

SHOALHAVEN CITY COUNCIL

DEVELOPMENT COMMITTEE

To be held on Tuesday, 5th May, 2009
Commencing at the conclusion of the Crown Reserve, Community and Commercial Operations
Committee (commencing at 4.00pm).

29th April, 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, 5th May, 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
3. **Addendum Reports**

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

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

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

Cell Phones:

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

LOCAL GOVERNMENT ACT 1993

Chapter 3

Section 8(1) - The Council's Charter

(1) The council has the following charter:

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

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REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 5 MAY 2009

STRATEGIC PLANNING AND INFRASTRUCTURE

1. Draft Centres Policy – Planning for Retail and Commercial Development

File 31157-07

Purpose of the Report:

The NSW Department of Planning (DoP) has released a Draft Centres Policy – Planning for Retail and Commercial Development (the draft Policy) as for public comment. This report outlines the issues that are proposed to be included in Council's submission on the draft Policy.

In order to meet the deadline for comments on this draft Policy, Council's submission will be made based on the outcome of the Development Committee meeting.

RECOMMENDED that Council make a submission to the NSW Department of Planning on the Draft Centres Policy – Planning for Retail and Commercial Development based on the issues raised in this report and Attachment "A".

Options:

The following Options were considered:

1. Council resolve not to make a submission on the draft Policy.
2. Council resolve to make a submission to the DoP on the Draft Centres Policy based on the issues raised in this report and Attachment "A".

Details/Issue:

Background

The draft Policy is currently on public exhibition from 9 April 2009 to 11 May 2009 and a copy will be available for review in the Councillors' Room prior to today's meeting. The DoP has also released a "Questions & Answers" Sheet on the draft Policy and it is provided as Attachment "B".

The draft Policy can also be viewed electronically at:

<http://www.planning.nsw.gov.au/asp/drafts.asp#centres>

It is indicated that the aim of the draft Policy is to create a network of vital and vibrant centres that cater for the needs of business, and are places where individuals and families want to live, work and shop. The retail and commercial sectors play a key role in achieving this objective. Not only do they provide the goods and services to meet the needs of community, they are also significant employers across the State. In 2007, the industry sectors covered by this policy contributed approximately \$125 billion (41 per cent) to NSW economic growth and 1.5 million (46 per cent) to NSW employment.

The challenge for the planning system is to continue to deliver strong growth in a way that meets business and community needs, is environmentally sustainable, and makes the most efficient use of the State's investment in infrastructure.

As such, this policy is based on six key planning principles:

Principle 1 – Retail and commercial activity should be located in centres to ensure the most efficient use of transport and other infrastructure, proximity to labour markets, and to improve the amenity and liveability of those centres.

Principle 2 – The planning system should be flexible enough to enable centres to grow, and new centres to form.

Principle 3 – The market is best placed to determine the need for retail and commercial development. The role of the planning system is to regulate the location and scale of development to accommodate market demand.

Principle 4 – The planning system should ensure that the supply of available floor space always accommodates the market demand, to help facilitate new entrants into the market and promote competition.

Principle 5 – The planning system should support a wide range of retail and commercial premises in all centres and should contribute to ensuring a competitive retail and commercial market.

Principle 6 – Retail and commercial development should be well designed to ensure it contributes to the amenity, accessibility, urban context and sustainability of centres.

Issues

The draft Policy sets out 21 consultation questions to lead discussion. These questions and the intended responses are set out in Attachment "A" to this report. General comments on the draft policy are also outlined below.

The draft policy recognises that there are differences between metropolitan and regional centres; however, overall the draft policy has a very metropolitan focus which makes it difficult to apply in the regional context.

There is little consideration of how the Policy will impact on smaller regional centres and towns which have vastly different demand pressures from those of the greater Sydney metropolitan area. Thus, it would be appropriate to have a separate policy for regional areas, or a section within the current draft Policy that addresses the issues that are specific to regional areas. In regional areas, it is important to consider how a community functions and its demand for services, eg. commuter dominated communities like

Kangaroo Valley are likely to shop in the centres where they work rather than where they live, whereas retiree dominated communities are likely to require more services in close proximity.

The principles of the draft policy are considered broadly appropriate but are not adequately implemented within the content of the report. The policy focus appears to be on facilitating development and competition at the expense of the other elements contained in the principles. The policy appears to be a reaction to the property development industry's desires to promote expanded retail competition, as most of the stakeholders involved in the development of the draft policy are private, commercial or retail operators/developers.

However, the sustainability and amenity of retail centres appears to be subordinate to the need to provide retail and commercial floor space and have not been well integrated throughout the document. For example, the draft Policy suggests that a single zone, such as B4 Mixed Use (Standard LEP Instrument zone), should be applied across a whole centre to provide certainty and flexibility for the market to respond to demand.

This is considered inappropriate for some centres within Shoalhaven - it may provide more certainty for the market, but it could result in less certainty for the community, and reduced ability for Council to improve the amenity and liveability of our centres. Concentrated infrastructure would need to be dispersed over a larger area and be less effective.

The draft Policy appears to be reinforcing traditional commercial centres with no consideration to current changes in the way businesses are run with the increasing role of technology. This tends to give a bias towards big retail operators that can afford high setup costs. In regional areas, there should be a focus on flexible business models through the promotion of e-business and home business opportunities which provide low cost set up with smaller footprints and lower resource needs.

The time available for comment on this draft Policy that could possibly have major impact on commercial and retail centres is very limited (only 4 weeks), and as such it is proposed to request that the DoP undertake further targeted consultation with Councils before the policy is implemented, and that Councils have input into the means of implementation i.e. State Environmental Planning Policy (SEPP), Planning Circular Etc.

Economic, Social & Environmental (ESD) Consideration:

This draft Policy has the potential to impact on the economic, social and environmental wellbeing of Shoalhaven as it will provide direction for the planning of our centres and the provision of future retail and commercial floor space.

These impacts are discussed above and in Attachment "A" - summary is provided below.

The lack of consideration of the needs of regional areas means that the draft Policy may be inappropriate for our economic and social configuration.

The draft Policy is very "metro centric" and does not respond to the demographics of a regional areas such as Shoalhaven. The proposal to possibly exclude the consideration of competition from merit based assessments may negatively impact on local

businesses. Further, the poor integration of sustainability throughout the draft Policy may lead to unsustainable developments and poor environmental outcomes.

Financial Considerations:

There are no specific financial considerations for Council at this time.

2. **Jerberra Estate Rezoning Investigations**

File 2653-04

Purpose of the Report:

The purpose of this report is to update Council on progress of Council's resolution of 10 February 2009 in relation to Jerberra Estate.

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

Options:

1. Accept that Council's preferred option is not achievable due to the State Government position and pursue the compromise option with DoP and DECC to explore avenues for regularising existing unauthorised structures and dealing with equity issues in areas that may be zoned for environmental conservation ('E' zones) – recommended option.
2. Complete a full BioBanking Assessment to determine the possible use of Council land at Coomonderry Swamp as a conservation offset. Preliminary advice from DECC indicates Coomonderry Swamp does not meet BioBanking requirements, primarily due to the land's existing conservation status. Furthermore, use of Council land outside of Jerberra Estate for the benefit of landowners within Jerberra Estate would potentially create an untenable precedent in respect of other areas such as Heritage Estates, Nebraska Estate, Verons Estate and the Woollamia Farmlets – not recommended due to initial feedback and resource availability / allocation.
3. Continue to lobby the relevant Ministers/Shadow Ministers. The current Planning and the Environment Ministers have both written to Council and indicated they do not support Council's preferred option due to inconsistencies with NSW environmental legislation. It would therefore seem highly unlikely that their position would change due to further lobbying by Council.

If Council resolves to pursue this option for the purpose of getting support for "Council's preferred option" there is little chance that the issue could be resolved in the foreseeable future.

Details/Issue:

On 10 February 2009 Council resolved to:

- a) *Continue to lobby the NSW Government, Minister for Planning, The Hon. Kristina Keneally and Minister for Climate Change and the Environment, The Hon. Carmel Tebbutt to progress the rezoning within the Jerberra Estate;*
- b) *Prepare a brief for the Shadow Minister for Planning and Shadow Minister for Infrastructure, Mr Brad Hazzard MP, in relation to the Jerberra Estate rezoning;*
- c) *Investigate the proposal to reclassify part of Coomonderry Swamp, currently zoned 'community' to 'operational' for a potential conservation offset;*
- d) *In the event that the lobbying of the Ministers is unsuccessful then the possibility of land pooling with possible concepts be raised.*

In relation to part (a) Shoalhaven City Council Mayor, Paul Green, wrote to the NSW Environment Minister, the Hon Carmel Tebbutt MP, on 13 February 2009 (Copy in Councillor Information Folder) and to the NSW Planning Minister, the Hon Kristina Keneally MP on 18 February 2009 (copy provided in Councillor Information Folder). The Mayor, General Manager and Director Strategic Planning & Infrastructure had previously met with the Minister and made similar representations. Council received a response from the NSW Planning Minister dated 17 March 2009 and a response from the NSW Department of Environment and Climate Change (DECC) on behalf of the Environment Minister dated 1 April 2009.

Kristina Keneally's letter (Attachment A), states that the Department of Planning (DoP) will not support Council's preferred option of one dwelling per lot while only protecting that area identified under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1979* (EPBC Act). The letter states that DoP is prepared to work with Council and DECC to investigate the "BES option 2" proposal involving the rezoning of about half of the Estate.

The Planning Minister's letter also states that the loss of additional high conservation value land can only be considered if a substantial conservation offset could be agreed upon. The letter goes on to say that Council's decision to investigate Coomonderry Swamp as a potential offset will need to include a consideration of a range of matters including:

- The circumstances under which the land came into Council's ownership;
- The level of protection currently afforded to the land, noting that it is a SEPP 14 wetland; and
- The conservation value of the proposed offset when compared against land which would be cleared at Jerberra Estate.

Coomonderry Swamp is characterised as follows:

- Size: 48.08 ha.
- Zoning: Part Environment Protection 7(A) (Ecology) and part Environment Protection 7(D2) (Special Scenic).

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- Local Government Act Classification: Community Land / Natural Area / Wetland (Determination date: 01/07/1993).
 - Vegetation: There are 4 EEC's on the site (Alison Hunt & Associates, 2008):
 - Swamp Sclerophyll Forest: 'good condition'.
 - Sydney Freshwater Wetland – 'good condition' except for about one quarter of the wetland which has been degraded by agricultural use. Occupies approximately half of the site.
 - Bangalay Sand Forest – 'good condition although weeds increase towards Gerroa Road'.
 - Swamp Oak Forest (along creekline) – 'fair condition'.
 - Council currently undertakes various management activities such as weed and pest control.

Preliminary advice from DECC indicates that Council's land at Coomonderry Swamp is unlikely to be a viable conservation offset, primarily due to its existing conservation status. DECC indicates that a BioBanking Assessment of both the development and BioBank sites (*i.e.* Jerberra Estate and Coomonderry Swamp) would need to be undertaken to provide a more definitive answer. It would appear that such an assessment would be unlikely to yield a favourable result and would be an inefficient use of staff resources. Council has written to DECC for clarification but has not received a response at this point in time.

Furthermore, use of Council land outside of Jerberra Estate for the benefit of landowners within Jerberra Estate would potentially create an untenable precedent in respect of other areas such as Heritage Estates, Nebraska Estate, Verons Estate and the Woollamia Farmlets.

A response to Council's letter on behalf of the Environment Minister by Joe Woodward, Deputy Director General of DECC dated 1 April 2009 (copy forms Attachment 'B') stated:

"As detailed in Minister Tebbutt's letter of 29 January 2009 [reported to Council on 03/02/09], DECC's position on this matter has been formulated by its statutory responsibilities for protecting the environment, as well as adhering to the objectives of the South Coast Regional Strategy, which sets out a clear and certain land use plan for the South Coast.

DECC has attempted to engage constructively with Council in assessing the available options to progress and ultimately resolve the complex issues at Jerberra Estate, however Council's current position on the matter makes it difficult to achieve further progress towards a desirable outcome."

In relation to part (b) of Council's resolution of 10 February, Council met with Shadow Planning Minister, Brad Hazzard MP. and member for South Coast, Shelley Hancock MP, on 11 March at Parliament House and presented a submission outlining the history of the matter and the issue at hand (copy in Councillor's Information folder). Council was represented by Mayor, Clr Paul Green, General Manager, Russ Pigg and Director Strategic Planning & Infrastructure, Ernie Royston.

Implications of Adopting a Compromised Rezoning Outcome

At a meeting attended by the Mayor, General Manager and Director Strategic Planning & Infrastructure, with the Deputy Director General of DECC on 20 April 2009 concerning the future of the Heritage Estates, the issue of DECC's position on Jerberra Estate was raised. DECC staff indicated that while they remain opposed to Council's preferred option purely in respect of the proposed rezoning, they are willing to consider further options for regularising the substantial structures in Jerberra Estate, provided the Estate's environmental values are not impacted (map provided Attachment 'C').

Under the option preferred by DECC and DoP, an environmental zone (eg. "Environmental Living") or other mechanism would be applied to an area containing a number of substantial structures. As previously noted in the report to Council on 3 February 2009, dwellings are proposed to be permissible in draft SLEP 2009 in all of the environmental zones except E1.

The primary control affecting the permissibility of dwellings on individual lots in these zones would be the minimum lot size that will form part of the SLEP 2009 mapping. While the default minimum lot size for the environmental zones would be 40 ha, Council may be able to negotiate a reduced minimum lot size to allow some development in that part of Jerberra Estate not given a residential zoning. However, consideration would need to be given to equity issues so that landowners who have not constructed unauthorised structures are not disadvantaged in favour of those that have.

Council's previous resolution raised the option of land pooling. It is likely that some degree of lot consolidation will ultimately occur as part of any solution for Jerberra Estate. For example, lots wholly within the EPBC-constrained areas may be best consolidated with adjoining properties to simplify ownership and management issues. Major constraints to land pooling are likely to include the fragmented ownership and financial considerations.

Economic, Social & Environmental (ESD) Consideration:

Economic feasibility of developing the Jerberra Estate subdivision has been a key concern since Council commenced the rezoning investigations in the 1990's when various consultants engaged by Council recommended various limited development scenarios.

