a future amendment to the plan. It should be noted, however, that DECC has advised that it may not be possible for this to occur.

Economic, Social & Environmental (ESD) Consideration:

Biodiversity certification replaces site-by-site, development-by-development assessment of threatened species under the TSC Act using a landscape-wide strategic assessment. In general, it removes the need to undertake detailed threatened species impact assessments at the development application stage for the certified area of the LEP, reducing government regulation whilst strategically improving or maintaining biodiversity. It also provides more certainty to landowners and the community regarding potential land uses and the extent of development and clearing of vegetation.

If SLEP 2009 is not biodiversity certified, it will mean that developers may still need to undertake a 7 part test in accordance with Section 5A of the EP&A Act, 1979 to determine if a subject site is potential habitat for an endangered flora or fauna species or population. This will continue to impact on the cost and timing of development. It will also mean that environmental outcomes are assessed at a property level rather than an overarching strategic level.

In principle, biodiversity certification has the potential to provide legislated protection for significant flora and fauna in Shoalhaven, although in practice such a result, and the path to such a result, remains very uncertain at this stage.

Financial Considerations:

There are no immediate financial considerations for Council in that the grant given to Council to investigate biodiversity certification was not conditional on the LEP ultimately being certified and Council was not required to match funds.

If biodiversity certification of the LEP is achieved in its current form using VPAs, the VPAs may be a source of income to assist in managing offsets on Council land. However, the funding raised from VPAs, or another source, may or may not balance the cost to Council for the preparation and administration of the VPAs (or other source), any plans of management that may be required and possible ongoing maintenance of offsets.

2. Proposed Zoning of Jaspers Brush Air Field in Draft Shoalhaven Local Environmental Plan 2009 **File 33363-07 (PDR)**

Purpose of the Report:

To report the outcomes as requested by Councillors at the Briefing held 20 May 2009 to discuss the proposed zoning of Jaspers Brush Air Field in draft Shoalhaven Local Environmental Plan (SLEP) 2009.

RECOMMENDED that Council retain the current proposed RU1 Primary Production zoning under draft SLEP 2009.

Options:

The options as presented and discussed at the Councillor Briefing are:

Option 1 – Retain the current proposed RU1 Primary Production zoning in SLEP 2009.

Option 2 – Remove “air transport facilities” as a permissible use (with consent) from the overall RU1 Primary Production zone.

Option 3 – Change the zoning of the airfield under the yet to be exhibited draft LEP to SP2 Infrastructure (Aero Club).

Details/Issue:

A Notice of Motion was tabled at Council’s Ordinary meeting on 12 May 2009 proposing that the zoning of the Jaspers Brush Airfield, being Lot 1 DP 813335, be amended in the yet to be exhibited draft SLEP 2009 from zone RU1 Primary Production to zone SP2 Infrastructure (Aero Club) to allow for the continued use of the air field by the aero club but to prevent any intensification of aviation uses on the site.

At that meeting it was resolved that that the matter be referred to a Councillor Briefing. The Councillor briefing on this matter was held on 20 May 2009. This report outlines the outcomes of that briefing.

The current zoning and use of the site were discussed, as well as the history of the development application for the sky diving operation which was lodged in 2006 and subsequently withdrawn in 2008. This was followed by a discussion of the three options for the zoning of the airfield under draft Shoalhaven LEP2009. These discussions are summarised below.

Option 1: Retain the current proposed RU1 Primary Production zoning in SLEP 2009.

This option is consistent with the best fit approach set out in the “ground rules” adopted by Council for the preparation of SLEP 2009. The RU1 zoning for the site is included in the draft Plan which is currently with the Department of Planning (DoP) awaiting a Section 65 certificate to enable public exhibition.

As there is no equivalent for the current Rural 1(g)(Flood Liable) zone under the State Government’s ‘Standard LEP Instrument’, the proposed RU1 Primary Production zone, with a “flooding overlay”, is the most appropriate “best fit” zone for the rural area in the vicinity of the air field as it allows for agriculture as well as a range of uses currently permissible in a rural zone. This includes ‘air transport facilities’ as a land use permissible with consent. Should the LEP process proceed as per this option, any development application for aviation related uses on the site would be subject to a detailed Section 79c assessment and Council would have the ability to impose conditions for any consent granted to minimise adverse impacts on the surrounding land. This option was presented as the preferred option and appeared to be favoured by the majority of Councillors present at the briefing.

Option 2 – Remove “air transport facilities” from zone RU1 Primary Production

This approach is not supported as it is contrary to “best fit” approach for the LEP and would prohibit air transport facilities anywhere in the RU1 zone in Shoalhaven, which is the most likely zone for an airstrip/ airfield to be located in the future.

Option 3 – Change the zoning of the airfield to SP2 Infrastructure (Aero Club)

This option would allow for continued use of the site by the Aero Club and may limit intensification of aviation uses on the site. However, this option would potentially be inequitable on the basis that it would represent a ‘back zoning’ of a privately owned site, with development limited to aero club uses only. Therefore, this option could result in the sterilisation of the property and remove the potential for any commercial aviation use of the only air field currently located in Shoalhaven that is not under the control of the Department of Defence. For these reasons, this option was not favoured by the majority of Councillors present at the briefing. It is also unknown whether the Department of Planning would accept the use of the SP2 zone to facilitate solely an Aero Club

It should be noted that timing would be an issue for options 2 and 3 as draft SLEP 2009 is currently with the DoP awaiting issue of a Section 65 certificate to enable public exhibition. If a Section 65 certificate is issued prior to this issue being resolved by Council, Council would have to address this matter after the public exhibition of draft SLEP 2009 to make the changes outlined in options 2 and 3. This could lead to delays in the plan process as the draft LEP may need to be re-exhibited if the change is considered to be significant.

Economic, Social & Environmental (ESD) Consideration:

The recommended option has potential to raise economic, social and environmental considerations but these are best considered at a development application stage rather than at the LEP stage.

Financial Considerations:

There are no financial considerations for this matter.

3. Review of Development Contributions Policies File 1057 & 34468 (PDR)

Purpose of the Report: To review the following Council Policies. (Attachment A)

- a) Payment of Development Contributions by Instalments (under special circumstances) (previously referred to as Section 94 Contributions by Instalments (under special circumstances)) – Policy POL08/415.
- b) Voluntary Planning Agreements – Policy POL08/417

This report also informs Council of its current approach to development contributions for Seniors Living Style Developments.

RECOMMENDED that:

- a) **Council adopt the amended Policies as detailed in this report;**

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- b) **Council incorporate the amended Policies in its new Contributions Plan; and**
 - c) **Council consider the inclusion of a reduction in Development Contributions for Seniors Living Developments in its new Contributions Plan.**

Options:

Council may:

- a) Resolve to adopt the recommendation in the reports;
- b) Resolve to change a recommendation; or
- c) Resolve to make amendments to individual policies.

Details/Issue:

- a) *Development Contributions by Instalments (under special circumstances) (previously referred to as Payment of Section 94 Contributions by Instalments (under special circumstances))*

The purpose of this Policy is to enable the payment of Development Contributions by instalment under certain circumstances.

On 30th January 2007, Council resolved to permit the payment of Development Contributions by instalments over 5 years when special circumstances can be demonstrated for tenants or businesses operating in the Shoalhaven Local Government Area. This is in addition to the option of deferred payment of development contributions already allowed for in Council's Contributions Plan.

This Policy sets out the requirements of both the applicant and Council staff members for dealing with the payment of development contributions by instalments.

A recent change to the Environmental Planning and Assessment Act will make reference to "Section 94" redundant. Therefore, it is suggested that wording be amended from "Section 94 Contributions" to "Development Contributions".

The following changes are recommended:

- (i) The name of the Policy be changed from "Payment of Section 94 Contributions by Instalments (under special circumstances)", to "Payment of Development Contributions by Instalments (under special circumstances)"; and
- (ii) All references to "section 94 contributions" throughout the Policy be changed to "Development Contributions".

- b) *Voluntary Planning Agreements*

The purposes of this Policy are:

- To establish a framework governing the use of planning agreements by Council;
- To ensure that the framework so established is efficient, fair, transparent and accountable;

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- To enhance planning flexibility in the Council's area through the use of planning agreements;
 - To enhance the range and extent of development contributions made by development towards public facilities in the Council's area;
 - To set out the Council's specific policies on the use of Planning Agreements; and
 - To set out procedures relating to the use of Planning Agreements within the Council's area.

It is recommended that the Policy be incorporated into the Shoalhaven Contributions Plan 2010 and amended at that time to reflect forthcoming amendments to the EP&A Act 1979.

New Contributions Plan

Council at its meeting of 14th April 2009, resolved in part (Min09.422) that:

c) Priority in Contributions Planning be given to Contributions Plan Amendments already resolved by Council and the preparation of the new Contributions Plan as required by changes to legislation.

In accordance with the above resolution, it is anticipated that "standalone" policies such as the "Payment of Development Contributions by Instalments (under special circumstances)" and Voluntary Planning Agreements will be incorporated as administrative provisions in the new Contributions Plan.

Seniors Living Developments

The current Council position is not to reduce Development Contributions for Seniors Living style development. This position was determined in response to a report presented to Council in 2007 and the subsequent Council resolution (MIN07.192) not to prepare a Policy allowing for a reduction in Development Contributions for this style of development. The Council report and associated resolution form Attachment B.

As part of the recent Part 3A approval of Bayswood Village by the Department of Planning, the Department has indicated that Council's current position is not reasonable to apply to the Bayswood Village application given that some projects in the CP have no nexus to seniors living style developments.

Through development of the new Contributions Plan, it is suggested that Council consider the inclusion of a reduction in Development Contributions for Seniors Living Developments, consistent with the previous report to Council.

Economic, Social & Environmental (ESD) Consideration:

These Policies assist in applying Council's Contribution Plan, an instrument designed to share the costs of essential Community Infrastructure, in a reasonable and equitable manner.

Financial Considerations:

The re-adoption of the Development Contributions by Instalments (under special circumstances) (previously referred to as Payment of Section 94 Contributions by Instalments Policy) will allow Council to continue to provide the option of payment of development contributions by instalments. Offering this option has no long term financial burden on Council.

The re-adoption of the Voluntary Planning Agreements Policy will continue to allow Council to use planning agreements as a way of providing community infrastructure. The policy intends to protect Council's interests while dealing with developers in a transparent, fair and accountable way.

4. **Ulladulla CBD Traffic Strategy**

File 8168, 3904-03, 1373, 29521 (PDR)

Purpose of the Report:

The purpose of this report is to advise Council in relation to traffic options and a preferred traffic strategy for the Ulladulla Central Business District, in particular addressing Boree Street.

RECOMMENDED that:

- a) **two-way traffic flow be maintained in Boree St and traffic calming and additional pedestrian facilities be provided**
- b) **the 1996 traffic management strategy for the Ulladulla CBD be reviewed**
- c) **where necessary, the infrastructure requirements resulting from the traffic management strategy review be considered in the current review of DCP 56 and the draft Section 94 Contribution Plan**

Options:

1. Implement the traffic management strategy adopted by Council in 1996.
2. Implement an interim traffic management strategy for the Ulladulla CBD, particularly addressing Boree St, which includes the provision of additional infrastructure, owing to the delay in the construction of the Ulladulla Bypass. (Recommended.)
3. Do nothing and resolve traffic matters on a reactive basis.

Details/Issues:

Council resolved at its meeting on 10 March 2009 that

“the General Manager urgently report on traffic options and a preferred traffic strategy for the Ulladulla Central Business District, in particular addressing Boree Street from the view of both traffic flow and pedestrian safety.”

Attachment “A” provides details of the issues which are summarised below.

Background

In 1996 having reached agreement with RTA, Council ultimately resolved to adopt a strategy for the management of traffic in the Ulladulla CBD (Tuesday 27th August, 1996 Council Ordinary Min96.1971 270896).

This became an interim traffic management strategy as it made provision for additional infrastructure until the Ulladulla Bypass was constructed and included the following stages:

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- Roundabout construction at the Highway/Deering St intersection (by 1997)
 - Upgrading St Vincent St (by 1997)
 - Median construction Green to Wason Sts (by mid-1997)
 - Roundabout construction at Golf Ave and St Vincent St intersections with the Highway (by 1998)
 - Traffic signals at the South St/Highway intersection (by 2000) and ultimately
 - Construction of the Ulladulla Bypass (by 2007)

The RTA has undertaken all of its capital works commitments in accordance with the adopted interim traffic strategy for Ulladulla CBD with exception of the South Street traffic signals and the Ulladulla Bypass. As at April 2009, RTA has still not provided a timeframe for either of these works.

In relation to the South Street traffic signals, RTA advised these works could be deferred due to the success of the interim traffic strategy in re-distributing traffic away from South Street to Deering Street and ultimately to Parson Street as well. RTA had advised that it would continue to monitor the situation at South Street and implement the signals when required. However, current traffic volumes and accident rates at the intersection meet the RTA's own guidelines for immediate installation of traffic signals. Consequently, the RTA could fund these works and not rely on developer contributions or Council funds for their installation but there is no recent commitment.

Amendments to DCP 56

- # Minor amendments to DCP 56 (detail of traffic facilities implementation) may be desirable to reflect the preferred traffic management strategy until the Ulladulla Bypass is constructed. (See attached report for details – Attachment "A"). However this issue can be addressed in the review of the DCP which is currently underway.

Boree Street

It is recommended that Boree Street remains as a two-way traffic street after consideration of the following:

- Road width
- Road grade
- Expected traffic speed
- Parking
- Traffic movements and volumes

Additional traffic calming and pedestrian facilities could be included in future as amendments to DCP 56.

Note: The current proposal for the Woolworths Supermarket provides for left in/left out off the Princes Highway.

Economic, Social & Environmental (ESD) Consideration:

Warrants have already been met for the provision of traffic signals at the intersection Princes Highway / South Street. Provision of traffic signals at this junction would reduce the cost of road crash and trauma and improve the level of safety efficiency and accessibility within the town centre.

The provision of an Ulladulla Bypass would provide substantial improvement to traffic conditions in the Ulladulla town centre, in turn reducing travel costs, improving safety and providing substantial environmental benefits (reduced delays, congestion and vehicle kilometres travelled means reduced omissions). This is particularly so in peak periods.

As there is uncertainty about the Bypass construction, the interim traffic management strategy needs to be confirmed and this may be best done by reviewing the original concepts and assumptions of the 1996 traffic management strategy.

Financial Considerations:

Funding has not been budgeted to undertake any additional traffic facilities works in and around the Ulladulla CBD, although Council has recently (December 2008) adopted a resolution to prepare a Section 94 Contributions Plan.

If a Bypass is not provided in the foreseeable future, determining an expansion of the original 1996 Ulladulla CBD traffic management strategy to include additional works that offset the adverse impacts of not constructing a Bypass will need to be agreed between Council and RTA, including a plan of how these additional works are funded.

5. Huskisson Town Centre Contributions Plan

File 1626-02 (PDR)

Purpose of the Report: To seek Council endorsement of the Huskisson Town Centre Contributions Plan for public exhibition.

RECOMMENDED that:

- a) **Council endorse the draft Huskisson Town Centre Contributions Plan for public exhibition for a minimum of 28 days;**
- b) **Notice of exhibition be placed in local newspapers;**
- c) **The draft Huskisson Town Centre Contributions Plan be placed on Council's internet site with easy links to make the comments electronically;**
- d) **The draft Plan be forwarded to relevant Community Consultative Bodies; and**
- e) **A further report on the draft Huskisson Town Centre Contributions Plan be submitted to Council after the public exhibition period.**

Options:

Council may choose to:

- a) **Endorse the draft Huskisson Town Centre Contributions Plan for public exhibition for a minimum period of 28 days**

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- b) Seek amendments of the draft Huskisson Town Centre Contributions Plan prior to public exhibition
 - c) Not endorse the draft Huskisson Town Centre Contributions Plan.

Details/Issue:

Background

Council resolved on 8th July 2008 to prepare a draft Contributions Plan for the Huskisson Town Centre, following the adoption of Amendment 3 to Development Control Plan 54 – Huskisson Town Centre and the completion of a Concept Design for Huskisson Town Centre (TPG 2008). The Council Report pertaining to this resolution is provided as Attachment A. Whilst Council previously resolved to exhibit a draft Plan, further amendments to the DCP were foreshadowed, so it is considered prudent to allow Council to view the draft Plan prior to exhibition.

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

On 5th May 2009, draft Amendment No. 4 to DCP 54 was reported to Council's Development Committee and subsequently adopted. The Amendment makes some changes to the DCP, however the assumptions which form the basis of the draft Contributions Plan are consistent.