There would be up to 40 to 48 fewer dwellings created under 'BES option 2' compared to 'Council's preferred option' if no dwellings were to be allowed in the area zoned environmental. Refinement of zone boundaries in BES option 2 and the provision of some development within the environmental area could reduce the discrepancy between these two options.

As discussed elsewhere in this report, equity and related social and economic issues would arise in cases where individual lots do not receive dwelling entitlements. Of importance is the need to avoid penalising landowners who have not erected unauthorised structures on their properties in favour of those who have. One potential mechanism for addressing these is through an appropriate minimum lot size that requires a degree of land pooling / lot consolidation.

In terms of environmental outcomes, 'BES option 2' would result in a greater proportion of the land environmental values being retained, particularly in respect of the forest and woodland areas as Council's preferred option focuses primarily on the protection of habitat in the drainage depressions.

Financial Considerations:

A reduction in the dwelling yield for the Estate would have implications for revenue generated through the special rates which were first introduced to fund the rezoning investigations and road design and construction. A 10 year repayment program commenced in 2006/2007 to recoup the \$350,000 borrowed by Council to fund the rezoning investigations and road design. A reduction in the dwelling yield could potentially impact on Council's ability to recoup its expenses on this project.

3. Listing of Terara Village as a Heritage Conservation Area in the Local Environmental Plan **File 1106-07**

Purpose of the Report:

The purpose of this report is to present options to Council in relation to the possible inclusion of Terara Village as a Heritage Conservation Area (HCA) in the LEP, following the Council resolution of 11 November 2008.

RECOMMENDED that:

- a) **Council request the Department of Planning to Include Terara Village as a Heritage Conservation Area in the draft Shoalhaven LEP 2009, prior to the issue of a Section 65 certificate from Department; and**
- b) **Invite the affected landowners to make a submission to Draft SLEP 2009 during the exhibition period on the possible establishment of the Heritage Conservation Area.**

Options:

Option One

- a. Council request the Department of Planning to include Terara Village as a HCA in draft LEP 2009, prior to the issuing of the Section 65 certificate; and
- b. Invite the affected landowners to make a submission to Draft Shoalhaven LEP 2009 during the exhibition period on the possible establishment of a HCA.

Comment

Should Council wish to proceed with the prepared listing of Terara Village as a HCA in the LEP, then this is the preferred option. The Shoalhaven Heritage Study of January 1998 (on which LEP Amendment No. 212 to Shoalhaven LEP 1985 was based), supports the inclusion of Terara Village as a HCA. The Department of Planning (the Department) have been advised that Council may consider this option and have raised

no objections. Ensuring the village is included prior to the issue of the Section 65 certificate will assist in minimising delays in the gazettal of the LEP as a major change will not need to be made to the LEP after the public exhibition period.

Option Two

- a. Invite the landowners of Terara village to make a submission during the exhibition period of the draft Shoalhaven LEP 2009 requesting establishment of the HCA and prepare a possible future amendment to draft SLEP 2009 to list Terara Village as a HCA.

Comment

It is considered that a future amendment to LEP 2009 is an inefficient use of resources as staff would be required to undertake a separate LEP process instead of incorporating the HCA into an LEP that is currently being undertaken. Furthermore, the Department has not given Council any direction of when and how future LEP 2009 amendments will be undertaken.

Option Three

- a. Not proceed further with the proposal to include Terara Village as a HCA in LEP 2009.

Details/Issue:

Background

Following the receipt of a petition from the residents of Terara Village, Council resolved on 11 November 2008 that:

“The General Manager investigate and report back to Council on the possibility of, and process involved, in declaring Terara Village a Heritage Conservation Area.”

The petition was instigated in response to a development application for a “rural industry” within the village.

The Terara Heritage Group has also requested that 5 additional properties that were not identified as part of the Shoalhaven Heritage Study, or included in the draft Heritage LEP and are currently not listed as items of heritage significance, be included as items of heritage significance in LEP 2009. Heritage data reports compiled by the Terara Heritage Group were submitted with the request, however it is not proposed that these additional items will be considered for inclusion in LEP 2009 at this stage, as an Independent Heritage Assessment would be required to assess the heritage significance of these additional items and the expected timing of the exhibition of draft LEP 2009 would not allow this to occur.

Local Environmental Plan (LEP) Amendment No. 212 – Heritage LEP

Amendment No. 212 to Shoalhaven LEP 1985 (SLEP) was gazetted on 13 April 2007. In the exhibition process the draft plan proposed to include a number of (HCAs) within the heritage provisions of SLEP 1985.

The Shoalhaven Heritage Study identified Terara Village as one of these HCAs. The heritage study provided the justification for listing areas and properties of heritage

significance. The resulting draft Heritage LEP was exhibited from 14 June to 18 August 2000 and included a Terara Township HCA.

Attachment "A" shows the draft Terara HCA that was exhibited as part of the draft Heritage LEP.

Whilst Council received no objections to the listing of the Terara Township HCA as part of the draft LEP exhibition process, some concerns were raised by landowners located in the other proposed HCAs over the possible implications of the listing being placed on non-heritage items that were located within HCAs. Council resolved to remove some of the HCAs (including Terara Township) from the draft LEP following consultation with affected landowners and consideration of the potential social and economic implications on the land owners in question. For this reason, the gazetted LEP amendment did not include the Terara Township HCA.

Process for Terara Village being listed as a Heritage Conservation Area

Shoalhaven Local Environmental Plan 1985

Shoalhaven LEP 1985 provides provision under *Schedule 7 Part 2 – Heritage conservation areas* for a place of significant heritage value to be listed as a heritage conservation area. There are currently 2 locations listed as HCAs, being the Plunkett Street HCA in Nowra and the Pulman Street HCA in Berry.

At this stage, to immediately commence the process of attempting to list Terara Village as a HCA, Council would need to resolve to amend SLEP 1985 in relation to *Schedule 7 Part 2 - Heritage conservation areas* of the current SLEP 1985.

Given that Council has submitted draft LEP 2009 to the Department to request permission to publicly exhibit the plan, it is highly unlikely that an amendment to the current LEP would be supported by the Department. As such the options outlined in this report focus on the opportunities to incorporate the matter into draft LEP 2009.

Draft Shoalhaven Local Environmental Plan 2009

Draft LEP 2009 (which is awaiting the issuing of a Section 65 certificate by the Department to enable exhibition of the draft LEP) also allows for the listing of HCAs under *Schedule 5 Part 2 - Heritage conservation areas* and by including them on the heritage overlay.

An alternative to amending the current SLEP 1985 would be to include Terara Village as a HCA in draft LEP 2009. There are two options available for amending draft LEP 2009:

1. Amend draft LEP 2009 prior to receiving a S65 certificate and public exhibition to include Terara Village as a HCA, or
2. Prepare a future amendment to LEP 2009 once the LEP has been gazetted.

Economic, Social & Environmental (ESD) Consideration:

Council's "*Guidelines for integrating the principles of Ecologically Sustainable development into Shoalhaven City Councils Activities*" states that a task of the Strategic Planning & Infrastructure Group is to:

“Identify key historic, social and cultural assets of significance and make recommendations for the protection, enhancement and management of heritage assets.”

Identifying Terara Village as a HCA in LEP 2009, based upon the previous Shoalhaven Heritage Study, satisfies the above. The listing of the Village as a HCA via an LEP amendment would add a further layer of heritage protection and management criteria for some of the heritage assets of the city.

The cost of Heritage Impact Assessments by applicants/landowners in HCAs in relation to proposed developments is a consideration.

Financial Considerations:

At this stage it is envisaged there would be minimal impact on Council's finances other than reporting time on review of any submissions received.

4. Contributions Plan draft Amendment 96 - St Georges Basin Village Centre and Anson Street Extension - outcome of further consultation File 36569 PDR

Purpose of the Report: Draft Amendment 96 to Council's Contributions Plan for St Georges Basin Village Centre and Anson Street Extension (CP96) was reported to Council in November 2008 following public exhibition. Council resolved to defer the matter to allow further community consultation. This report presents the outcomes of the further consultation and recommends the draft Plan be adopted with some significant changes.

RECOMMENDED that in relation to Contributions Plan draft Amendment 96, St Georges Basin Village Centre and Anson Street extension:

- a) **Council adopt the Plan with amendments relating to the calculation of contribution rates and minor editing corrections as detailed in this report;**
- b) **Council place a notice of adoption in local newspapers and on Council's website within 28 days of adoption, and advise affected landowners and community groups accordingly; and**
- c) **Council enter negotiations with Salcorp Developments Pty Ltd for the acquisition of that part of Lot 2 DP785956 necessary to provide community infrastructure described in DCP 17 Amendment 2 St Georges Basin, and a further report be presented to Council.**

Note: This matter, (c) was the subject of discussion at the Budget Working Party Meeting of 27 April 2009.

Options:

- a) Council adopt the Plan as exhibited. In doing so, Council will not satisfy the concerns of landholders significantly affected by the Plan and key to future commercial and residential development of the locality. Submissions to the exhibited Plan raise some issues of merit for Council's consideration.

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- b) Council adopt the Plan with amendments. This report summarises some suggested amendments to the Plan. Council can adopt or vary these suggestions, but may need to consider re-exhibition of a further amended Plan if the changes significantly disadvantage landowners and development.
 - c) Council not adopt the draft Plan. CP96 is designed to replace an existing contributions scheme. Should Council not adopt CP96, the existing scheme remains effective but does not include contributions to the full set of capital works envisaged in the locality, and is based on cost estimates that are out of date.
 - d) Council defer adoption of the Plan for further consultation or briefing.

Details/Issue:

Background

Development Control Plan 17 (DCP17) applies to the St. Georges Basin Village Development Precinct and was recently amended. As part of the on-going review of Council's Contributions Plan, and in light of significant development interest in the locality, Council staff reviewed infrastructure requirements. CP96 was duly prepared, exhibited and reported to Council. A copy of the exhibited Plan is provided in the Councillors room. A copy of the report is included as Attachment A because it contains a large amount of additional background information and should be read in conjunction with this report. It also includes a review of submissions received following the initial exhibition period. These relate to a proposed service lane and other matters that are not discussed further in this report.

Following representations by affected landowners, Council deferred adoption of the Plan to allow further community consultation.

Council is preparing to install a significant part of the drainage works described in this report in advance of development.

Submissions

Two further submissions were received from Allen Price & Associates on behalf of affected landowners. Meetings were also held between Council staff and Allen Price & Associates on behalf of Salcorp Developments P/L (Salcorp), one of the affected landowners, with a further submission received. A summary of issues raised and the response of Council staff is summarised below.

Method of calculating contributions

The draft Plan calculated some contributions on a 'per m² of land area' basis. The submissions argued that they should be calculated on a 'per Equivalent Tenement' (ET) basis because this was a better measure of the demand created by development and because the full land area is not available for development. Council staff recognise the merit of this request and recalculated contributions for projects other than drainage on this basis, with the results discussed below. Because of the nexus between drainage works and the size of the drainage catchment area, it will be recommended that contributions for drainage be calculated on a 'per m²' basis. For drainage, the catchment area is a close fit to the developable area.

Contribution Areas and cost apportionment for the Anson Street extension and the Village Access Road

In the exhibited draft Plan, the nominal end point for the extension of Anson Street was where it connected to the Village Access Road, and not the full length to Island Point Road. This was because the Village Access Road might be completed ahead of the Anson Street extension, and the western section of Anson Street is expected to carry a larger volume of traffic generated by development compared to the section to the east. The submissions argue that Anson Street logically extends to Island Point Road and the projects in the contributions plan should reflect this. Furthermore, the submissions argue that the cost of this work should be apportioned similarly to that section to the east.

Council staff recommend Council consider this request, but in doing so a larger proportion of the cost will be borne by Council. The submissions also argue that the wider community benefits from these roads, not just the commercial development in the Village Centre, so the costs of the works should be borne by the wider community. However, consistent with other Plans, the commercial and residential activity of the village centre are considered the generator of demand and it will be recommended contributions be applied accordingly. Notwithstanding, it is appropriate to make minor adjustments to the boundaries of the contribution areas to better reflect demand estimates; specifically, all land adjoining Anson Street and expected to benefit from access to it should be included.

Cost estimates

The submissions suggest that the cost estimates included in the draft Plan are excessive, compared to cost estimates prepared for Allen Price & Associates by contractors, and lack sufficient detail to permit thorough review. However, the cost estimates were prepared by Council staff using standard techniques and, for the drainage works, reviewed in light of impending construction. For the purpose of setting contribution rates, it will be recommended that the cost estimates stand. In the opinion of Council staff, the draft Plan contains sufficient detail.

Acquisition of land for proposed Village Green

Two of the submissions suggest that the assumed value of the land required for the Village Green proposed in DCP17, being part of Lot 2 DP785956 (132 Island Point Road) is too low. Furthermore, it was requested by Salcorp, as a matter of urgency, that Council acquire the land in accordance with the intention of the DCP. This matter was raised in the previous report to Council, with a recommendation to enter negotiations which was subsequently deferred.

The land value assumed in the draft Plan was based on the recommendation of an independent Valuer. Since that time, Council has been advised of the somewhat higher acquisition cost of an adjoining land parcel. The revised calculations discussed below are based on this latest advice. Even so, this value is significantly lower than that requested by the landowner, supported by their valuation. Should Council adopt a contributions plan that provides for recoupment of the cost of acquisition, it will be recommended that Council continue negotiations with the owner. In the calculations which follow, costs shown are for both acquisition and construction.

Uncertainty over requirement for on-site drainage

The submissions requested clarification on the issue of on-site stormwater detention. The drainage works incorporated into the draft Plan are designed to accommodate stormwater flows from the developable catchment. In general terms, additional on-site

stormwater detention will be required only under certain circumstances; firstly, if stormwater discharge exceeds the design capacity of the proposed drainage works, and secondly, if development proceeds in advance of construction of the drainage works. These circumstances are expected to be negotiated as development proceeds.

Other issues raised in submissions

One submission requested that there be no additional requirement for dedication of open space other than the proposed Village Green. This relates to an area of land zoned 6(c) Open Space – Recreation “C” Proposed. This issue is considered outside the scope of this report.

One submission requested clarification regarding the exact locations of the proposed Village Green and associated public car parking. The information included in the exhibited contributions plan reflects the concept plans shown in DCP17 and have not yet progressed to design details. They are considered of sufficient detail to be included in the contributions plan for the purpose of setting a contribution rate.