Draft Huskisson Town Centre Contributions Plan

The purpose of the draft Huskisson Town Centre Contributions Plan (CP) is to seek contributions for demand created by development for the provision of essential community infrastructure in the vicinity of the Huskisson Town Centre.

The Scope of Works in the draft Plan is based on Development Control Plan (DCP) No. 54 (Amendment No. 3) Huskisson CBD area. The proposed works are detailed in Sections 11-15 of the draft CP and shown on the Infrastructure Plan provided as Attachment B.

It has been calculated that existing development will generate 51.2 per cent of the demand and is detailed in Section 10 of the draft CP. Therefore, this proportion will be funded by Council. The remaining 48.8 per cent of demand will be apportioned to future development. Council will be required to contribute to the projects, as detailed in the table below.

The proposed project costs, Development/Council share and priority are outlined in the table below. Given the nature of the work required to complete these priority projects, it is expected that project delivery may overlap. The table also lists proposed contributions rate on a \$ per equivalent tenement (ET) basis.

Project	Project cost	Development Share	Contribution Rate per ET	Council Share	Priority (Higher to Lower)
Huskisson Town Centre Service Lanes	\$420,000	\$217,560	\$1,661	\$202,440	1
Huskisson Town Centre Pedestrian and Traffic Facilities	\$5,171,454	\$2,523,670	\$3,055	\$2,647,784	2
Huskisson Town Centre Car Parking	\$778,048	\$778,048	\$2,309	\$0	3
Huskisson Town Centre Northern Section of Currambene Street	\$1,421,025	\$693,460	\$840	\$727,565	4
Huskisson Town Centre Drainage	\$905,772	\$461,038	\$772	\$444,734	5
Total	\$8,696,299	\$4,673,776	N/A	\$4,022,523	N/A

In regard to car parking, further review has resulted in a revised estimate of costs and contribution rates, being a combination of new parking spaces in road reserves and recoupment of Council expenditure at the Owen Street car park. The draft Plan proposes that car parking be provided on-site for residential development and commercial development of large sites within the Town Centre, thereby averting the need for Council to acquire additional land for the purpose.

Whilst the capital works projects in the draft CP are identified separately for administrative purposes, the CP allows for contributions to be pooled and progressively applied to the projects of highest priority as development occurs, offering greater flexibility for Council to respond to the infrastructure demands of development.

Economic, Social & Environmental (ESD) Consideration:

The proposed works identified in the draft CP will be constructed using best practice industry standards. This will ensure that economic, social and environmental considerations are appropriately considered at the time of development. One objective of the CP is to ensure equitable sharing of the costs of essential community infrastructure.

Financial Considerations:

The draft CP allows Council to collect Development Contributions to assist in the funding of Community Infrastructure within the Huskisson Town Centre. The draft CP identifies 5 projects which Council will be able to collect contributions for. The contribution rates are summarised in this report and detailed in Section 20 of the draft CP. Council funding required to match Development Contributions will need to be considered in future capital works planning.

E J Royston
DIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE

R D Pigg
GENERAL MANAGER

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 2 JUNE 2009

DEVELOPMENT AND ENVIRONMENTAL SERVICES

6. Review of the Swimming Pools Act 1992.

File 21027

PURPOSE OF THE REPORT:

The purpose of this report is to advise Council that the Department of Local Government has, as part of the review of the Swimming Pools Act 1992, released an Options Paper and is seeking submissions on possible amendments to the Act.

RECOMMENDED that a submission consistent with the comments in this report be forwarded to the Department of Local Government prior to the close of the submission period on 12 June 2009.

OPTIONS:

- a) A submission consistent with the report be forwarded to the Department of Local Government prior to the close of the submission period on 12 June 2009; or

Comment: This is the recommended option.

- b) Council not support all the recommendations of the Options Paper outlined in the report and a submission to this effect be forwarded to the Department of Local Government prior to the close of the submission period on 12 June 2009; or

Comment: This is not the recommended option. If Council formed the view that some of the recommendations in this report should not be supported, Option b) should be adopted.

- c) Council not provide a submission.

Comment: The report recommends support for a number of the recommendations to amend the Swimming pools Act as outlined in the Options Paper. If Council formed the view that the recommendations in this report should not be supported and that the Act should not be changed, Option c) should be adopted.

DETAILS/ISSUE:

On 29 July 2005 the Department of Local Government advised that a review of the Swimming Pools Act 1992 had commenced and sought submissions from Councils. On

31 August 2006 the Department released a discussion paper and sought comments on possible changes to the legislation.

On 16 January 2007, Council forwarded a submission to the Department providing information on a number of aspects in the discussion paper including mandatory swimming pool registers, compliance certificates and periodic inspections of swimming pools by Councils.

The Department has now advised that, as part of the review of the Swimming Pools Act, an Options Paper has been released to seek an indication of the level of support for possible amendments to the Act.

Recommendations in the Options Paper

The recommendations in the Options Papers are outlined below and contain some explanatory information and comments on the recommendations for inclusion in a Council submission to the Department of Local Government. The recommendations and comments outlined below need to be read in conjunction with the Options Paper - see **Attachment 'A'**.

Recommendation 1:

It is recommended that the current definition for "swimming pool" be retained and that there is no change to the scope of application of the Act. Consideration could be given to clarifying that the definition for swimming pool refers specifically to the structure or vessel itself to remove confusion.

Comment: The Act currently applies to pools on properties with residential buildings including moveable dwellings, hotels and motels but excludes pools on public land. The Act also covers spa pools (but not spa baths), though there are provisions for an exemption for barriers to spa pools. It is recommended that this recommendation be supported.

Recommendation 2

It is recommended that further consideration be given to removal or amendment of the current exemptions to specific pool barrier requirements in particular situations with a view to eliminating apparent inconsistencies.

Comment: Although the Act requires pools to be surrounded by a child resistant barrier, there are a number of specific exemptions to this requirement in the following cases:

- "existing" swimming pools (those constructed or commenced before 1 August 1990);
- pools on very small properties (area less than 230m²);
- pools on large properties (area greater than 2 ha); and
- pools on waterfront properties.

Generally in these cases pool fencing is not required to isolate the pool however requirements do apply to restrict access from the dwelling on the site and this is generally limited to locks and the like on windows and doors.

It is considered that all pools to which the Act applies should be subject to same child resistant barrier requirements and the current exemptions within the Act should be removed.

There are a number of ways in which this could be achieved, for example, the fencing requirements could apply to only new pools and fencing/barrier requirements would be addressed at the development application or Complying Development Application stage.

If it was proposed to require existing pools that were previously exempt to be made compliant with barrier requirements this could be required at the time of sale of the property. If the requirements are to be applied retrospectively to existing previously exempt pools and inspection/certification is required by Council it is important that Council's are able to be adequately reimbursed for cost of providing this service.

If it is proposed that third party accredited certifiers carry out the inspections and issue certifications, there are concerns that non-compliant pools will be referred to Councils under the legislation for rectification and enforcement actions. This is currently the case under the building legislation with Councils being burdened with the associated costs with enforcement actions such as Orders. In these cases, mechanisms need to be put in place to enable Councils to obtain reimbursement of these costs from the parties involved.

Recommendation 3

If it were decided to remove one or more exemptions to specific pool barrier requirements in particular situations, then it is recommended that certain issues be addressed in relation to whether and how this will be implemented for existing pools.

Comment: It would seem appropriate that if exemptions are to be removed that existing pools should be upgraded to comply with the child resistant barrier requirements within a reasonable period of time, e.g. 2 years, or at sale of the property. In these cases property owners should be required within the legislation to obtain certification from Council at the appropriate time that the pool is compliant with the Act

Recommendation 4

Given the absence of evidence linking drownings to structures within swimming pool fences on residential properties, it is recommended that no change be made in regard to structures within the bounds of barriers around non-exempt private pools (i.e. that structures continue to be permitted within barriers surrounding such swimming pools).

Comment: Currently the Act prohibits structures within the bounds of the barrier that are not ancillary to the purpose of the pool for pools situated on properties with moveable dwellings, motels and hotels. There is no similar provision for private residential pools. The recommendation that there be no change to these requirements of the Act is supported.

Recommendation 5

No change is recommended in regard to the treatment of multiple pools in close proximity as a single pool in relation to barrier requirements.

Comment: For the purposes of the Act, adjacent pools are treated as a single pool in regard to requirements for the barrier. This recommendation is supported.

Recommendation 6

Given the links to the Environmental Planning and Assessment Act 1979, it is recommended that the matter of restriction of access to swimming pools under construction be pursued with the Department of Planning.

Comment: The Options Paper advises that it seems preferable to require restrictions on access to any construction to be addressed as part of the conditions imposed on the development consent for the swimming pool under the Environmental Planning and Assessment Act 1979. This recommendation is supported.

Recommendation 7

It is recommended that Section 19 be re-drafted to remove all references to doors, so that walls are allowed as part of a pool barrier provided there is no access at any time to the swimming pool.

Comment: It seems that there is some uncertainty about the interpretation of Section 19 in relation to doors in walls forming part of the barrier and it is proposed to re-word the section to make it clear that doors are not permitted in walls forming part of the barrier. The recommendation is to re-word Section 19 to make it clear that doors are not permitted in a wall forming part of the barrier is supported.

Recommendation 8

It is recommended that the exemption for spa pools from the general requirement for a pool barrier be retained.

Comment: Currently spa pools are exempted from the requirement to provide a barrier but other mechanisms are required such as a lockable lid. The recommendation to retain the current exemption for spa pools is supported.

Recommendation 9

It is recommended that further consideration be given to mandating compliance certificates at all or certain times (such as sale of property), in tandem with consideration of a pool register and inspection regime, but that any decision should weight up the real contribution that compliance certificates can make to pool safety against expected costs.

Comment: Currently under the swimming pool legislation a pool owner can request the Council to issue a compliance certificate as evidence of compliance. The Council must accede to this request if the pool complies with the legislation. The maximum fee for issuing a compliance certificate under the current legislation is \$50. Mandatory

compliance certificates at specified times, such as sale of the property, together with a regular inspection regime, should significantly increase the number of compliant swimming pools in the community, however there are potential resource implications for Councils and appropriate mechanisms need to be put in place to enable Councils to be adequately reimbursed for the costs involved. The current \$50 fee prescribed by the legislation is inadequate and does not cover the costs associated with inspecting the pool and issuing a certificate, particularly if the pool is found to be non-compliant and enforcement actions are required. A similar fee to the statutory fee of \$210 for a Building Certificate is considered to be more realistic and would more accurately reflect the cost of providing the certificate.

Recommendation 10

It is recommended that consideration be given to swimming pool inspections for specified occurrences (such as sale of property).

Comment: Currently within the Shoalhaven, swimming pools are inspected for compliance with safety barrier requirements during construction by the Principal Certifying Authority who may be Council or a private certifier. Council does not currently have in place a regular inspection regime of existing pools. Given that the Options Paper advises that the available data indicates that the level of compliance for existing pools is low, a program of regular inspections should be considered. There are concerns about introducing a form of third party inspection, such as private certifiers, particularly where high levels of non-compliance are likely. Particularly if enforcement action and associated costs for non-compliant pools becomes the responsibility of Councils and not the private certifiers, as is currently the case under the building legislation. If mandatory inspections are to be introduced, it is recommended that Councils provide the service and that appropriate mechanisms be put in place to enable costs to be recovered and that such costs become a “charge on the land” similar to rates.

Recommendation 11

It is recommended that all Councils be expressly required to develop a swimming pools register and, at the least, store information for all swimming pools installed or constructed in the future. Consideration should be given to developing a standardised format for the storage of information to provide compatibility across Councils and leaving open the possibility of a single pools register.

Comment: The development of a swimming pool register is generally supported as centralised data may have a number of on going benefits at both a local and state level, however there are potential resource implications for Councils that would need to be addressed in any mandated process.

Recommendation 12

It is recommended that:

- *Swimming pools be subject to certification for compliance with the Act at time of sale of the property; and*

-
- *Consideration be given to accrediting third party certifiers for assessment of swimming pools at time of sale of the property but not give them power to grant exemptions under Section 22 of the Act.*

Comment: There are concerns about the accrediting of third party certifiers if it is proposed that enforcement actions for non-compliant pools is to be the responsibility of Councils unless mechanisms are provided to ensure that Councils are able to adequately recoup costs associated with these actions. This is currently the case with enforcement actions under the building legislation where private certifiers are unable to issue orders requiring rectification of defects. In these cases the issuing of orders must be carried out by Council and is at the Councils cost.

Recommendation 13

Given the seriousness of the consequences of offences under the Act it is recommended that the maximum penalty for a penalty notice be increased to five penalty units, and that a corresponding increase be made for penalties where matters go to court.

Comment: Penalties for various offences are prescribed within the swimming pool legislation with the limit currently set at a maximum of 2 penalty units. Currently one penalty unit is \$110. An increase to five penalty units or \$550 is similar to the penalty limits for offences in other legislation administered by Councils and is supported in this case.

Recommendation 14

It is recommended that further consideration be given to legislating powers for Councils to do remedial works on swimming pool fences, in situations where there is an immediate hazard and where the owner is unable or unwilling to undertake the works, subject to appropriate controls, such as a court order.

Comment: These provisions previously existed and were removed in the 1992 Swimming Pools Act. The power to enter property and carry out works to give effect to an order is currently within the Local Government Act and is generally only used in extreme cases where all other efforts to have the property owner carry out the required works have failed. The reinstatement of this power to Council in the Swimming Pool Act would assist in having works carried out where all other means have failed.

Recommendation 15

It is recommended that the legislation of swimming pools be kept in a stand alone Act.

Comment: This recommendation is supported.

Recommendation 16

It is recommended that compliance certificates be used in preference to certificates issued under Section 149A of the Environmental Planning and Assessment Act 1979 if certification of swimming pools is made mandatory at point of sale of a property.

Comment: This recommendation is supported and that the prescribed fee of \$50 be increased to more accurately reflect the cost of inspecting the pool and issuing the certificate.

Recommendation 17

It is recommended that the question of whether swimming pool fences come under the scope of Section 149A of the Environmental Planning and Assessment Act 1979 be pursued with Department of Planning.

Comment: That is recommendation be supported.

Recommendation 18

It is recommended that the current approach to prescription for the regulation of swimming pools be retained with the possible exception of Section 5(a) of the Act, which would become superfluous if it is decided to legislate for a swimming pools register.

Comment: The current prescriptive approach to swimming pool legislation should be retained.

Recommendation 19

It is recommended that consideration be given to revising the diagrams in the Act for greater clarity, perhaps along the lines of those in the relevant Australian Standard, AS1926.

Comment: This recommendation is supported.

Recommendation 20

It is not recommended that there be further or changed definitions in the Act, other than those definitions of additional terms generated by changes elsewhere in the Act. The matter of definitions in the regulation will be addressed in the Regulatory Impact Statement.

Comment: This recommendation is supported.

Miscellaneous recommendations

- *It is recommended that no changes are made to the wording of Section 23 of the Act.*

Comment: This recommendation is supported.

- *It is recommended that Section 15(1) focus more on children and that the last line should read “as an effective and safe child-resistant barrier”.*

Comment: This recommendation is supported.

- *It is recommended that the provisions relating to the Pool Fencing Advisory Committee be removed.*

Comment: The Options Paper advises that the Pool Fencing Advisory Committee has not met for many years and provisions relating to it are no longer necessary. On this basis the recommendation is supported.

- *It is recommended that, to the extent possible, the Swimming Pools Act 1992 be made consistent with other legislation under which Councils have powers or responsibilities, in regard to provisions for*
 - *The use of the term “authorised officer” instead of the current “inspector” (Part 3 of the Act)*
 - *The current requirement for the certificate of identification to be in the “prescribed form” (Section 27(2) of the Act)*
 - *Additional technology that may be used for the service of notices (Section 34 of the Act).*

Comment: This recommendation is supported.

- *It is recommended that the name of the Act is not changed (for example, to the Pools Act).*

Comment: This recommendation is supported.

- *It is recommended that pool covers not be considered as a means to restrict access to swimming pools by small children.*

Comment: The Options Paper advises that pool covers were not designed as a safety measure and that under certain circumstances increase the hazard associated with swimming pools. This recommendation is supported.

- *It is recommended that proceedings to remedy or restrain a breach of the Act be allowed in either the Land and Environmental Court or the Local Court, as it would be convenient for Councils to be able to have all proceedings conducted in the same Court (Section 26 and Part 3 of the Act).*

Comment: This recommendation is supported.