The exhibited Plan contained one incorrect map and a small number of editing errors that can be corrected should Council adopt the Plan.

Land the subject of development consent

It should be noted that these and other landowners have development consent that will not be subject to any amended contributions plan, so the impact of the amended Plan will apply to subsequent development applications. Where consent requires construction of works that are the subject of the Plan, the Plan contains provisions for work in kind to offset monetary contributions in the consent.

Consequences of recalculation of contributions in accordance with submissions

It will be recommended that Council consider the recalculation of contribution rates on a ‘per ET’ basis, taking into account the developable land area only, but using the latest cost estimates prepared by Council staff. In doing so, the total cost of the proposed works will be higher than in the exhibited draft Plan. Council’s share of that cost will be increased, partly because of increased costs and greater cost apportionment to Council, but also because consents have been issued under the existing CP. The difference in contributions for development already approved will become part of Council’s cost share under these recommendations.

Because it results in a different basis for calculation, it is not possible to directly compare contribution rates. The final submission from Allen Price & Associates is supportive of the approach, but not of the cost estimates proposed in this report.

Table 1 summarises the scope of works and estimated costs for the current CP, draft amendment 96 as exhibited and the latest revised costs. For road projects, the apparent change in costs is partly due to cost increases with the passage of time but also by changing the scope of each of the road projects.

Table 1 Estimated costs in current, exhibited and proposed amendments

Works item	Cost in current CP	Estimated cost in exhibited draft CP96	Revised estimated cost
Drainage	\$718,205	\$720,900	\$1,134,740
Anson St extension	\$644,409	\$938,720	\$1,894,000
Village Access Rd	\$1,692,758	\$2,054,700	\$2,466,593
Village Green	n/a	\$277,468	\$277,468
Car parking	n/a	\$162,960	\$162,960
Total	\$3,055,372	\$4,154,748	\$5,935,761

Note: Acquisition of the Village Green area was discussed at the Budget Working Meeting of 27 April 2009.

Should Council agree to apportion costs on a 'per ET' basis in accordance with the submissions, Council's share increases from an estimated \$926,034 in the exhibited draft Plan to \$1,826,879 in the revised amendment. This estimate does not take into account that development consents already issued will not be subject to the amended Plan. Council's cost share could be much higher, perhaps approaching \$3m, depending on how much of the scope of works is provided by development as condition of consent, or work in kind, should existing consents be acted upon. New development applications will be subject to the amended Plan.

Table 2 summarises current and exhibited contribution rates and rates calculated in accordance with the methodology proposed in submissions. Because of the change in the basis of the calculations, rates are not always directly comparable between Plans.

Table 2 Contribution rates in current, exhibited and proposed amendments

Works item	Indexed contribution rate in current CP	Contribution rate in exhibited draft CP96	Revised contribution rate recommended for adoption
Drainage catchment 1	\$11.06/m ²	\$9.88/m ²	\$10.24/m ²
Drainage catchment 2	\$5.61/m ²	\$5.45/m ²	\$8.66/m ²
Drainage catchment 3	\$4.85/m ²	\$4.28/m ²	\$5.93/m ²
Anson St extension	\$949.63 per ET	\$1,211.25 per ET	\$2,403.55 per ET
Village Access Rd	\$14.41/m ²	\$15.32/ m ²	\$6,084.40 per ET
Village Green	n/a	\$2.07/ m ²	\$684 per ET
Car Parking	n/a	\$8,148 per space	\$8,148 per space

The scope of works allows for the creation of a rear service lane for certain properties fronting Island Point Road and for the land adjoining to the east. The exhibited Plan requires affected landowners to dedicate the required land and construct the service lane, and does not require monetary contributions for this work. It is recommended the adopted Plan retain this provision.

Additional comment - Impact of Amendments to the Environmental Planning & Assessment (EP&A) Act

The draft Plan was developed to be consistent with proposed amendments (not yet gazetted) to the EP&A Act affecting development contributions. The draft Plan will be sent to the Department of Planning for their concurrence.

Economic, Social & Environmental (ESD) Consideration:

CP96 provides an updated contributions plan for the St Georges Basin locality, which will encourage equitable cost sharing of essential infrastructure as development proceeds. The scope of works allows for better management of urban stormwater flows, with a view to reduce nuisance flooding and to improve water quality discharge into St Georges Basin. The scope of works also provides for better traffic management in the locality, with particular reference to access around the Village Centre, as well as the provision of public open space and additional public car parking.

Financial Considerations:

The financial impact of CP96 on Council and the development industry is detailed in this report. The cost share to Council of the proposed works will need to be included in Council's capital works forward planning. Much of the proposed drainage works are scheduled for construction in this and next financial years, a significant investment by Council in anticipation of future development. The impact of contributions on the development industry should also be considered, however the recommendations in this report propose a contribution rate and cost apportionment that are considered reasonable and within the 'affordability threshold' recently determined by NSW Government.

5. Development Control Plan No. 54 Huskisson Tourist Town Centre - Draft Amendment No. 4 File 10132-07 PDR

Purpose of the Report:

The report dealing with comments received during exhibition of DCP No. 54 Huskisson Tourist Town Centre - Draft Amendment No.4 was deferred at the Council meeting of the 11th November 2008, to allow an on-site inspection and a Councillor workshop on the subject.

The Councillors Town Centre inspection occurred on the 5th February and a workshop was undertaken on the 18th February 2009. Since the original report, a further letter from the Executive Director-Rural and Regional Planning, NSW Department of Planning was received on the 5th January 2009, reiterating the concerns of the Department previously submitted in writing during the public exhibition of the Draft Plan.

The purpose of this report is to summarise the results of the site inspection and Councillor Workshop and to discuss issues raised by the Department of Planning and reconsider the report of the 11th November 2008 (Attachment "A") dealing with public comments received at the public exhibition with the aim of finalising the DCP review.

RECOMMENDED that in regard to DCP No.54 Huskisson Tourist Town Centre-Draft Amendment No.4, the Plan be adopted with the amendments described below:

- a) Council advertise its adoption in accordance with provisions set down in the Environmental Planning and Assessment Act 1979.
- b) The adopted Plan be made available on Council's website.

Amendments:

- a) **With regards to Building Height:**
 - i. The maximum height of development in Owen Street be capped at 3 storeys and 10 metres on the north and 4 storeys and 13 metres on the south above natural ground level.
 - ii. One bonus level (maximum 3 metres high) may be considered but is limited to a maximum of 50% of the building footprint, subject to the following requirements:
 - 1. Lot size over 2000m² or lot consolidation with 2 or more lots over 1200m²;
 - 2. Provision of basement car park to allow two way traffic flow and turning movement in accordance with DCP 18- Car Parking Code;
 - 3. A high degree of building articulation and architectural design merit; and
 - 4. Good urban design practice, including quality design contribution to the public domain and minimisation of overshadowing to the public domain and residential properties.
- b) **With regard to Huskisson Style/Design Guidelines:**
 - i. Huskisson Town Centre Urban Design Guidelines be prepared as a supplementary document to the DCP with an aim of an extended application to other Commercial Centres in the Shoalhaven in the future.
 - ii. In the interim (until the Guidelines are prepared), an Urban Design Assessment Report be required as part of DA submissions for development which is over 3 storeys.
 - iii. Include in the DCP, Urban Design Assessment Report must be prepared by a qualified design professional and should address a series of good design principles that applied for the development and how the development is to contribute to the desired character for Huskisson.

c) Other amendments:

i. The following objective be re-inserted:

‘To maintain Huskisson with a level of retail development that would not compete with the Vincentia District Centre’.

ii. (p.14) ‘Development should also follow the template for urban based apartments’ be amended as ‘Development may follow the template for urban based apartments.’

iii. Delete ‘5 Application’ in Page 5, as repeated in Page 20.

iv. Definition of ‘height’ be replaced by new LEP template, as “Building height’ (or ‘Height of building’): refer to the definition in the Shoalhaven LEP 2009” (p.20).

v. To refer to the updated SEPP 65 in Appendix 2 (p.49).

vi. Huskisson Sun Angle Diagrams be included in the Plan as Appendix 3.

vii. Minor error corrections & formatting matters:

Options:

a) With regard to DCP No.54- Draft Amendment No.4:

i. Option A: Adopted as exhibited.

ii. Option B: Adopted with amendments as recommended.

iii. Option C: Adopted with amendments modified.

b) With regard to building height options (Attachment ‘B’) (modified from the four options shown in the report of the 11th November 2008):

i. Option A: Exhibited Plan: do nothing and approve the Plan as exhibited

ii. Option B: Workshop outcome: the height of development in Owen Street be limited to 3 storeys and 10 metres on the north and 4 storeys and 13 metres on the south, with one bonus storey of max 50% of the building footprint, subject to the requirements specified in the Plan.

iii. Option C: The height of development in Owen Street to be capped at 2 storeys and 8 metres on the north and 3 storeys and 11 metres on the south with the frontage to Owen and Currambene Streets, with one bonus storey, subject to the requirements specified in the Plan.

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- iv. Option D: The height of development in Owen Street be capped at 3 storeys and 10 metres on the north and 4 storeys and 13 metres on the south with the frontage to Owen and Currambene Streets adopting a tourist village theme through 7.5 metres high (two storeys) on both sides of the street for a depth of 12 metres (No bonus provision).
 - c) With regard to Huskisson Design Guidelines:
 - i. Option A: Do nothing. No Guidelines required.
 - ii. Option B: Huskisson Urban Design Guidelines be prepared as a supplementary document
 - iii. Option C: No Guidelines but Urban Design Assessment Report be part of DA submission for development over 3 storeys.
 - iv. Option D: Option B + C, above

Details/Issue:

Councillor Site Inspection and Workshop

Staff gave a PowerPoint presentation on the issues relating to the DCP concentrating specifically to the four building height options in the Council report of the 11th November 2008.

Matters discussed included the need for adequate articulation and whether building separation assisted in reducing the impact of large buildings in the existing streetscape. It was generally agreed that the ground floor could have maximum site coverage however residential storeys above the first floor would need to be separated to comply with the natural light and ventilation requirements contained in SEPP 65 and the Residential Flat Design Code.

Whilst it appeared to be acceptable that buildings should be separated in the 3G residential orientated zones, some concern was expressed over the ability to achieve similar separation in the shopping streets as developers would be seeking maximum site coverage of development. In addition, the building side separation in the commercial area may be difficult to achieve due to promoting the continuity of active street frontage and security concerns on spaces created by the separations.

- # The Huskisson Sun Angle Diagrams (Attachment 'C') allowed further discussion on building height issues and it was generally agreed that shadows on the opposite footpath café area from buildings on the northern side of Owen Street, or residential properties in Morton Street, would not be an issue with a maximum of 4 or 5 storey buildings. However some concern was expressed over the continuous shadow that would be cast by a continuous building wall of 4 storeys high on the northern side of Owen Street. One possible solution was to require a large enough setback from the Owen Street frontage for the bonus storey so that it was not apparent when viewed from the opposite footpath (see Attachment 'D').

At the workshop, the Mayor and some other Councillors identified Option 'B', 10 metres (3 storeys) on the north of Owen Street and 13metres (4 storeys) on the south of Owen Street with a 50% Bonus level (Attachment 'B'), as the compromise position of both the community and business representatives at the facilitated workshops. The Department of Planning has also expressed this option be considered.

It is acknowledged however that this option has not been reflected in submissions received during the public exhibition and a detailed discussion on the submissions appeared in the report to Council of the 11th November 2008, also attached.

Discussion occurred on the preferred template for building design; 'Coastal' as compared to 'Urban' or 'Garden' style apartments as categorised in the Residential Flat Design Pattern Book. Urban style buildings may be considered along both sides of the main shopping street (Owen Street) to achieve an active and lively street frontage where zero street setbacks and retail/commercial uses at ground level are required. Coastal style is considered more appropriate to other developments within mixed use zoned areas. Flexibility of building styles may be sought. Urban style may be acceptable to respond to the shopping street context to achieve continuous active shop frontage without building side separations, whereas coastal style, such as horizontally emphasised window patterns, views with an emphasis on framing balconies, coastal colours and other building material details, as shown in the Design Pattern Book, may be considered for residential flat development in Huskisson, creating a consistent building character as 'costal style', not 'urban'.

Discussion also occurred on whether the town centre should encourage Tourist developments over permanent units by restricting permanent units to 25% of the total number of units in any one development. There seemed to be consensus that Tourist units should only apply to the Huskisson Hotel site due to its unique status whilst other residential developments should not have any occupancy restrictions.

Underground car parking standards were discussed and although it was suggested that manual operated turntables, to achieve access to tight spaces, should be considered, there appeared little support for such sub standard designs and that vehicles should be able to enter and exit in a forward fashion without undue restrictions. The inadequacy of the Australian Standard for users in unfamiliar car parks (holiday use) was also raised. Innovative car parking design options, as seen in some overseas examples, may be considered but seems unlikely in Huskisson development due to its cost implication.

Director of Strategic Planning & Infrastructure Group Comment

The report submitted to the Council meeting of the 11th of November is yet to be considered by Council. Whilst the workshop and site inspection have clarified a number of issues, particularly in terms of shadow impacts, tourist occupation vs permanent occupation, etc., the lack of a clearly articulated desired future character statement makes it difficult to establish built form design controls for the town centre – i.e. acceptable bulk and scale.

There appears to be a desire to encourage residential living in the commercial area to activate the town centre. On the other hand, there is a clear statement from the community through the submissions during the public exhibition that a significant increase in height over the current heights of average 1-2 storeys is of concern, particularly as it impacts on the character that attracts new residents and tourists.

In the absence of a demand analysis to determine the capacity for an increase in residential living, and when the Jervis Bay Settlement Strategy only forecasts modest increases, it is possible that increased height may encourage speculation and increase the price of land beyond viable development opportunities. Moreover, the costs of providing underground car parks is becoming increasingly expensive to the point that most applications received and constructed recently have foregone this option.