- *Given the serious nature of the consequences of non-compliance with the Swimming Pools Act, it is recommended that consideration be given to expressly absolving Councils of the requirement to provide notice of an intention to issue an order to bring a pool into compliance with the Act (Section 23).*

Comment: This recommendation is supported.

- *It is recommended that requirements for signage on depth of water in swimming pools be pursued with the Department of Planning.*

Comment: This recommendation is supported.

-
- *It is recommended that further considerations be given to the need for inclusion of explanatory notes relating to Section 22.*

Comment: This recommendation is supported.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

Amendments to the legislation may create an increased economic burden on the community due to additional costs.

Proposed amendments to the legislation seek to have a positive social outcome by reducing to the number of drownings in swimming pools.

FINANCIAL CONSIDERATIONS:

There are potential financial implications for Council if the amendments to the Swimming Pools Act require that Councils develop a mandatory swimming register, carry out regular inspections of existing pools and issue compliance certificates at specified times such as sale of the property. There are also potential resource and financial implications for Council if third party accredited certifiers are introduced and Councils are required to enforce compliance where defects are identified, as is currently the case with private certifiers under the building legislation. Associated costs may be offset by enabling Councils to charge appropriate fees for these services.

7. DCP 91 - Single Dwelling and Ancillary Structures (Amendment No 1)

File 12856-03

PURPOSE OF THE REPORT:

The purpose of this report is to inform Council of the public exhibition of draft Amendment No 1 to Council's Development Control Plan (DCP) 91 - Single Dwellings and Ancillary Structures and recommend that the amendments to the DCP be adopted in the form in which it was publicly exhibited.

RECOMMENDED that:

- a) Council adopt draft Amendment No 1 to Council's DCP 91 - Single Dwellings and Ancillary Structures (POL08/303) as publicly exhibited; and**
- b) In accordance with Recommendation a) above, public notice is given on the adoption of this DCP pursuant to Clause 21 of the *Environmental Planning & Assessment (EP & A) Regulation 2000.***

OPTIONS:

- a) Resolve to adopt the draft amendments in the form in which it was publicly exhibited, as recommended in the report; or

-
- b) Resolve to adopt the draft amendments with such alterations as Council thinks fit and specify such amendments; or
 - c) Resolve to not proceed with the draft amendments.

DETAILS/ISSUE:

As part of Council's resolution of 10 March 2009 to Development and Environmental Services Group's Policy Review (Round 2), Council resolved to place draft Amendment No 1 to Council's DCP 91 - Single Dwellings and Ancillary Structures, on public exhibition for a minimum period of 28 days.

The amendment to DCP 91 was made in order to capture the requirement that any approval for the construction of any non-habitable building structure on a vacant allotment of land is subject to the owner furnishing Council with a written undertaking that the structure will not be used for residential purposes.

Accordingly, the draft amendment was publicly exhibited between 1 April and 1 May 2009, in accordance with Clause 18 of the *EP&A Regulation 2000*.

No submissions were received with respect to the public exhibition of the draft amendments. Council is now in a position to adopt those amendments, as exhibited. A copy of the draft amendments to DCP 91 are included in the Councillors' Information Folder.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

Economic, social and environmental (ESD) consideration is addressed within the subject DCP.

FINANCIAL CONSIDERATIONS:

Not applicable in the context of this report.

- 8. Section 82A Review of Determination for New Rural Dwelling In Principle - Lot 107 DP 755967, Woodstock Road, Milton. Applicant: Rygate & West. Owner: I Wilford
File DA08/1991**
-

PURPOSE OF THE REPORT:

This report addresses a request for a review of determination pursuant to Section 82A of the EP&A Act 1979, which was lodged on 5 March 2009. Under the terms of reference for the Development Committee, requests for review of determinations under Section 82A are to be submitted to the Committee.

RECOMMENDED that pursuant to Section 82A of the EP&A Act 1979 the Determination of Development Application No DA08/1991 for an in principle dwelling house envelope on Lot 107 DP 755967 Woodstock Road, Milton, by way of refusal dated 20 October 2008, be reviewed in accordance with this report and the previous decision be confirmed.

OPTIONS:

There are two options that Council could consider in relation to the request to review the previous determination of DA08/199:

- a) Not review the previous determination as requested by the applicant.

Reason: There is no legislative requirement for Council to fulfil the request to review the previous determination; the council **may** review the determination.

- b) Review the previous determination and confirm the previous determination, being refusal of the application.

DETAILS/ISSUE:

Background

A development application for an in principle dwelling envelope was lodged with Council on 16 July 2008. The application was refused under delegated authority on 20 October 2008 for the following reasons:

1. *Further to Section 79C(1)(a)(i) the proposal is inconsistent with the provisions of Clause 15 of Shoalhaven Local Environmental Plan 1985 (SLEP 1985) as the subject site does not meet any of the criteria in 1(a) to (g) nor 1A, in particular, the subject site is not a "1964 holding" as defined by SLEP 1985.*
2. *Further to Section 79C(1)(b) the proposed development has not satisfactorily demonstrated that physical and practical access is available to the subject site.*
3. *Further to Section 79C(1)(e) the proposed development is not in the public interest.*

A copy of the Section 79C assessment report for this determination is included as **Attachment A**.

The Review of Determination was placed on notification from 9 April 2009 until 23 April 2009 in the same manner as the original application.

The Subject Site

The subject site is legally described as Lot 107 DP 755967, Woodstock Road, Milton and has an area of 19.42 hectares. The site is located at the southern end of the unformed section of Wilfords Lane. The site is bounded to the west and south by Stony Creek (tidal). The subject site is vacant land used for open grazing land with sparse tree cover. An area of SEPP 14 Wetland is located along the south east boundary of the property.

Locality and zoning plans are provided as **Attachment 'B'** and **Attachment 'C'** respectively.

The Proposal

The development proposal seeks consent for the development for an in principle dwelling envelope which would allow a future application to be submitted to erect a dwelling on the lot.

The request for the Section 82A review and the statement of environmental effects from the original application are provided as **Attachment 'D'** and **Attachment 'E'** respectively.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

Statutory Considerations and Policy Framework

The following list of Environmental Planning Instruments (which include SEPPs, REPs and LEPs), DCP, Codes and Policies are relevant to this application:

- Environmental Planning and Assessment Act 1979;
- State Environmental Planning Policy (SEPP 71) - Coastal Protection;
- NSW Coastal Policy 1997;
- Illawarra Regional Environmental Plan (IREP) No 1; and
- Shoalhaven Local Environmental Plan (SLEP) 1985.

Section 79C Assessment Report (EP&A Act 1979)

An assessment of the application against the key matters for consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 is provided in the original assessment - see **Attachment 'A'**.

The application for review did not include any additional information that was not included in the original application. As the main issue is permissibility under Shoalhaven Local Environment Plan 1985 the matter was referred for review of the previous legal assessment of the application. This is dealt with in the separate confidential report on this request for review.

79C(1)d) Any submissions made in accordance with the Act or the regulations.

The request for review was notified in accordance with Council's Notification Policy resulting in the receipt of three submissions:

1. One submission was indicating no objection;
2. One submission indicated that they would have no objections to the proposal if certain issues raised in their submission were addressed; and
3. One submission objecting to the proposal on the basis of their previous enquires that indicated a dwelling was not permissible under the SLEP, together with issues in relation to the provision of access to the land and environmental issues including ecological values of the land and visual impact from the lake.

FINANCIAL CONSIDERATIONS:

This proposal has no direct financial considerations for Council other than the potential cost of an appeal in relation to Council's determination.

CONCLUSION:

On the basis of the assessment detailed above, and the supplementary confidential report, it is considered that the proposal is not permissible under Shoalhaven Local Environmental Plan and the previous determination should be confirmed.

The options outlined represent those, in the opinion of staff, that are legally open to the Council.

9. Policy for Subdivisions, Rural Dwellings and Tourist Facilities - Leebold Hill Road, Parish of Cambewarra. File 3621-03

PURPOSE OF THE REPORT:

The purpose of this report is to inform Council of the public exhibition of draft amendments to Council's Policy for Subdivisions, Rural Dwellings and Tourist Facilities - Leebold Hill Road, Parish of Cambewarra and recommend that the amendments to the Policy be adopted as publicly exhibited.

RECOMMENDED that:

- a) **Council adopt the amendments to the Policy for Subdivisions, Rural Dwellings and Tourist Facilities - Leebold Hill Road, Parish of Cambewarra (POL08/194) as publicly exhibited; and**
- b) **The adopted Policy be notified to the relevant Community Consultative Body and be included on Council's website.**

OPTIONS:

- d) Resolve to adopt the draft amendments as recommended in the report; or
- e) Resolve to adopt the draft amendments with such alterations as Council sees fit and specify such amendments.

DETAILS/ISSUE:

As part of Council's resolution of 10 March 2009 to Development and Environmental Services Group's Policy Review (Round 2), Council resolved to place a draft amendment to the Policy on Subdivisions, Rural Dwellings and Tourist Facilities - Leebold Hill Road, Parish of Cambewarra, on public exhibition for a minimum period of 28 days.

The policy was amended in order to be consistent with the *Shoalhaven Local Environmental Plan 1985*, by "discouraging" subdivisions, rural dwellings or tourist facilities in that part of the Parish of Cambewarra which obtains access via Leebold Hill Road, due to risks to lives and properties associated with the land constraints of the area.

Accordingly, the draft amendments were publicly exhibited between 1 April and 1 May 2009, in accordance with Council's Community Consultation Policy for Development Applications and the Formulation of Development Guidelines and Policies.

No submissions were received with respect to the public exhibition of the draft amendments. Council is now in a position to adopt those amendments, as exhibited. A copy of the draft amendments to the subject Policy is included in the Councillors' Information Folder.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

Economic, social and environmental (ESD) consideration is addressed within the subject Policy.

FINANCIAL CONSIDERATIONS:

Not applicable in the context of this report.

Tim Fletcher
DIRECTOR, DEVELOPMENT AND ENVIRONMENTAL SERVICES

R.D Pigg
GENERAL MANAGER

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 2 JUNE 2009

DEVELOPMENT AND ENVIRONMENTAL SERVICES / STRATEGIC PLANNING AND INFRASTRUCTURE

10. **Alterations and Additions to Existing Dwelling, Demolish Existing and Construct New Swimming Pool - Lot 901 DP 11893, 101 The Marina, Culburra Beach. Applicant: BHI Architects. Owner: A Lapa. File DA08/2541**
-

PURPOSE OF THE REPORT:

The purpose of this report is to advise that Council has recently received the draft Shoalhaven Coastal Zone Management Plan and Hazards Study from consultants, SMEC, that reviews Council's coastal hazard controls in response to the release of a Draft Sea Level Rise Policy Statement by the NSW Department of Environment and Climate Change (DECC) and the Department of Planning. This report has implications for Council's current coastal hazards policy and has implications for the subject development application plus other applications located in foreshore areas. Direction is sought from Council on this policy matter prior to determination of the subject development application and other affected applications.

RECOMMENDED that further consideration of the development application, and similarly affected applications, be deferred pending consideration by Council of the Shoalhaven Coastal Zone Management Plan and Hazards Study 2009 prepared by SMEC and a review of Council's current coastal hazards policy.

Options:

- a) That further consideration of the development application, and similarly affected applications, be deferred pending consideration by Council of the Shoalhaven Coastal Management Plan and Hazards Study 2009 prepared by SMEC and a review of Council's current coastal hazards policy; or

Comment: This is the recommended option and is consistent with the advice provided by Council's legal advisors and Insurers.

- b) That the development application, and similarly affected applications, be determined under Council's current coastal hazards policy pending consideration of the SMEC study and review of Council's policy.

Comment: If Council forms the view that development applications should be determined under the current policy until such time as the policy is reviewed, Council may consider adopting option b). This is not the recommended option for

the reasons outlined in the advice provided by Council's legal representatives and insurers.

DETAILS/ISSUE:

Background

On 3 November 2008 the applicant submitted a development application to Council for alterations and additions to an existing two-storey dwelling on the subject site (see **Attachment 'A'**). The application also proposed demolition of an existing swimming pool and construction of a new lap pool at the rear of the dwelling. The applicant initially proposed to locate the pool adjacent to the northern side boundary of the site however in discussions with staff prior to lodging the application the applicant was advised that the pool should be rotated 90 degrees and moved as close as possible to the dwelling to comply with the 50 year coastal hazard line affecting the property.

Although the pool had been relocated as advised by staff the plans submitted in the development application initially showed that the pool was partially located on the seaward side of the coastal hazard setback line. Following further discussions with staff the applicant sought advice from SMEC on the exact position of the 50 year line given the existing topographical features in the vicinity of the site. This resulted in SMEC relocating the setback line a distance of 2.0 m seaward and clear of the proposed pool with the exception of a small portion of the coping.

Coastal Hazards Policy

In September 2005 Council considered a report on development controls in coastal hazard areas and resolved to adopt a building line for new development equating to the 50 year hazard line as identified in the report prepared by SMEC. Property landward of the 50 year line and up to the 100 year line was defined as a zone of reduced foundation capacity and new development was required to be founded on piers to engineers design. Existing development located seaward of the 50 year line is subject to Council's draft policy for modifications to existing buildings forward of the building line.

In response to the release of a Draft Sea Level Rise Policy Statement by DECC and the Department of Planning, Council, at the May 2009 Ordinary meeting, resolved to defer the exhibition of the Draft Shoalhaven Coastal Zone Management Plan and to seek funding to engage consultants to review the Hazard Study and Management Plan.

Council has recently received the revised Shoalhaven Coastal Zone Management Plan and Hazards Study from consultants, SMEC, and it is understood that this study will be reported to Council in the near future for consideration of impacts on Council's currently adopted policy position.

The SMEC study has identified that, for the subject site, both the 50 year and 100 year setback lines have moved a considerable distance landward which has significant implications for the current proposal and any future development on the site. As outlined above, the location of the existing 50 year setback line is immediately seaward of the proposed pool. The location of the 50 year line identified in the **new SMEC study is approximately 10.0 m landward of the existing line** and located towards the centre of the existing dwelling.

The question arises should Council determine the development application on the current adopted policy position with which the application essentially complies, or should Council determine the application on the information contained in the recently received SMEC report. Advice was sought on this matter from Council's legal advisors (see confidential report) and Insurers who have advised as follows:

Insurer's Advice

Council's Insurance and Risk Management Manager has sought advice from Council's Insurers, Jardine Lloyd Thompson (JLT) and has provided the following advice.

JLT recommended that legal advice be sought as to how Council considers the new information, its current policy and DA approvals and Council defer approval of any DA potentially impacted until Council's position is determined.

JLT has also advised given the uncertain nature of these types of claims and the infancy of courts determinations in relation to coastal erosion matters, as a prudent measure, Council notify as potential claims current DAs potentially impacted by the new SMEC report to meet notification requirements under the insurance policy for indemnity. This information needs to be provided to the Insurers by 30 June 2009.

Other Policy Matters

The proposed development is also subject to compliance with Development Control Plan 48 - Culburra Beach (DCP) and the applicant is seeking to not comply with a number of the Acceptable Solutions and demonstrate compliance with the relevant Performance Criteria.

Clause 2.1 Building Lines:

The existing building and the proposed development is in part non-compliant with the 35.0m rear foreshore building in DCP 48. Portion of the works to the existing building including proposed rear additions to the dwelling and the proposed pool will be located within the building line. However it is considered that, subject to determination of the above-mentioned coastal hazard policy matter, the development would achieve compliance with the Performance Criteria of the DCP to provide adequate building area while recognising the objectives of hazard safety, dune stability and reduced visual impact.

Clause 2.4 Building Envelope and Siting:

Portion of the roof of the proposed development encroaches into the 7.5m concessional height zone. As the proposed development is alterations and additions to an existing two-storey dwelling, the new work is to some extent constrained by the location and height of the existing building. The design has however generally achieved compliance with the building envelope in the Acceptable Solution with the exception of the new pitched roof which is to replace the existing skillion roof that is non-compliance with the DCP. Nevertheless it is considered that the development does not significantly affect the amenity of the foreshore and adjoining development and therefore achieves compliance with the Performance Criteria and the variation to the Acceptable Solution should be supported in this case.

Applicant's Submission

In response to advice that the development application was to be reported to Council for consideration of the coastal hazard policy matter the applicant has provided a submission and extracts are reproduced below:

During the owner's purchase process S.C.C. were consulted if they would support a swimming pool in the area forward of the building line, as this feature was paramount to the suitability of the property for the client. A letter & sketch 01 [Ref1] submitted on 11 July 2008 is testament to this request and notes that other pools in this street are forward of the landscape buffer zone. The advice was that S.C.C. would support it and proceeded to obtain and issue the 1:50 year and 1:100 year erosion line informative with the advice that this would determine the depth of the footings required for the pool. The client subsequently purchased the site and the developed D.A. was lodged on 3 November 2008.