The desirable future character will indicate the levels of change anticipated within a certain time frame and the valued aspects of Huskisson character should be recognised and retained. New development will always result in some level of change in existing character but it is nonetheless possible to reinforce and promote many of Huskisson's valued aspects, which residents and visitors can appreciate easily. In the absence of a 'desired future character statement' that endorses a significant shift in the existing character, it is suggested that urban design guidelines for the town centre be prepared not only to improve design quality for residential living and the public domain, but also to minimise visual impact of new development which will need to create a liveable and pleasing tourist town atmosphere.

Through the three workshops in 2008, undertaken by an independent facilitator, Dr Danny Wiggins, the following was generally accepted: that 3 and 4 storey development along Owen Street with one bonus storey of max 50% of the building footprint, subject to lot size requirements, a provision of underground car parking; and good architectural/urban design merit.

- # This option results in a reduction of the built floor area of the bonus level and will help to improve building façade horizontal articulation and reduce visual impacts of new development on the southern side of Owen Street, by facilitating a top level setback (refer to Attachment 'E').

To ensure that there are design guidelines to reflect this building height option, it is suggested that the local context analysis, which is a requirement of SEPP 65, is developed further as a stand alone document; that is 'Huskisson Town Centre Urban Design Guidelines' to provide clear guidelines for both designers and assessment officers dealing with new development applications. The DCP will be augmented with such supplementary design guidelines which will provide adequate design information to translate the character elements required to strengthen the desired future character for Huskisson.

While 'style guides' normally have been a strong focus on buildings, urban design guidelines are more appropriate to cover commercial centres to provide the design interpretation for a desirable local context, anticipated physical form, town centre activation and public domain improvement. The proposed Guidelines will complement the review of DCP99 for 3g areas in Huskisson, be of relevance to Higher Density Code and could be extended to apply to other localities in the Shoalhaven.

It would be desirable that development of 4 or 5 storeys is stepped down when located adjoining 2 story medium density or low density residential zones, and proposed design guidelines will detail further such desirable design solutions to minimise visual impacts of new development in terms of building setbacks, articulation, shopfront activation, building modulations and separations, landscaping and so on.

The letter from the Department of Planning has indicated that an objective needs to be re-inserted in the Plan to provide a clear statement on the retail hierarchy showing the Vincentia District Centre as the highest order centre, in accordance with the South Coast Regional Strategy. In response to the Department's concern, the following objective is recommended to be included: To maintain Huskisson with a level of retail development that would not compete with the Vincentia District Centre.

Tourist accommodation is to be maintained as the preferred land use on the Huskisson Hotel site and serviced apartments and the like be added to the uses that will be required to comply with the Residential Flat Design Code.

There is an inconsistency in the definition of 'building height' between new LEP template and the draft DCP. As the Department letter has indicated, the definition needs to be consistent, preventing future confusion when the height control is incorporated in the new LEP. While Shoalhaven LEP 2009 working draft definition of the 'building height' (or 'height of building') means *"the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like"*, the current DCP defines it as *"the vertical distance between ground level (existing) at any point to the highest point of the building, roof or parapet, but excluding architectural roof features which exceed the top of a building by more than 1 metre"*.

According to Draft LEP (Working Draft) clause 5.6, development that includes an architectural roof feature that exceeds the height limits can be carried out with consent. In addition, LEP states that "any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature'.

Since LEP clarifies and defines architectural roof features and building height, it is recommended that current DCP definition of height is replaced by the LEP definition, as "Building height: refer to the definition in the Shoalhaven LEP 2009". Despite replacement with the LEP definition, it is proposed the following be retained in the DCP, to allow one metre flexibility of architectural roof features above the building height limit,

'Buildings having a height between 10 metres and 13 metres inclusive may exceed this height by a maximum of 1 metre to provide for architectural roof features and decorative elements on the upper most portion of a building' (P.11).

Huskisson Hotel Site- *'Development may incorporate architectural roof features exceeding the maximum height by 1 metre as defined in this plan' (p.16)*

A copy of the amended DCP proposed for adoption is included in the Councillor's Information folder.

Economic, Social & Environmental (ESD) Consideration:

Refer to attached report of the 11th November 2008.

Financial Considerations:

Although Huskisson Town Centre Urban Design Guidelines could be prepared in house, if Council sees it a matter of urgency, it may be preferable from a timing point of view for these to be prepared by external consultants. In this case additional funds would need to be allocated. Other financial matters are addressed in the attached report of the 11th November 2008.

E J Royston

DIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE

R D Pigg

GENERAL MANAGER

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 5 MAY 2009

DEVELOPMENT AND ENVIRONMENTAL SERVICES

6. **Alterations and additions to existing development comprising 5 shops and 4 offices with on-site car parking and access of Princess Street via the existing council car park - Lot 1 DP 1038574, 108 Queen Street, Berry. Applicant: Architects Edmiston Jones. Owner: R & S Corsaro. File DA08/2340 (PDR)**
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PURPOSE OF THE REPORT:

A development application has been received by Council which seeks approval for additions to an existing development by extending the building to the west and to the south in accordance with the footprint established by Development Control Plan 49 - *Berry Central Business District* (DCP 49) and the addition of a second storey. The proposed development would comprise five shops at ground level and four offices on the first floor. See **Attachment 'A'** for location, see **Attachment 'B'** for plans.

The application proposes to provide eight (8) on-site car parking spaces and a garbage storage facility in contravention of DCP 49.

This report is submitted to council for direction as the submitted application is proposing a variation to DCP 49 requirements in respect of the initial provision of on-site car parking and the location of the garbage storage facility.

RECOMMENDED that:

- a) **Council support a variation to Council's Development Control Plan 49 - Berry Town Centre, to allow on-site car parking for a limited period of ten years or until such time as further development occurs, whichever occurs sooner;**
- b) **The development application be determined under delegated authority; and**
- c) **The applicant be advised that:**
 - i) **Currently, a 5 tonne load limit is imposed over Council's Princess Street car park; and**
 - ii) **A modification to the condition limiting the provision of on-site car parking to ten years may be sought and will be considered by Council under Section 96 of the Environmental Planning and Assessment Act 1979.**

OPTIONS:

- a) Refuse the variation;

Clearly, in the absence of adequate on-site car parking, the developer does not appear to be in a position to proceed with this development and to commence economic activities to fund the future development of the site. However, in a commercial area such as this, Council would normally be prepared to accept a s94 contribution for the balance of the required parking.

The principal reason for refusing the variation request would be based on the non-compliance with the DCP and the potential for frustrating its long term implementation.

Given the current government initiative to create and maintain employment, it is considered that part development of the site in the short term would be more beneficial to the local economy than no development until the long term or no development at all.

- b) Allow the variation for an unlimited period; or

Council may allow the on-site car parking variation to remain permanently. However, such a solution would be contrary to the objectives of DCP 49. It is considered that permanent on-site car parking would seriously impede the implementation of DCP 49 by setting an undesirable precedent and significantly constraining pedestrian and traffic movements.

- c) Allow the variation for a limited period.

It is recommended that Council allow on-site car parking for a limited period of ten years. Such an option would enable the development of a substantial portion of the site to commence, while ensuring the long term objectives of the DCP 49 are not compromised.

The limited period option would enable the developer to proceed with the proposal and provides a positive financial stimulus to the local economy in difficult economic times. This option also maximises opportunities to complete the development of the site in accordance with the DCP 49 by leaving in place the financial incentive to do so.

DETAILS/ISSUE:

Background

This current application was notified in accordance with Council's Community Consultation Policy. No submissions were received by Council during the notification period.

The proposed development generates the need for ten (10) car parking spaces and the submitted site plan indicates eight (8) of these spaces are proposed on the subject site, leaving two (2) parking spaces to be paid for under Council's S94 Contributions Plan (\$30,147.00 x 2 = \$60,294.00). Further assessment regarding on-site pedestrian movement may require an adjustment to the on-site car parking arrangement, in which case the S94 contribution amount would change.

Nevertheless, the map associated with DCP 49 indicates that no car parking spaces are to be located on the subject land nor the provision of garbage facilities outside the nominated building envelopes as is currently proposed on an interim basis. Refer to **Attachment 'C'** - Extract from the DCP 49 (Amendment 5) Map.

The proposal to locate parking spaces on the subject site and garbage storage facilities in the manner proposed is therefore contrary to the adopted DCP 49 Berry CBD (Amendment 5) Map.

Justification for the Variation

The applicant acknowledges that the proposed parking does not comply with the DCP 49 map. Refer to **Attachment 'D'** - Applicant's Supporting Submission. However, the applicant submits that the proposed car parking arrangement represents the first phase in the ultimate development of the whole of the site in accordance with DCP 49. The applicant further acknowledges that ultimate development of the subject site will include the future development of residential accommodation units which will also accommodate the ultimate garbage storage facility adjacent to the proposed service road.

Therefore, the first phase of the total development of the site includes the temporary on-site car parking arrangement and the garbage storage facility designed to allow economic activities to be commenced to enable funding of subsequent development for the whole site.

Comment

Given the current global financial situation, it is considered reasonable to allow for such a temporary/interim parking arrangement. Indeed, such a car parking arrangement could remain in place for a substantial period (say up to ten years) or until further development of the site is undertaken (whichever occurs sooner).

At the end of the period however, or until further development of the site occurs, it is equally reasonable for Council to expect payment of the S94 monetary contribution for the remaining eight on-site parking spaces in order to enable progressive implementation of DCP 49.

It may be noted that the car parking spaces and the garbage storage facility do not constitute substantial structures. Thus, agreeing to the phasing of the development as described above, would not compromise the objectives of DCP 49, nor its long-term implementation.

It is further noted that, based on the current rate, S94 contribution for the outstanding on-site parking spaces amounts to (\$30,147.00 x 8 spaces) \$241,176.00 (this amount would be adjusted at the time of payment). The applicant submits that, given the opportunity to generate such funding, the owner would be in a more sound financial position to proceed with future development of the site.

In the event Council approved this variation, temporary traffic management would involve the two-way movement of vehicles along an access/service lane and over an existing Council car park as an interim measure until land required for completion of the whole of the service lane is acquired by Council.

The access/service lane would be constructed by the applicant and if ceded to Council as part of this development application, the owner would need to be compensated via the normal acquisition process. Council's s94 Contributions Plan incorporates the acquisition of the land required for the service lane as a s94 Project. However, if it is decided that ceding is not required now, then the acquisition for the service lane could occur at a later date in accordance with the s94 Plan implementation. While the applicant owns the adjoining property to the east and that site will be ultimately re-developed in accordance with the provisions of DCP 49, there is benefit in securing key components of the implementation of a DCP when the opportunity arises; that is with this DA proposal.

Dedication of the service lane would be an important step closer to securing the service lane in public ownership, which is an essential element within the DCP.

The Public Interest

The public interest would be better served by allowing the variation for a limited period. Development of this particular property would contribute positively to the economic wellbeing and vitality of the Berry CBD area as well as providing actual car parking spaces close to the proposed shops in the heart of the town centre during this interim period.

ECONOMIC, SOCIAL & ENVIRONMENTAL (ESD) CONSIDERATION:

Economic, social and environmental considerations are addressed within this report.

FINANCIAL CONSIDERATIONS:

A separate issue associated with this development application involves the ceding of a service lane to Council. The acquisition and construction of the service lane is a project within the Section 94 Contributions Plan. Any requirement upon the applicant to dedicate or cede the affected land would have to be achieved by Council following a normal acquisition process. It is likely that the applicant/owner would seek to off-set s94 car parking contributions through this process. If the ceding of the affected land is not undertaken at this time then, the acquisition could be affected at a later date in accordance with the implementation of the s94 plan project, however an important opportunity to secure part of an essential element of the DCP may be lost at this stage.

The acceptance of on-site provision of car parking will reduce and delay the amount of Section 94 contributions for car parking that would normally be paid for this proposal. Thus, such funds will not immediately be available for Council's adopted projects. The proposal has no other direct financial implications for Council.

An indirect implication of the proposal is that a condition of any development consent granted will need to impose a restriction on service vehicles to be less than 5 tonnes (consistent with the current weight limit on the car park) until such time as there are sufficient funds collected via s94 Contributions for the strengthening of the pavement in the vicinity of the heritage protected "American Live Oak" tree. The car park was constructed at a time when the service lane was identified in the previous DCP as continuing westwards and entering Alexandra Street, thus negating the need for service vehicles travelling through the car park.

Although, it should be noted that the Strategic Planning and Infrastructure Group (SPIG) recently commissioned a consultant to prepare detailed structural and civil designs in relation to the possibility of redesigning the public car park to retain the heritage tree and accommodate service vehicles over 5 tonne load limit. The SPIG Director advises that Council will be kept informed as this project progresses.

CONCLUSION

Notwithstanding the variation to DCP 49 as discussed above, all the other issues directly associated with this development proposal either comply with the DCP requirements or may be suitably conditioned in the consent under delegated authority.

In regard to the identified Options, it is recommended that Option C be adopted for the purposes of completing the s79C assessment of the application as it provides a reasonable and measured response to the progressive implementation of the DCP. It is also intended to seek dedication of the service lane at this stage such that this important component of the DCP is secured with this application.

7. **Section 82A Review of Determination for Caravan Park - Lot 6 and Lot 108 DP 755923, Inyadda Drive, Manyana. Applicant/Owner: Berringer Road Pty Ltd.**
File DA08/1258 (PDR)
-

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 19 December 2008 including a request to amend the proposal to include the following changes:

- Change from 75 long term sites to 75 short term tourist sites;
- Addition of an ablutions/laundry building; and
- Relocation of the reception building to be adjacent to the caravan park entrance to suit a tourist caravan park.

Given that the refusal of the original application was determined by the elected Council, Section 82A(6)(b) requires this review to be determined by the elected Council.

RECOMMENDED that Pursuant to Section 82A of the Environmental Planning and Assessment Act 1979, the Determination of Development Application No DA08/1258 for a 75 site Caravan Park for long term dwelling sites, Manager's Residence and Community Facilities on Lots 6 and 108 DP 755923, Inyadda Drive, Manyana by way of refusal dated 28 November 2008, be reviewed in accordance with this report and the previous decision be changed to approve the amended application as a deferred commencement consent subject to the conditions of consent detailed in Attachment 'A'.

OPTIONS:

There are three options that Council could consider in relation to the request to review the previous determination of DA08/1258:

- 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 by way of refusal for the following reasons:
- i) Pursuant to the provision of SEPP 21 Clause 10(a) the site is considered to be unsuitable for the proposed development in respect to the location and character of the land; and
 - ii) Pursuant to Section 79C(c) the site is not suitable for the development due to the relative isolation of the site from the villages of Manyana, Bendalong and coastal attractions.