The Pool is a moderately sized 11 x 3.5.m in ground type that is to be set within established landscaped grounds, and was explained that the pool design would assist in the stabilization of this zone. To aid this it was relocated closer to the existing dwelling and orientated North-South. It is intended to retain as much of the existing landscape as possible, which is substantial and extends around the perimeter of the yard.

*In a meeting on the 11 December 2008 at the Council Chambers, re issues raised by S.C.C. were discussed. Refer to the returned correspondence 12 December 2008 for full details of Issues 1 to 11. Most of the issues were about gaining an understanding of the D.As' scope and interpretation of information. Of relevance was Issue 4- Issue 4: The proposed pool is located in part forward of the 1:50 year safe foundation line. It was discussed that S.C.C. is reviewing current draft policies & discussing with S.M.E.C. who sets these lines.
Action: Internal issues await information.*

The issues raised and the response outlined in points 1-11 is a summary of the meeting on the 11 December 2008. On the 13 February 2009 B.H.I. received an email that states in brief that no new development seaward of the 50 year hazard line will be approved. A meeting on the 30 March 2009 at the Council Chambers. The pools interaction with the Z.O.R.F.C. was the issue to be resolved. Some options were discussed but all meant compromising the pool significantly except the following. It was tabled that B.H.I. would seek clarification of the said line with Snowy Mountains Engineering Corporation (S.M.E.C.) who was responsible for determining them. It was said that we would try a common sense approach, as the current line looked flawed. It was also revealed that a cantilevered balcony had been approved contrary to their policy of not approving built structures in front of the 1:50 Z.O.R.F.C.

S.M.E.C. were contacted and agreed to the assessment of the said lines. They required a 'Transect' (survey section) through the property to the ocean to make this assessment; this was provided. Generally Transect's are at intervals of greater than 50m and can give a distorted result. The client, at the agreement of Council, had to engage S.M.E.C. directly to have this individual site assessment completed. On the 21 April 2009 their response was that the 1:50 year Z.O.R.F.C. could be moved seaward by 2 metres thus allowing the pool in principle to be with in this line [Ref 2]. This information was provided to S.C.C. by S.M.E.C.

During this time, as we understand it, S.C.C. had engaged S.M.E.C. to provide revised 1:100 & 1:50 Z.O.R.F.C. levels. This data is based on the Draft Sea Level Rise Policy Statement (Draft S.L.R.P.S.) prepared by the Department of Environment and Climate Change NSW (D.O.E.C.C.). Mr. Andrew Baron from D.O.E.C.C. Urban and Coastal Water Reform Branch (U.C.W.R.B.) has stated that no instruction was given to S.C.C. to adopt this draft D.O.E.C.C. Policy. They are still reviewing public feedback on this policy which had finalised in Mid April 2009.

At the meeting on the 15 May 2009 B.H.I. submitted this information and was informed that the only way to progress this project was to refer it to the Development Committee of Council. We request that the S.C.C. consider the lengthy consultation process that has already taken place prior to the purchase of the property and D.A. submission, then since the D.A. submission of October 2008. The discussion was whether a non habitable building (the pool) should be allowed to be built in its current location which is compliant in principle with the current 1:50 Z.O.R.F.C. as located by S.M.E.C. The draft information places it in front of the potentially new 1:50 Z.O.R.F.C. This is only a small but integral part of the submitted D.A. which we have been informed is ready for approval. We respectively request this to be granted as supported by the information provided.

Comment: The applicant's submission appears to allege that, in pre-lodgement discussions with Council staff, advice was provided that the proposed location of the pool would be supported. This is not the case as staff verbally advised the applicant that the pool in the location shown on the sketch would be located at least in part on the seaward side of the 50 year setback line. It was recommended to the applicant at that time that consideration should be given to rotating the pool 90 degrees and moving it as close as possible to the rear of the dwelling to ensure that the structure was clear of the setback line. The exact position of the line on this property was not known at that time and the applicant was advised that this information would need to be provided by SMEC. The applicant was however advised that Council may support the proposed pool forward of the 35.0m building line and within the landscape buffer shown in DCP 48 given the location of the existing dwelling and subject to appropriate justification being provided.

CONCLUSION

The subject development application and a number of other applications currently submitted but undetermined, are for properties affected by Council's existing coastal hazards policy.

Council has recently received the draft Shoalhaven Coastal Zone Management Plan and Hazards Study from consultants, SMEC, that reviews Council's coastal hazard controls in response to the release of a Draft Sea Level Rise Policy Statement by DECC and the Department of Planning. This report potentially has significant implications for Council's current policy and the report has not yet been considered by Council.

Advice has been sought from Council's legal advisors and Insurers on this matter and particularly in relation to the determination of development applications on affected properties.

The legal advice contained in the confidential report essentially concludes that Council should act cautiously as potential liability needs to be seriously considered because of the Council's knowledge of the updated SMEC report, and may effect both the Council's

immunity under s733 and its insurance cover. The advice further provides that the conservative approach to the issue is for the Council to defer determining the DA until the Council has considered a report on the updated SMEC report.

The advice from Council's Insurers is similar to the legal advice and advises that Council should defer determination of any affected applications until Council's policy position is reviewed following consideration of the SMEC report.

It is therefore recommended that Option 1 in the report be adopted and that further consideration of the development application, and similarly affected applications, be deferred pending consideration by Council of the Shoalhaven Coastal Management Plan and Hazards Study 2009 prepared by SMEC and a review of Council's current coastal hazards policy.

The latest information submitted by SMEC in relation to the Draft Shoalhaven Coastal Zone Management Plan is being assessed by staff. A Councillor Briefing (date to be advised at Development Committee meeting) will be held to present draft coastal hazard setbacks in the context of Council's legal obligations and risk management processes. It is hoped that Department of Climate Change representatives can comment on submissions to the draft Sea Level Rise Policy Statement.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

The consideration by Council of the objectives of the Environmental Planning and Assessment Act include consideration of ESD principles. The updated SMEC report which makes allowances for sea level rise as a result of climate change is part of the consideration of the principles of ESD, and even though not yet adopted policy, the new proposed 50 year hazard line should be given serious consideration.

FINANCIAL CONSIDERATIONS:

The potential damaging effects of coastal processes and the approval/construction of developments in locations that are effected by these processes could under certain circumstances result in Council being liable for significant costs for damage to property and development in the future.

The owner of the subject property, and similarly affected applicants, may feel aggrieved by Council's actions in this matter and may consider legal action.

11. Draft DCP for Commercial Use of Public Footpaths.

File 5213

PURPOSE OF THE REPORT:

The purpose of this report is to seek Council's endorsement that a draft Development Control Plan (DCP) be prepared for the Commercial Use of Footpaths, to provide simple urban design requirements for the establishment of alfresco dining and its associated uses as well as guidelines for displaying goods on public footpaths for the Shoalhaven Local Government Area (LGA).

This report also reviews the overall fees that currently apply to applications for alfresco dining and proposes that part of this fee be removed in order to encourage the uptake of alfresco dining in the Shoalhaven.

RECOMMENDED that:

- a) **Council resolve to prepare a draft DCP for the Commercial Use of Public Footpaths and place this document on public exhibition in accordance with Clause 18 of the Environmental Planning and Assessment (EP&A) Regulation 2000 and that this draft DCP be incorporated into Council's draft citywide DCP 2009;**
- b) **In the spirit of encouraging the uptake of future applications for alfresco dining in the Shoalhaven, Council retains the current fee for the licencing component for alfresco dining on public footpaths (no licence fees for the first year, a 50% reduction for the next 4 years and full fees apply thereafter for the life of the alfresco dining) and retains the 50% reduction in DA fees, but completely removes the Section 94 Developers Contribution component for off-street car parking in the assessment of DAs for out-door dining within Council's footpath reserve; and**
- c) **Consistent with recommendation b) above, the associated requirement that additional off-street car parking be provided for alfresco dining on public footpaths also be removed, and accordingly, Council's DCP 18 - Car Parking Code be concurrently amended to reflect this and placed on public exhibition, pursuant to Clause 18 of the EP&A Regulation 2000.**

OPTIONS:

- a) For future applications for alfresco dining, Council retains the current fee for the licencing component for alfresco dining on public footpaths (no licence fees for the first year, a 50% reduction for the next 4 years and full fees apply thereafter for the life of the alfresco dining) and retains the 50% reduction in DA fees, but completely removes the Section 94 Developer Contributions component for off-street car parking in the assessment of DAs. Consistent with this, Council removes the requirement for additional off-street car parking for alfresco dining and amends DCP 18 - Car Parking Code in accordance with the *EP& A Regulation 2000* to reflect this - a copy of the amendment is included in the Councillors' Information Folder.
- b) Council makes no change and retains the status quo of the current fee structure for alfresco dining which involves:
 - For Development Application (DA) component - 50% reduction in DA fees; and 50% discount in S94 Developer Contributions for car parking.
 - For licencing component - No licence fees for the first year and a 50% reduction for the next 4 years. Full fees apply thereafter for the life of the alfresco dining.