Reason: The council considers that despite the amendments to the proposal the site is still unsuitable for the development of a caravan park

- c) Review the previous determination and change the determination so as to approve the application as amended in the review request on the basis that the amendments overcome the previous reasons for refusal and the locational issues outlined in the Section 79C Assessment associated with the development proposal are acceptable. The consent to be a deferred commencement consent subject to the draft conditions detailed in **Attachment 'A'**.

DETAILS/ISSUE:

Background

A development application for the development of a 75 site Caravan Park for long term dwelling sites, Manager's Residence and Community Facilities including a small shop, a multi purpose community building, swimming pool and recreation and BBQ areas was lodged with Council on 27 February 2008. Council refused the application at its meeting held on Tuesday 25 November 2008 for the following reasons:

1. *Pursuant to the provision of SEPP 21 Clause 10(a) the site considered to be unsuitable for the proposed development in respect to the location and character of the land;*
2. *Pursuant to Section 79C(b) the likely social impact of the development is unacceptable;*
3. *Pursuant to Section 79C(c) the site is not suitable for the development due to the relative isolation of the site; and*
4. *Pursuant to Section 79C(e) the development is not considered to be in the public interest due to the significant negative social and economic impacts associated with the development proposal.*

A copy of the original report to the development committee is included as **Attachment 'B'**.

The Review of Determination was placed on public exhibition from 21 January 2009 until 18 February 2009. In response to this public exhibition, a large number of public submissions were received. A Residents Briefing Meeting was held at the Manyana Community Hall on 19 March 2009 where the notification period was extended to 27 March 2009.

The Subject Site

The development site is located to the western side of Inyadda Drive, Manyana near the intersection of Berringer Road. The subject site has an area of approximately 39.0156 hectares and is generally rectangular in shape. The site falls gently from Berringer Road across to the north east towards Inyadda Drive with a drainage path running from the western boundary to Inyadda Drive.

The site is surrounded to the north by part of Conjola National Park, to the east by Inyadda drive and the Kylor development site, to the south Berringer Road that forms the northern boundary of the Manyana village and to the west by undeveloped rural bush land.

The property supports extensive areas of native vegetation and is bush fire prone. The site was historically cleared for agricultural purposes with understorey removal and was also burnt in the 2002 wildfire. Mapping and advice from the DECC indicates that Swamp Sclerophyll Forest on a Coastal Floodplain, an Endangered Ecological Community, is likely to be present on the subject site. A number of threatened fauna species have been observed or have the potential to occur on the subject land.

The subject site is approximately 11 kilometres from the intersection with the Princes Highway and is 34 km and 57 km respectively from the major centres of Ulladulla and Nowra. The proposed caravan park area is located in excess of 600 metres from the residential area of Manyana and is approximately 1.7km from the beach in Manyana, 2.3km from Berringer Lake and 2.4km from the beach at Bendalong. Locality and zoning plans are provided as **Attachment 'C'** and **Attachment 'D'** respectively.

The Proposal

The amended development proposal seeks consent for the development for:

- 75 short term dwelling sites with one car parking space per site;
- 32 visitors car parking spaces;
- A managers residence incorporating ancillary convenience shop;
- Dividable community facilities building;
- Amenities building incorporating sanitary and laundry facilities;
- Ensuite facilities to serve 8 sites
- Camp kitchen and BBQ areas;
- Swimming pool, 2 tennis courts, play ground, jumping pillow;
- Grassed playing area;
- Internal access and boundary roads;

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- Pedestrian pathways;
 - Extension of water services to site;
 - Stormwater detention and treatment system; and
 - Sewerage pumping station and private rising main to the Bendalong-Manyana sewer treatment plant.

The proposed dwelling sites provide for a range of dwelling sites with areas between 330 m² and 500 m². Full details of the revised proposal are included in **Attachment 'E'**.

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, in respect to the matter of landuse and are discussed individually below:

- Environmental Planning and Assessment Act 1979;
- State Environmental Planning Policy (SEPP 21) - Caravan Parks
- State Environmental Planning Policy (SEPP 55) - Remediation of Land
- State Environmental Planning Policy (SEPP 71) - Coastal Protection;
- NSW Coastal Policy 1997;
- Illawarra Regional Environmental Plan (IREP) No 1;
- Shoalhaven Local Environmental Plan (SLEP) 1985;
- Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

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 below:

- a) **Any planning instrument, draft instrument, DCPs and regulations that apply to the land.**

Environmental Planning and Assessment Act 1979:

Section 82A - Review of Determination: Section 82A permits Council to review a determination; provided that the Council is satisfied that it is substantially the same development as the original proposal. The applicants have proposed a development footprint that is almost identical to the original proposal. In a physical sense the development is substantially the same as the original. The main change to the proposal relates to the use of the development being short term sites compared to the long term sites in the original proposal. It is considered that as the proposal is essentially the same physical form as the original proposal and despite the variation in the use of the sites the request meets the requirement to be substantially the same development. This position was taken following advice from Council's solicitors.

State Environmental Planning Policy No 21 - Caravan Parks

A review of the relevant requirements of the SEPP is provided in the following table:

Clause	Requirement	Comment
<p>3. Aims, objectives, etc</p>	<p>(1) The aim of this Policy is to encourage:</p> <p>(a) the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both;</p> <p>(b) the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community;</p> <p>(c) the provision of community facilities for land so used; and</p> <p>(d) the protection of the environment of, and in the vicinity of, land so used.</p>	<p>The modified application identifies all 75 sites for short term tourist use.</p> <p>The proposed site footprint identified in this review utilises the larger dwelling sites nominated from the original application for long term accommodation, being 180m² to 500m². The regulations require a minimum area of 65m²/site for short term sites and 80m² for long term sites but no maximum area/site.</p> <p>Given that the modified application is intended exclusively for short term tourist use, the overall development footprint of the site could be significantly smaller except for the need of the amendment to be substantially the same development.</p> <p>The proposed community facilities are considered suitable for short term tourist caravan park.</p> <p>The oversized short term sites, 3-7 times the minimum site requirement, require a greater area of the property to be cleared and maintained as APZs and therefore the development has a larger potential impact on native vegetation and the environment in the vicinity of the land than it would if the sites had been sized more appropriately for short term use.</p>
<p>10 Matters to be considered by Councils</p>	<p>A Council may grant a development consent required by this Policy only after it has considered the following:</p> <p>(a) whether, because of its location or character, the land concerned is particularly suitable for use as a caravan</p>	<p>(a) Council determined that the location of the land was not suitable for long term residential use under its refusal of the original application.</p>

	<p>park for tourists or for long-term residence,</p>	<p>Council must now determine whether the site is suitable for short term tourist use.</p> <p>The applicants contend in their revised Statement of Environmental Effects (SEE) (Attachment ‘E’) p1. that the deletion of the long term dwelling sites in favour of short term dwelling sites removes potential negative social or economic impact brought about by the sites location. They state:</p> <ul style="list-style-type: none"> • <i>“the location and character of the site are well suited to short term dwelling sites;</i> • <i>the park is not isolated in terms of tourism pursuits and interests;</i> • <i>there is no potential for negative social or economic impact as no one will reside in the caravan park permanently (apart from the manager) By contrast the proposal will provide a positive impact on the social and economic well-being of the local area and the region.”</i> <p>And on p33. the applicants contend that the likely social impact of the modified development is acceptable because:</p> <ul style="list-style-type: none"> • <i>“the proposal is for short term tourist sites. Tourists coming to visit to the caravan park will do so at their own choice having regard to the services that area available. The tourists will not put a strain on key social services as the services utilised by the long term residents in an ongoing manner (eg schools, doctors, hospitals etc) are not commonly used by tourists. The village is a tourist location and therefore tourist use is not uncommon. Crowding of a shopping centre etc is not an issue as there isn’t such a facility</i>
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	<p>(b) whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of sites for long-term residence,</p>	<p><i>in Manyana – by contrast the proposal will be providing a shop in the caravan park.”</i></p> <p>In contrast, the applicants earlier statements for the original long term proposal, [SEE] p25 they argued that:</p> <p><i>“the development site does not represent a highly desirable tourist accommodation location”</i></p> <p>In addition on p4. of the original applicant’s Social Impact Assessment by Key Insights Pty Ltd the argument was made that:</p> <p><i>“The site is particularly suitable for long term accommodation, being further from the water (both Lake Conjola and the ocean) than other caravan parks in the vicinity....the site shows less potential as a short term tourism site, due to its relative distance from the water”</i></p> <p>Given that short term tourist caravan parks are highly seasonal in their nature, with peak demand around Christmas period and school holidays, the viability/suitability of the site for a tourist park that is remote from the water is not ideal, however there are a number of examples where parks exist in less than ideal locations.</p> <p>(b) The applicants acknowledged that Manyana supports some absentee owner holiday letting. In the current [SEE] they contend that there is inadequate provision for tourist accommodation in the locality.</p> <p>A review of approved short term accommodation in the Manyana-Bendalong area has revealed the following short term accommodation:</p>
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	<p>(c) whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,</p> <p>(d) whether necessary community facilities and services are available within the caravan park to which the development application relates or in the locality (or both), and whether those facilities and services are reasonably accessible to the occupants of the caravan park,</p>	<ul style="list-style-type: none"> • Bendalong Caravan Park - 228 sites; • Allawah Cabins - 47 sites; • Don Hearn’s Cabins - 6 x 2 bedroom cabins that sleep 6/cabin; • Rustic Caravan Park - 34 sites; • Berringer Holiday cabins - 4 cabins. <p>However the applicant carried out an audit of available sites which indicated that only a small proportion of sites were currently available and that there was demand for their proposal.</p> <p>In conflict with their current [SEE] on p4. of the original Social Impact Assessment by Key Insights Pty Ltd for the applicants the argument was made that:</p> <p><i>“In regard to provision (b) there is adequate tourist land in the area. A number of parks, of differing sizes and styles of accommodation (cabins, powered sites, un-powered sites) are located at Cunjurong Point, Bendalong Point, and Lake Conjola”</i></p> <p>(c) this matter is not relevant to short term use.</p> <p>(d) the proposal provides for adequate community facilities for a tourist caravan park.</p>
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	(f) the provisions of the <i>Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993</i> .	(f) the caravan park generally complies with the provisions of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 which has replaced the transitional regulations.
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State Environmental Planning Policy No 55 - Remediation of Land

A stage 1 contamination assessment report was carried out as it was understood that the site may have been used for agricultural purposes in the past. The authors of the report (Martens Consulting Engineers) have recommended further investigation in the form of a Stage 2 contamination assessment to be carried out prior to construction. In the event that the application is approved, contamination assessment and clearance conditions will need to be included in any consent.

State Environmental Planning Policy 71 - Coastal Protection

The subject site is identified within the coastal zone and part of the subject site is identified as a 'sensitive coastal location'. Accordingly consideration of the relevant provisions of the SEPP are provided as follows:

Aims of the Policy:

(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast - the proposed caravan park is located on a site which includes extensive areas of native vegetation including an area identified as a 'sensitive coastal location'. Investigations have identified potential areas of environmental significance including an Endangered Ecological Community and threatened flora. The site also is known or has the potential as habitat for a range of native and threatened fauna. The amended proposal does not alter the development footprint.

(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge – the amended proposal does not alter the development footprint.

(e) to ensure that the visual amenity of the coast is protected - The clearing and modification of native vegetation associated with the proposal will significantly alter the landscape context of the locality but is not likely to impact on the visual amenity of the coast.

(g) to protect and preserve native coastal vegetation - the amended proposal does not alter the vegetation to be removed and is consistent with the original proposal.

(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area - The development proposal will require a high level of vegetation removal and modification. This will significantly alter the visual appearance of the area, however, areas of environmental significance have been protected in the design of the development.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area - The development is isolated from the villages of Manyana and Bendalong and is a 'stand alone' development surrounded by other natural areas, including the Conjola National Park. The development involves removal and modification of native vegetation which will alter the landscaping context of the locality.

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities - The amended proposal does not alter the scenic impacts of the proposal.

(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats - This has been addressed in detail in the previous report and a review of one detailed submission on this issue is discussed later in this report.

(i) existing wildlife corridors and the impact of development on these corridors - The proposal is not considered to impact on wildlife corridors.

NSW Coastal Policy 1997: The consideration of the key principles of the Coastal Policy in regards to this proposal requires consideration of issues in regards to protection of biodiversity, ecological integrity and the provision of intergeneration equity in accordance with the precautionary principle. These considerations are detailed in other sections of this report and the original report in **Attachment 'B'**.

Illawarra Regional Environmental Plan (IREP): The proposed development is within the area to which the IREP applies. An assessment against the requirements of the IREP has indicated that the subject land is not identified as a wildlife corridor, land having prime crop and pasture potential, land containing extractive materials, land containing coal resources, land containing rainforest vegetation or land with landscape or environmental attributes. The proposal does not conflict with the aims and provisions of the IREP.

Shoalhaven Local Environmental Plan 1985 - as amended (SLEP 1985): The subject land is zoned 1(d) Rural (General Rural) under SLEP 1985.

The SLEP 1985 does not contain a definition of '*caravan park*' as a land use, however caravan parks is a land use utilised in other parts of the SLEP. Tourist facilities are defined under the Environmental Planning and Assessment Model Provisions 1980 to include caravan parks as a use. Neither tourist facilities nor caravan parks are prohibited in the zone, therefore, the proposed caravan park is considered to be permissible with consent. The small shop component of the development is also permissible with consent as an ancillary use to the dominant caravan park use.

SLEP Clause 28 - Danger of Bush fire: The subject development site is identified as bush fire prone land and a bush fire assessment report was submitted with the application. Accordingly the development proposal was referred to the NSW Rural Fire Service (RFS) Sydney for comment outside of the normal integrated development process.

Council has received preliminary advice from the RFS that the proposal is satisfactory subject to certain conditions being included in any consent issued regarding bush fire mitigation measures. A Bush Fire Safety Authority will be required to be obtained from the RFS prior to any development commencing. Appropriate measures can be physically implemented to provide bush fire mitigation in accordance with the provision of the Planning for Bush Fire Protection 2006. In the event that Council grants consent for the development, the draft conditions require consolidation of Lot 6 and Lot 108 DP 755923 as required Asset Protection Zones encroach upon neighbouring Lot 6.

Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005: The proposal generally complies with the regulations for a caravan park for short term tourist occupancy other than would need to be included in any conditions of approval. An approval to operate the caravan park under Section 68 will be required prior to the installation of any moveable dwellings.

b) Likely impact of that development on the natural and built environment and social and economic impacts in the locality.

Threatened Species: The subject area is identified as containing known and potential habitat for a number of threatened species including:

- East-coast Freetail Bat;
- Yellow bellied Glider;
- Squirrel Glider;
- Square Tailed Kite;
- Gang gage Cockatoo;
- Powerful Owl; and
- Masked Owl.

The subject site has also been identified as likely to contain Swamp Sclerophyll Forest, an Endangered Ecological Community (EEC). Following extensive assessment and peer review by NGH Environmental the proposal was identified under the original proposal as being unlikely to have a significant impact on threatened species in accordance with Section 5A of the Act.

One submission questioned the acceptability of the threatened species assessment for the project. As the submission was detailed it was referred to NGH Environmental, who undertook the peer review of the applicants Flora & Flora Assessment on behalf of Council in the original application, for comment. The consultant has indicated that the submission substantially raises issues that were raised by NGH Environmental in the peer review process for the original application and the revised proposal does not alter the footprint of the proposed development. NGH Environmental does not suggest that any further review of flora and fauna impacts is required. A copy of the comments from NGH Environmental are provided in **Attachment 'F'**.

Vegetation Removal and Modification: The proposed development will require the removal or modification of 19.7 hectares of native vegetation on the subject site. This level of clearing and modification to the native vegetation on site is required to accommodate the short term sites as well as providing the necessary bush fire mitigation measures. It is noted that the retention of hollow bearing trees and the protection of the area identified as a 'sensitive coastal location' that adjoins the national park has been included in the design layout of the development as well as landscaping being provided within the development area. However, the development will require large areas of

clearing and this vegetation removal and modification will significantly alter the visual appearance of the site which currently is generally well vegetated.

The proposal may require a separate approval from the Southern Rivers Catchment Management Authority under the Native Vegetation Act (NVA) and the applicant has been advised. However, the requirement for any approval under the NVA is not a consideration for Council under Section 79C of the EP&A Act.

Social Impact: As the proposal has been amended to be short term tourist use only, most of the social impact issues identified in the original report on the proposal are no longer relevant. However, the location of the proposal remote from the water indicates that the majority of tourist users would rely on vehicle use to access water orientated tourist facilities such as boat ramps, beaches etc., this will have a greater traffic impact upon the local community during peak holiday periods than would be created by a similar development with closer proximity to the coast.

Council's Community Development section have reviewed the amended proposal and concluded that the impact on community facilities would not be substantially more than is currently experienced with an influx of tourist numbers at peak periods.

The applicants have committed to providing a pedestrian path from the development site to Manyana that will provide safe pedestrian access to and from the development for tourist park users.

Traffic issues: Currently the identified vehicular access point for the proposal from Inyadda Drive does not meet Safe Intersection Sight Distance requirements specified under Austroads Part 5 for an 80km/h road. This issue is able to be resolved by way of a deferred commencement consent which requires redesign and relocation of the access to comply with Austroads Part 5 for safe intersection sight distance prior to the issue of an operational consent. This will necessitate some minor redesign of the park layout, however the access point will still be within the current proposed development footprint.

c) The suitability of the site for the development.

With the location of the site being remote from the village, beach and waterways, the site is not considered to be ideal for the proposed short term site tourist development, but it is not regarded as unacceptable. Refer to comments under SEPP 21.

d) Any submissions made in accordance with the Act or the regulations.

The application was notified in accordance with Council's Notification Policy resulting in the receipt of over 140 submissions from the community including 1 petition containing 40 signatures. A Residents Briefing Meeting was held on 19 March 2009 to brief the community on the review and to detail the assessment process. The issues raised in the submissions are:

- Legitimacy of using S82A given that RFS referral required for the development and question whether short term use v long term use is substantially the same;

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- Site compatibility questions in relation to conflicting statements between the SEE and social impact statement for the original application v the SEE for the S82A modification review;
 - Proposed size of short term sites too large;
 - Proposed use not compatible with South Coast Regional Strategy;
 - Application has failed to address any significant changes as identified in the original development refused last year - specifically social impact issues;
 - Tourist accommodation is already adequately serviced by existing caravan parks and the impact of proposal on existing holiday cottage rentals;
 - Council prohibition for caravan parks on eastern side of Inyadda Drive;
 - Believe full time employment for 6 staff to be a farce given seasonal nature of development;
 - How will short stay be policed?;
 - Inadequate local govt infrastructure to support increased population including parking, cycle ways, pathways, boat launching facilities, sewage, patrolled beaches;
 - Limited health/shopping/chemist/transport availability;
 - Increased demands on sparse support services such as police, ambulance, fire brigade, public transport;
 - Proposal is out of character with quiet village life;
 - Want to retain rural use of the land;
 - Site should be used for environmentally sensitive food production using recycled water from adjacent STP;
 - Site has no connection with the community or the coast forcing visitors to be dependant on vehicle use to move around that will increase traffic and traffic conflict with pedestrians;
 - Current conflict between vehicle users and pedestrians during peak holiday times will be increased by proposed development if approved as pedestrians tend to walk on the roads due to lack of constructed pathways along the site and in the villages;
 - Roads into Manyana/Bendalong are too narrow and poorly maintained which is currently an issue under current traffic demand;
 - Dangerous walking from the site along roads that are 80km and 100km;
 - Believes traffic report understates traffic flow for peak periods and should be updated for the tourist short stay proposal;
 - Proposal will bring unwanted transient population into Manyana;
 - Queuing vehicles from proposed caravan park would cause traffic hazard to motorists in Inyadda Drive during peak season;
 - Road widening needed to improve safety for Inyadda Drive;
 - Unsuitable location - proximity to waste recycling facility;
 - Risk of overloading new sewage system;

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- Location is too remote from beaches and other attractions and too close to Sewer Treatment Plant odour (STP) and Waste Transfer Station (WTS);
 - Site is located down slope of STP - no guarantee that STP won't discharge overflow effluent through the site ;
 - Potential for leachate and dust contamination of caravan park users from the WTS;
 - Proposal not appropriate for the area due as site forms part of sensitive creek catchment containing a number of threatened species;
 - Deficiencies in applicants flora and fauna reports - no assessment of cumulative impact, biodiversity impacts;
 - Need to protect sensitive coastal environment;
 - Observed increase in wildlife fatalities along western side of Inyadda Drive since the erection of the applicants new fence; and
 - Proposal will place up to an additional 300 people at risk in times of bushfire emergence as only 1 road in and out of Manyana and could cause traffic congestion on Inyadda Drive during a fire event that could impact on the ability of Manyana residents escaping from the village.

e) The public interest.

The development proposal raises some question over the suitability of the site for a short term tourist development in the locality, in this regard and given the strength of community objection some will argue that the proposal is not in the public interest when considered in relation to the immediate locality. However, given the results of the 82A review and when considered at a much broader level it would be difficult to refuse the application on the basis of a distinct and adverse impact for the broader public interest.

The above assessment addresses the key issues under Section 79C, all other issues were capable of resolution and are therefore not detailed.

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.

COMMENTS FROM STRATEGIC PLANNING:

In the previous report it was indicated that caravan parks would be prohibited in the Draft 2009 LEP but it has been recognised that it was inappropriate to prohibit caravan parks on rural land as they are currently permissible under SLEP 1985.

CONCLUSION:

On the basis of the assessment detailed above it is considered that the proposal will result in short periods of adverse social impacts to the existing community in Manyana-Bendalong during the peak tourist seasons. However, the more pronounced social impacts identified in the original proposal are no longer justified as the sites will all be used for tourist use.

The proposed caravan park layout provides short term sites that are sized between 270% and 760% higher than the minimum area provided for in the regulations, the result of this is that there is a much larger environmental footprint than might otherwise be achieved with a design that considered short term use from the beginning. If the proposal provided for smaller more relevant short term sites, the environmental footprint of the site could be reduced and the separation to the sensitive coastal zone to the north could be increased resulting in a better outcome from an ecologically sustainable development perspective. However, to substantially change the layout of the caravan park would necessitate a new development application as it would no longer meet the requirements of Section 82A to be substantially the same development.

On balance it is not considered that these impacts are sufficient to uphold the previous refusal and it is recommended that the amended proposal be approved by way of a deferred commencement consent subject to conditions.

8. Quarterly Progress Report - Key Performance Indicators

File 1442

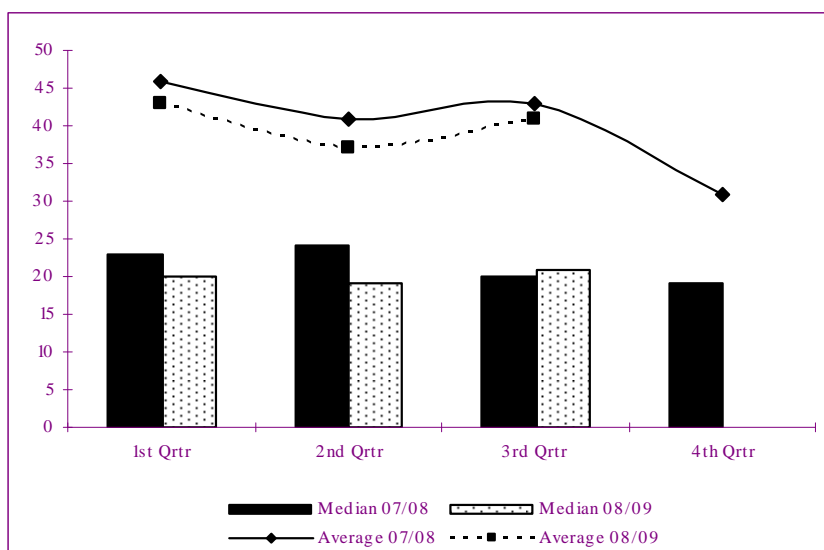
PURPOSE OF THE REPORT:

This supplementary report to the Quarterly Report is provided given the interest in development related matters. It provides a summary of some of the key performance indicators used to monitor Group performance and development activity. The report also contains detail on the status of major applications as well as policy reviews and formulation.

SUBMITTED for information.

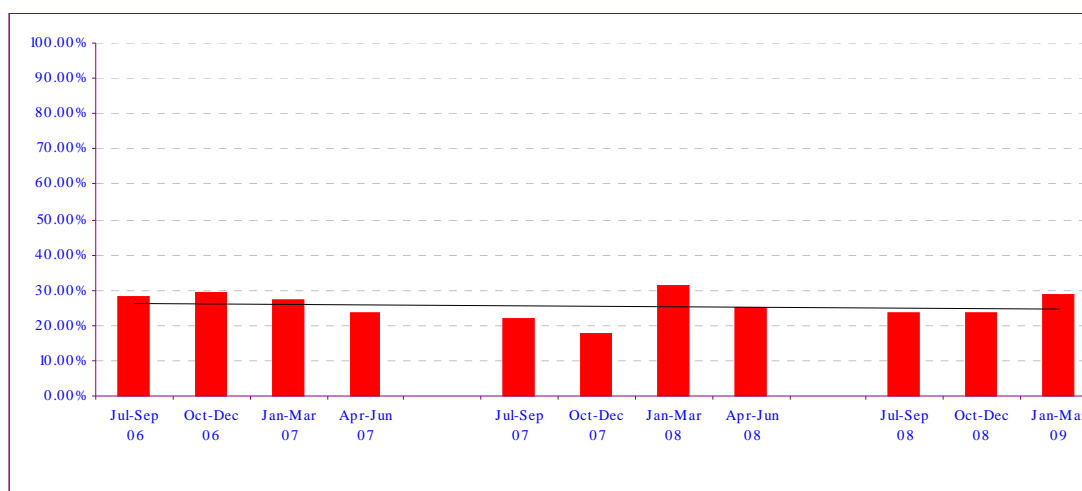
DETAILS/ISSUE:

Processing Times Summary - Development Applications



Both the median and average figure have risen slightly in the last quarter. Processing times of 21 days (median) and 41 (average) are still reasonable results given the resources that have been directed away from processing applications as the number of applications has been decreasing.

Percentage of DAs determined exceeding 40 days



The number of applications exceeding 40 days has risen slightly. Once again, as resources are reduced in line with application numbers, care needs to be taken to ensure processing levels are maintained within reasonable limits. Overall the long-term trend remains flat at around 25-30%.

Applications Received and Approved

Period	Received	Determined	Difference
06/07			
Quarter 1	643	654	-11
Quarter 2	497	564	-67
Quarter 3	478	520	-42
Quarter 4	619	536	83
Total 06/07	2237	2274	-37
07/08			
Quarter 1	607	598	9
Quarter 2	574	545	29
Quarter 3	448	476	-28
Quarter 4	517	491	26
Total 07/08	2146	2110	36
08/09			
Quarter 1	482	514	-32
Quarter 2	428	448	-20
Quarter 3	403	361	42

Development application numbers continued to fall consistent with the down turn in the economy and the last quarter which is usually the slowest (after Christmas) is reflective of this trend. As indicated above, to off-set the impact of lower revenues and reduced application numbers, some staff vacancies have not been filled, staff have also been encouraged to reduce leave balances and part-time assistance has not been used to back fill these positions. Resources have also been diverted to other inspections (e.g. Sewage Management Facilities) where there are heavy work demands. The cumulative impact of these actions has led to reduced output. This situation needs to be closely monitored to ensure adequate resources maintain application turnover times.

Undecided Development Applications - ILAPs

These older applications (old system) are now virtually completely resolved with only two still outstanding. These applications invariably involve complex planning issues where policy changes have required detailed consideration and applicants have further submissions to make.

Development Application	Date Lodged	Proposed Development	Property Address	Application Status
DA04/3419	Dec 2002	New dwelling and demolition of existing residence	390 Leebold Hill Rd Red Rocks	Legal advice on a proposed refusal of the application has been obtained and is being considered.
DA04/2639	Jul 2004	New building for retail and residential use (3 shops & 2 units)	102 Queen St Berry	Required information submitted by Applicant - assessment continuing - determination imminent.

Undecided Development Applications - DARTS

At the time of preparing this report there were 152 applications outstanding for more than 60 days under the DARTS system. This is substantially less than the 260 that were within the system when reporting on the DARTS system commenced. This represents an improvement of approximately 40% in the last 2 yrs 9mths.

Status of Major Development Applications

Southern Area

- **Masterplan Development for 350 Residential and Tourist Units, Maisie Williams Drive Mollymook** - Traffic, water and sewer infrastructure, bushfire and threatened species issues. Notification complete and resident briefing meeting (RBM) held on 22 April. Regional Traffic Committee raised a number of issues and meetings with applicant being arranged to work through these issues. Status of closed road to be determined and finalise assessment of threatened species and bushfire issues. Community submissions open for a further week following RBM.
- **New Woolworths Supermarket Complex, Boree and South Streets Ulladulla** - Traffic, sewer infrastructure and design issues. Notification complete. Submissions being reviewed to determine issues to be addressed by applicant prior to further assessment. Applicant requested to revise design of Highway elevation to include commercial activation and pedestrian weather protection. Meeting held on traffic issues and further meetings with RTA required to resolve issues of traffic lights and highway vehicular access.
- **Permanent Occupancy Caravan Park, Inyadda Drive, Manyana** - Residents Briefing Meeting held 5 June 2008. Threatened Species and Social Impact issues major concern. Threatened Species Issues resolved. Application refused on social impact issues. Request to review under Section 82A received including amendment to tourist caravan park with no permanent occupancy. Report to May Development Committee for consideration.
- **High Care Senior Living Development, Bishop Drive, Mollymook** - Deferred Commencement Consent Issued 23 March 2009.

Northern Area

- **Masterplan Development for Expansion of William Campbell College, Albatross and Gannet Roads, Albatross** - Reported to Development Committee on 7 October 2008. Council resolved to conduct a Councillor site inspection and briefing on 5 November 2008. Reported to December Development Committee and Council meetings - Resolved to accept proposal as an in nominate use, an acoustical report be submitted prior to determination, confirm consistency with DCP 69 based on 2014 ANEF Forecast, noise mitigation measures to be incorporated in the building design and be certified upon completion and further discussions be held with the Department of Defence and that the application be dealt with under delegated authority. S79C assessment continuing with specialised assistance in regard to social impact. A further noise report has been submitted and an independent social planning report has been prepared. Staff are finalising their assessment of the application.
- **29 Unit Mixed Commercial/Residential Complex, Owen Street, Huskisson** - Reported to July Development Committee. Amended submission completed by the applicant addressing design matters and directions of the Committee. Notice of Motion considered by Council on 21 October 2008 - Section 79C Assessment Report and Determination finalised by the granting of 'Deferred Commencement' Development Consent. Alternative development application lodged for a Boutique

Hotel/Conference/Dining Facilities and shops. Section 79C for this application nearing completion.

- **New 4 Storey Hotel - Huscorp - Council Precinct, Bridge Road, Nowra** - Issues resulting from referrals and notifications (e.g. Access for service vehicles, garbage disposal and loading dock; Pedestrian impacts; Traffic volume generation; Pedestrian footpath treatment along Bridge Road; Social and economic impact statement) were forwarded to applicant to respond. Proposal reported to Development Committee meeting held 7 April. Committee resolved to recommend to Council the refusal of the application. Prior to Council meeting, the applicant withdrew the application.
- **New Supermarket Complex, off Island Point Road, St Georges Basin** - Section 79C Assessment and draft development consent has been discussed with developer who is preparing a formal response including a request that some Section 94 Contributions be off-set against works in kind. Report on drainage funding reported to Works and Finance Committee on 21 October 2008. Section 79C Assessment Report and consent issued. Applicant/Developer negotiating s94 Contributions as off-sets against "works-in-kind" - waiting formal submission in support of s96 amendment application.

Status of Department of Planning 3A Applications

- **Hotel (MP08_0027) - Four Storey Hotel, Basement Level Car Parking and Associated Landscaping - Scenic Drive, Nowra** - Determined to be a 3A Application on 15 April 2008. Project application submitted 27 May 2008. Key issues and assessment requirements issued 8 July 2008. Director-General's requirements for environmental assessment issued 11 July 2008.
- **Shaolin Tourist Residential Development, Comberton Grange (MP06_0135) - Concept Plan for the Construction of a Mixed Tourist, Residential, Commercial Facility - Comberton Grange Road, Comberton Grange** - Major Project status confirmed and application received 4 June 2008. Key issues and assessment requirements submitted 15 July 2008. Director-General's requirements for environmental assessment issued 16 July 2008, amended and re-issued 11 September 2008.
- **Rural Residential Subdivision (MP07_0015) - Three Lot Rural Residential Subdivision - Garrads Lane, Milton** - Major Project application received 7 May 2007. Council submission forwarded 25 June 2007. Director-General's (DG's) requirements for environmental assessment issued 2 August 2007. Council to assess environmental assessment under delegation of the Minister issued 28 April 2008. Proponent is required to submit environmental assessment by 1 August 2009 (i.e. within two years from DG's requirements).
- **Tourist Development at Goodnight Island and Commercial Development at Greenwell Point Road, Greenwell Point (MP06_0034) - Orama Crescent, Orient Point and Greenwell Point Road, Numbaa** - Major Project application received 30 March 2006. Council submission forwarded 8 May 2006. Director-General's requirements for environmental assessment issued. Public exhibition of environmental assessment 21 July 2008 to 19 August 2008. Council submission forwarded 16 September 2008. Proponent is currently preparing a response to submissions to the Department of Planning.

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- **Residential and Tourist Development (MP07_0126) - Low and Medium Density Residential Development, expansion of the existing 9-Hole Golf Course to 18 holes, including ancillary structures, upgrading of existing course and a new clubhouse, tourist development, open space and ancillary infrastructure and dedicated conservation areas - Badgee Lagoon, Sussex Inlet** - Application submitted 28 August 2007. Application pending rezoning. Director-General's requirements issued 20 February 2008.
 - **170 Lot Residential Subdivision (MP05_0024) - Highview Drive, Dolphin Point** - Director-General's requirements issued 11 February 2006, environmental assessment exhibited 11 October - 30 November 2007. Council comment on environmental assessment submitted 4 April 2008. Proponents preferred project report issued. Council's responses to the PDR submitted 17 December 2008. Project currently being assessed by the Department of Planning.
 - **Nowra Brickworks Quarry (P07_0123) - Princes Highway South Nowra (Council File 3A08/1001)** - Environmental Assessment (EA) exhibited from 27 February to 30 March 2009. Council submission on EA submitted. Proposal is currently being assessed by the Department.
 - **Mixed Commercial and Residential Development (MP08_0201) - 23-27 Wason Street, Ulladulla (Council file 3A09/1002)** - Council submission on key issues submitted. Director-General's requirements issued 29 March 2009.
 - **27 Lot Subdivision (MP06_0003) - Murramarang Road (cnr Forster drive), Bawley Point (Council File 3A09/1002)** - Council submission on key issues submitted. Director-General's requirements issued 9 April 2009.
 - **200 Lot Subdivision (MP09_0056) - Lot 1 DP1021332, George Evans Drive, Mundamia (Council File 3A09/1004)** - Council land as part of the Mundamia Masterplan growth area, north of the University campus. Council submission on key issues submitted. Director-General's requirements issued 13 April 2009.
 - **380 Lot Residential Subdivision (MP08_0141) - Jonsson and George Evans Roads, Mundamia, West Nowra** - Part of the Mundamia Masterplan growth area, north of the University campus. Council submission on key issues submitted. Director-General's requirements issued 17 October 2008.

3A Applications Approved

- **Vincentia Coastal Village (MP06_0060 and MP06_0058) - Residential and Commercial Development - The Wool Road and Naval College Road, Vincentia** - Concept and staged approval on 25 January 2007. Modification No 1 approved 8 October 2007, modification No 2 approved 9 July 2008, modification No 3 approved 6 February 2009, modification No 4 approved 13 February 2009 and modification No 5 approved 20 April 2009.
- **Bayswood Retirement Living Village, Vincentia (MP08_0096)** - Comprising: 166 Predominantly Single-Storey (attached and detached) Dwellings on a Single Lot with 18 Dwellings in a Two-Storey Scale Building with Basement Car Parking; a Village Centre comprising 'resident only' facilities and associated works - Corner of Jervis Bay Road (Naval College Road) and The Wool Road, Vincentia - Approved 28 January 2009.

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- **Vincentia District Town Centre (MP06_0205) - Discount Department Store, Supermarket, Medical Centre, Childcare Centre, Restaurants and Speciality Retail** - Proposal includes car parking, loading bays, landscaping, public open space and associated services and infrastructure - Corner of The Wool Road and Naval College Road, Vincentia - Stage 1 approved 7 January 2009.
 - **Additions to Existing Caravan Park (MP05_0141) - 20 Additional Short Term Sites and 90 Additional Camp Sites, Kioloa Beach Holiday Park - Murramarang Road, Kioloa** - Approval issued 8 April 2009.
 - **Expansion of Ethanol Production (MP06_0228) - Upgrade of Ethanol Production, reduction of odour and waste water treatment measures for existing and proposed operations at Shoalhaven Starches Factory - Bolong Road, Bomaderry** - Approval issued 28 January 2009.

Policy Formulation and Review

The following policy and procedures have formed part of our current work program from 1 January to 31 March 2009.

- Review of DCP 57 (Dual Occupancy) - Councillor Briefing held in December 2008, in conjunction with DCP 100 (Subdivision). Reported to March 2009 Development Committee. Referred for a further briefing.
- NSW Planning Reforms:
 - NSW Housing Code SEPP - Effective 27 February 2009 - Arranged for amendments to DCP 89, relevant forms etc.
 - Submission to DoP on Local Variations and Exclusions - Almost finalised.
 - Beach Street (North) Huskisson - zoned Business 3(g) formulation of Urban Design Strategy - To combine reporting draft Urban Design Strategy in conjunction with review of DCP 99 which has been extended to cover 3 other Business 3(g) zoned areas. Consultants engaged, workshop held.
- DES Group Policy Review (Round 1) (10 items) - Reported back to Council following Councillor Briefing, adopted 14 April 2009.
- DES Group Policy Review (Round 2) (7 items) - Adopted 10 March 2009.
- DCP 91 (draft Amendment No 1) - On public exhibition until 1 May 2009 following Council's resolution of Round 2 Policy Review rescinding Policy for Garages on Vacant Allotments of Land.
- Policy for Subdivisions, Rural Dwellings and Tourist Facilities - Leebold Hill Road (Draft Amendment) - On public exhibition until 1 May 2009 following Council's resolution of Round 2 Policy Review.
- DCP for Areas of Coastal Hazards - Initial draft finalised December 2008. On-going discussions with Strategic Planning and Infrastructure Group on further details, to correspond with draft SLEP 2009.
- DCP for Business use of Footpaths - Formulation of DCP commenced. Initial draft prepared.

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- Adult Shops Policy - Amendments publicly exhibited 14 January until 13 February 2009. Adopted 14 April 2009.
 - Procedure for Dealing with Development Applications Lodged by Council Staff/ Councillors - Adopted 10 March 2009.
 - Heritage Advisory Service - EOI called. 8 EOIs received, finalisation subject to finalisation of budget 09/10.
 - Internal DES Procedure for Heritage Referrals Protocols and Procedures - Commenced drafting, subject to outcomes of Heritage Advisory Service outcomes.
 - Shoalhaven LEP and DCP 2009 - Liaison with SPI Group and drafting of SDCP 2009 - On-going.
 - Update of Protocol on the Implementation of the *Native Vegetation Act 2003* between Shoalhaven City Council and Southern Rivers Catchment Management Authority - being finalised.
 - Operation of Markets Policy - Review commenced and amendments drafted, to be publicly exhibited and completed by next quarter.

CONCLUSION:

It is clear that the down turn in the economy continues to impact on the level of development activity locally. Application numbers continue to decline. Resources have been diverted to other areas and savings gained by not back filling some positions and minimising part-time assistance.

The level of output has subsequently declined even though turnaround times (e.g. median figure) have remained reasonably consistent. Care needs to be taken to ensuring adequate resource levels in the DA area to maintain sound processing times. Major 3A applications continue to use considerable resources.

Sound progress in the policy review area has been maintained especially given the substantive impacts resulting from legislative changes such as the new Housing Code requirement for a single DCP. The impact of the legislative reform agenda will continue to be a major consideration throughout 2009.

9. Subdivision Application - 2 Lot Residential Subdivision - Lot 6 Section H DP 27358, 2 Sir Henry Crescent, Callala Beach. Applicant: Allen Price and Associates. Owner: W and J Slater. File SF10053

PURPOSE OF THE REPORT:

A subdivision application for 2 residential lots on the subject land has been submitted to Council.

As the role of the Development Committee is to consider Policy issues, this application is being reported to Council because it includes several departures from or “alternate solutions” to the acceptable solutions outlined in Development Control Plan 100 - Subdivision Code, (DCP100).

RECOMMENDED that the Development Committee inspect the subject site prior to making a policy decision on the submissions made.

OPTIONS:

There are 3 options, for Council to consider:

- a) Determine that the alternative solutions to DCP 100 and DCP 91, as outlined in this report for this application as proposed on the subject land are acceptable for the reasons outlined in the applicant's submission; or
- b) Determine that the alternative solutions to DCP 100 and DCP 91, as outlined in this report for this application as proposed on the subject land are unacceptable, in that the cumulative impact will have an adverse effect on surrounding residential amenity and therefore be contrary to the public interest; or
- c) Given the complexity of the policy issues involved and importance of understanding the on-site conditions, an inspection be held for available Councillors.

DETAILS/ISSUE:

The Subject Land

The subject land is Lot 6 Section H DP 27358, 2 Sir Henry Crescent, Callala Beach, see **Attachment 'A'** for subject land. The land is located on the north-west side of the corner of Sir Henry Crescent and Quay Road and has an area of 968m². The land is generally rectangular in shape, except for the arc of the Sir Henry Crescent frontage.

It is a long lot, with a length of 58.3m to the west and 62.1m to the east. The lot has a width of 15.2m. There is an existing dwelling on the land that sits forward of the existing dwellings to the east.