-
- c) For all future applications of alfresco dining, Council charges full DA fees, full Section 94 Developer Contributions and full licencing fees for the life of the development, as per Council's current fees and charges.

DETAILS/ISSUE:

Background

Council on 22 October 2002, resolved in part that:

- “a) A draft policy be prepared for business use of the footpath and a further report be brought forward when the policy has been drafted. This report be the subject of a Council briefing prior to consideration by Council;*
- b) Council endorse the principle of levying a carparking contribution for outdoor eating on the public footpath but that this contribution be discounted by 50%;*
- c) That the General Manager be requested to investigate a simple, low cost standard licence fee for all locations;*
- d) That the carparking component of the outdoor eating fees be clearly defined and collected separately (but at the same time) and be capable of being paid off over a period of 5 years;*
- e) That Council initiate and advertise an incentive scheme for outdoor eating that provides:*
- a) A 50% reduction in DA fees*
 - b) No licence fees for the first year*
 - c) Next four years up to and including year 5 – 50% reduction in licence fees;...”*

This particular resolution has been the standing Council policy on footpath dining in the Shoalhaven since 22 October 2002 until present.

Further, at a separate meeting on 22 January 2008, Council considered a report on new liquor licencing laws and resolved in part that:

“...Issues associated with outdoor use of footpath areas ... form part of a comprehensive review of the existing ‘Outdoor Eating Policy’.”

Subsequently, following the commencement of the liquor licencing laws on 1 July 2008, a Councillor Briefing was held on 14 July 2008 which covered matters pertaining to the resolution of October 2002 and the social (or anti-social) implications of the new liquor licencing laws on footpath dining in the Shoalhaven.

Council at its meeting on 10 February 2009 raised an additional item on alfresco dining within the Shoalhaven and resolved that:

“A report be submitted to the Development Committee on the issue of Alfresco Dining within Shoalhaven that re-examines licence fees for kerbside areas with the view of simplifying and reducing the rates in order to encourage the uptake of kerbside dining.”

In accordance with this resolution, this report addresses matters raised in Council resolutions relating to commercial uses of footpaths in the Shoalhaven.

Preparation of a DCP for Commercial Use of Footpaths

This report recommends that a DCP be prepared incorporating provisions relating to all commercial uses of footpaths for the Shoalhaven (not just for alfresco dining but also other commercial uses of footpaths), in accordance with the *EP & A Act 1979*. This DCP for Business Use of Footpaths will eventually form part of the Shoalhaven single DCP (Shoalhaven DCP 2009).

Accordingly, as recommended at the Councillor Briefing on 14 July 2008, a draft DCP on this matter has now been prepared and is included in the Councillors' Information Folder. The draft DCP covers a number of matters such as:

- Aims and objectives;
- Locational requirements;
- Maintenance of footpath widths;
- Outdoor furniture;
- Food standards/ health requirements;
- Protection of public assets on footpaths;
- Perimeter barricades - Delineation of outdoor eating areas;
- Signage and advertising; and
- Legislative provisions (including provisions under the *Liquor Act 2007*).

Preparation of a DCP for Commercial Use of Footpaths in Line with Liquor Licencing Laws of July 2008

As a result of the introduction of the new liquor licencing laws in July 2008, which makes it easier for restaurants and cafes to obtain liquor licences, any DCP on commercial use of footpaths should provide information to alfresco dining applicants proposing to serve alcohol, that such application must be compliant with the *Liquor Act 2007* and a separate licence must be obtained from the NSW Casino, Liquor and Gaming Control Authority (CLGCA). The draft DCP makes reference on this matter.

Current Fees Charged for Alfresco Dining

Currently, fees charged for applications for alfresco dining, as per Council's resolution of 22 October 2002, are:

- For DA component:
 - 50% reduction in DA fees; and
 - 50% discount on Section 94 Developer Contributions.The formula for calculating Section 94 Developer Contributions takes into account the vagaries of weather and seasonal issues. The developer contribution is halved from 1 space/24m² (restaurants) to 1 space/48m². As 1m²

is equivalent to a maximum of 1 seat under the Building Code of Australia (BCA), the figure of 1 space/48m² converted to 1/48th of the relevant contribution for the area (per chair).

Therefore, the provision for car parking on-site is required at the rate of one space per 48 seats or part thereof. Where on-site parking is not appropriate, a car parking contribution is imposed in accordance with the rates determined by Council using the Contributions Plan 1993 as a guide. The contribution for car parking is calculated on the basis of 1/48th of a car parking space for each seat.

- For licencing component:
 - No licence fees for the first year; and
 - A 50% reduction for the next 4 years. Full fees apply thereafter for the life of the alfresco dining.

In observing the current fees charged for alfresco dining in the Shoalhaven, it is apparent that Council's current policy on this has taken into account some considerable reduction in fees in order to encourage the uptake of alfresco dining. Nevertheless, it is acknowledged that the uptake of alfresco dining is still relatively slow throughout business and commercial areas of the Shoalhaven and some comments are still being received from business proprietors that fees charged for alfresco dining are too high.

Issues Relating to Current Section 94 Developer Contributions Charged for Alfresco Dining

Removal of the Section 94 component will create an additional requirement for Council to "make up" the demand as Council's contribution to the car parking requirement. While this may not be a significant factor under the current level of footpath usage, it may become substantial if more significant alfresco areas are involved e.g. Junction Court proposal or if similar provisions become applicable for private land.

Implications of Removing Section 94 Developer Contributions

It is anticipated that there will be some consistency and equity implications as a result of the recommendation that future applications for alfresco dining not be charged "additional" Section 94 Developer Contributions for car parking. Alfresco dining outlets that have already paid Section 94 Developer Contributions for car parking on public footpaths may feel disadvantaged, compared to future operators. There may also be concern by owners or operators who need to provide parking, in accordance with DCP 18, for café or restaurant dining undertaken on private land; this may be seen as an inconsistent approach.

ECONOMIC, SOCIAL AND ENVIRONMENTAL (ESD) CONSIDERATION:

There may be economic and social implications should Council adopt the recommendations of this report. Nevertheless, it is considered that the benefits of removing Section 94 Developer Contributions for car parking for alfresco dining on public footpaths outweigh its disadvantages in the long run, as the intent of removing the parking imposition is to positively encourage the uptake of such dining. Environmental and health matters are addressed within the draft DCP.

FINANCIAL CONSIDERATIONS:

Should Council adopt the recommendations of this report, Council will have to consider the potential financial loss from removing Section 94 Developer Contributions for car parking for alfresco dining on public footpaths. It is anticipated that this loss is relatively low as the Section 94 levy is a one-off collection and does not recur year after year.

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

E J Royston
DIRECTOR, STRATEGIC PLANNING AND INFRASTRUCTURE

R.D Pigg
GENERAL MANAGER

CONFIDENTIAL BUSINESS PAPER AGENDA

DEVELOPMENT & ENVIRONMENTAL SERVICES

1. Confidential Report - Legal Advice - Section 82A Review of Determination for New Rural Dwelling In Principle - Lot 107 DP 755967, Woodstock Road, Milton. Applicant: Rygate & West. Owner: I Wilford. File DA08/1991

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

DEVELOPMENT & ENVIRONMENTAL SERVICES / STRATEGIC PLANNING & INFRASTRUCTURE

2. Legal Advice - Alterations and Additions to Existing Dwelling, Demolish Existing and Construct New Swimming Pool - Lot 901 DP 11893, 101 The Marina, Culburra Beach. Applicant: BHI Architects. Owner: A Lapa. File DA08/2541

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.