There is an existing 2 storey dwelling on the land, erected in 1999 (DA98/2622), a shed, fencing at the southern end of the lot and an unfenced yard with 3 small trees on the northern part of the lot. The existing dwelling is connected to all services, which would be able to be connected to the proposed lot. To the east of the subject land are dwellings and then Callala Beach. To the west and north are adjoining properties with dwellings.

It would be possible to consider an application for a dual occupancy development on this land and a concurrent or subsequent application for subdivision of the dual occupancy. The current application is for a Torrens Title subdivision only. If an application for a dual occupancy application was submitted, that would enable Council to assess the full impact of such development. Creation of a Torrens title lot postpones such assessment until such time as a dwelling application is received.

The Proposal

The application is for a 2 lot residential subdivision, refer to **Attachment 'B' - proposed subdivision**. The existing land has a total area of 968m². Proposed Lot 61 would have an area of 500m² and proposed Lot 62 would have an area of 468m².

The proposal includes several alternative solutions or departures to the acceptable solutions contained in DCP 100 (lot area, lot depth) and DCP 91 (setbacks).

Policy Issues

A) Development Control Plan No. 100 - Subdivision Code

The proposed development includes several alternative solutions to the acceptable solutions outlined in DCP 100. DCP 100 is a performance based document. This format was selected to achieve a "**higher standard of subdivision by encouraging the use of Performance Criteria**". The purpose of this plan is "**to encourage appropriate development which provides quality subdivision design, optimising land use and minimising net infrastructure costs being consistent with the objective of the EPAA 1979. These important objectives must be balanced against maintaining or improving amenity**".

The objectives describe the main aims of each design element and desired outcomes. Alternatives to the acceptable solutions may be proposed if it can be demonstrated to Council's satisfaction, that the alternative will satisfy the design objective and criteria.

A1 DCP 100 - RE13 Streetscape

The lot created by this subdivision will rely upon a setback, which is less than the predominant 7.5m setback. A 5m front setback is proposed, which is consistent with the existing dwelling on this lot.

The objectives may be achieved where the street and landscape design achieves:

- The creation of attractive residential environments with clear character and identity; and
- Respect for existing attractive streetscapes in established areas.

A2 DCP 100 RE14 - Allotment Layout

Acceptable Solution	Alternative Solution	Comment
Standard residential lot area minimum of 500m ²	Lot 61 = 500m ² Lot 62 = 468m ²	Lot 62 is only approx. 7% short of acceptable solution.
Rectangular non-corner lot Square width minimum 16m	Lot 62, Width of 30.7m proposed	Whilst the proposed width is almost double the minimum acceptable solution, the depth falls short by approx. 50%

Depth minimum 30m	Depth 15.2m proposed	
Rectangular corner lot Square width 20m Depth 30m	<p>Lot 61 -</p> <p>This lot enjoys frontage to Quay road - the house, driveway etc is oriented to Quay Road.</p> <p>Width of 27.6m/31.4m proposed and depth of 15.2 proposed</p> <p>Alternatively, if Sir Henry Cres was considered to be the "frontage", then the depth would be 27.6m/31.4m with a width of 15.2m</p>	<p>Whilst the proposed width exceeds the minimum acceptable solution, the depth falls short by approx. 50%. Alternatively, if Sir Henry Cres is considered the frontage, then the width falls short by approx. 25% while the depth would be adequate.</p>
Rectangular building envelope of minimum dimensions of 15m x 15m be available	<p>Lot 61 - the dwelling/garage occupies approx 21m x 10m, with reliance on the use of the "front setback" area for an ancillary outbuilding.</p> <p>Lot 62 - nominated as 20m x 9m</p>	<p>Lot 61 - use of the "front setback" area for an ancillary outbuilding is contrary to DCP91 and DCP100</p> <p>Lot 62 an area of 180m² is proposed as BE, as opposed to the recommended 225m². Relies on compliance with RATU, and constrained so that no structures being placed in view corridor</p>
5m side boundary setbacks to adjoining properties	<p>Lot 61 - the existing 2 storey dwelling is between 1.5/ 1.7m setback from adjoining boundary with no.4 Sir Henry Cres; but the proposed adjoining lot has a no build restriction on that boundary.</p> <p>Lot 62 - a side setback to the north of 3.5m is proposed and a 1.5m rear setback to the west is proposed.</p>	<p>This recommended side setback is beyond that nominated in DCP91.</p> <p>The side setbacks proposed comply with DCP 91.</p>

Summary of issues relevant to RE14 Lot Layout:

- Proposed Lot 62 is 500m^2 - i.e. 7% (minor) departure from acceptable solution;
- The lot depth is 15.2m for both proposed Lots 61 and 62, i.e. 50% departure from acceptable solution however, the width for Lot 62 is almost double what is required;
- Alternatively if Lot 61 'fronts' Sir Henry Cres, lot depth is < required 20m, shortfall of 25%;
- The nominated BE for Lot 62 is approx. 180m^2 (acceptable solution in DCP 100 is 225m^2);
- Proposed "view corridor" with "no buildings permitted" excludes detached outbuildings (shed, carport or the like) on the site;
- Lot 61 - relies on a 'front setback' area for private open space area; and

B) Development Control Plan 91 - Single dwelling and ancillary structures - minimum building requirements

A recent application for a building line variation was considered by Council in November 2007, DA07/1834. That application was for a dwelling on a lot that had been created via SF9253, with a lot depth of 23.81m. At the time it became apparent that future consideration of subdivision applications that included a departure from the acceptable solutions contained in DCP 100 should have due regard for likely requests for variations to setbacks contained in DCP 91 and as such consideration should be given to the "predominant setback" of an area.

The aims of DCP91 include:

- *To ensure a high standard of residential development and ancillary structures, is achieved throughout the city;*
- *To ensure appropriate levels of amenity are achieved, including privacy, overshadowing and access to sunlight, noise and open space;*
- *To set appropriate environmental criteria for energy efficiency, passive solar design, privacy and vehicular access;*
- *To provide clear guidelines for the planning and construction of buildings within the City of Shoalhaven*
- *To provide a document with flexible performance-based criteria to guide development*

Acceptable Solution	Alternative Solution	Comment
Floor space ratio of 0.5 to 1 (dwellings & outbuildings to lot area)	Existing dwelling is approx 257m^2 , plus shed. Existing lot area is 973.77m^2	FSR for proposed lot 61 is approx 0.44 (plus shed) : 1 when garage is excluded
(note 3 - where the garage is within the dwelling or an outbuilding, an allowance of the garage floor area,	i.e. existing FSR = 257m^2 (+ shed) to 973.77m^2 , or 0.26 (+ shed) to 1	Lot 62 - for a future dwelling to comply with the 0.5 to 1 FSR, the maximum floor area of a proposed dwelling could

<p>up to a maximum of 50m² may be excluded from the gross floor area)</p>	<p><u>Proposed Lot 61 =</u> 257m² (+ shed) to 500m², or 0.514 (+ shed) to 1</p> <p>NB garage of existing dwelling + approx. 36m² 221m² plus shed : 500m²</p> <p><u>Proposed Lot 62</u></p> <p>The nominated BE of 20m x 9m would equate to 180m², however if a 2 storey dwelling were constructed, which the applicant has said is possible, then the floor area of the dwelling could potentially be 360m², or 0.72 to 1 (note DCP 91 would need to be considered)</p>	<p>only be 234m² (not including the garage)</p>
<p>See appendix A - the required setback of the new building should be increased to be compatible with the predominant setbacks.</p>	<p>The applicant has submitted plans with an indicative 5m front setback.</p>	<p>Appendix A indicates that the proposed lot is "infill development in existing subdivision", with a depth of <30.5m therefore, a minimum front setback of 6.0m is applicable.</p> <p>The existing dwelling is setback at 5.0m, with a porch encroachment at 3.5m.</p> <p>Generally, encroachments should be staggered - in this case, a 5.0m line has been proposed for the full length of the Quay Rd frontage (existing & proposed lots)</p>

Summary of Issues DCP 91:

- Front Setback - secondary street setback - Although the property is rated to Sir Henry Cres, both the existing and proposed access will be to Quay Road and the existing dwelling is orientated to Quay Road. The existing and proposed dwellings will therefore, rely on variations of the front setback. The existing dwelling has a shed and high fence located forward of the building setback for a secondary road frontage.

That setback area has by default become the “back yard” for the existing house, rather than the necessary setback area.

- Setback - front setback - The existing dwelling is setback forward of the predominant setback along Quay, but when interpreted as a secondary frontage, is acceptable. The proposal includes reliance on a 5m front setback for proposed Lot 62, with potential for a 2 storey dwelling. A search of Council’s records confirm the predominant setback in this location whilst it varies, (see attached diagram, and aerial photo), is predominantly 7.5m or greater. Of the 43 sites illustrated, where records are available:
 - 35 (i.e. 81%) comply with a minimum front setback requirement of 7.5m. The predominant setback is 7.5m.
 - In some instances, setbacks are much greater than 7.5m, such as 19m, 12.1m, 14.8m e.t.c.
 - Of the 43 sites, 8 do not comply with the 7.5m setback.
 - 1 is setback at 7.46m.
 - No.54 has a variation from 7.5m to 4.5m, this relates to an older fibro single storey dwelling.
 - 3 variations relate to a carport or garage, whilst the dwelling in each of these cases is setback greater than 7.5m
- Floor space ratio of existing dwelling complies with DCP 91 and proposed Lot 62 would have a defined building area.
- Side and rear set backs comply with DCP 91.

Public Notification

This application was notified in accordance with Council’s Community Consultation Policy. Seven (7) submissions (from 5 objectors) were received as a result of the original notification. Additional information was notified and a further five (5) submissions (from 3 objectors) were received. A total of 12 letters (from 5 objectors) have been received with respect of this application, all objecting to the proposed development. Representations have also been made by neighbouring property owners directly to Councillors.

The points below summarise the issues raised in submissions.

- The proposal represents an over development of the land;
- Development should comply with Council regulations (DCP 100 P1, P3, P6, P11, and DCP91);
- Adverse impact on existing amenity;
- Non-compliance with minimum lot area;
- Non-compliance with square width dimension of 16m;
- Proposed lot depth of 15.2m, non compliance with DCP 100 - unreasonable degree of variation;
- Proposed lot depth of 15.2m, likely non compliance with DCP91 - front setback;
- Nil vegetation to be retained (non compliance with RE14 P3);
- Adverse impact on character of area;
- Scale and location & size of existing house too big for proposed lot;
- Proposal inconsistent with scale, FSR and average lot size of existing development;
- Shouldn’t be compared with SF 9461 - circumstances differ;
- Loss of views;

-
- Due to likely positioning of new dwelling - adverse impact due to loss of privacy, additional noise, overshadowing and loss of air from predominant north-east breezes;
 - Adverse economic impact on adjoining property due to adverse impact on amenity;
 - There have already been adverse impacts from the existing dwelling, which would be exacerbated by the proposal and future dwelling;
 - The proposal is considered to be unreasonable, unnecessary and unfair;
 - Others in the area have built according to Council's laws and want such laws upheld; and
 - Lack of valid reason or argument to deviate from Council guidelines.

Applicant's submission

a) Supporting information

The applicant submitted to Council on 7 January, 2009 a response to the submissions, including a slightly revised plan that included a proposed "viewing corridor". That response is provided for the information of Council, in full, as **Attachment 'C'**. The "viewing corridor" has been proposed as a "no building" area to ensure a viewing opportunity is provided to the adjoining property.

b) Previous Applications

The applicant referred to previous subdivision applications - SF9461, SF901 and SF9962. In each of these other examples, the circumstances vary from those currently being sought although they do constitute examples of where variations to the acceptable solutions have been agreed to. In summary:

SF9461

- Dimensions - proposed Lot 341 to be 20.115m wide x 29.58m deep
- Lot 341 - setback 6m to King George St, 3.5m to Parkes Cres
- Lot 341 area 595m², Lot 342 area 464m²
- Indicative building envelope 17m x 15m (Lot 341)
- Floor plans for proposed L342 dwelling submitted (Lot 341)

Relevance of this application relates to Council's agreement to variations to minimum area, predominant setback and minimum dimensions.

SF9901

- Dimensions - proposed Lot 12 to be 13.76m/15.25m wide by 30.44m/30.48m deep
- Indicative dwelling design was submitted showing compliance with predominant setback
- Lot area - 441.5m²
- RATU placed over the title re: maximum height and single storey construction

Relevance of this application relates to Council acceptance of variation to minimum width and area.

SF9962

- Proposed lot areas were 474m² and 754m²
- Dimensions of proposed lot 100 = 27.34m wide x 17.315deep
- Indicative designs submitted

Variations to DCP 100 and DCP 91 were approved by Council, with respect to minimum area and minimum depth.

ECONOMIC, SOCIAL & ENVIRONMENTAL (ESD) CONSIDERATION:

There have been Council decisions in the past (some examples have been listed above) that have supported reduced site areas, some with reduced depths and variations to standard building lines.

FINANCIAL CONSIDERATIONS:

Objectors to this application have raised concerns about possible adverse impact upon their property values.

The applicants have committed resources to the preparation of this application. Determination of this application by way of approval or refusal will have significant financial consequences for the applicants.

No other direct financial implications for Council other than those associated with possible legal action following Council's determination.

CONCLUSION:

This application includes several alternative solutions or variations to the acceptable solutions contained in DCP 100 - Subdivision Code. There have been strong objections lodged to the application, by several nearby landowners.

The subdivision on its own would not have an adverse impact on surrounding properties, however, the subdivision is the beginning of the development process in as much as it sets the parameters for the future built form. DCP 100 requires lots to be created to have "*appropriate area and dimensions for the siting and construction of a dwelling and ancillary outbuildings, private outdoor space, convenient vehicle access and parking*".

The impacts as a result of a proposed dwelling could be exacerbated due to the existing dwelling, limited lot size, reduced setback and likely 2 storey construction of future proposed dwelling. Much would depend on the scale and quality of the design and how well it mitigates the potential impacts on adjoining residences. If the lot size and/or lot depth were larger it would increase the chances of a single storey dwelling as being a practical option, and would also decrease the need for such building to be located as close to existing dwellings.

The applicant has attempted to alleviate concerns by providing a "viewing corridor" for adjoining property owners, however, loss of view is not the only issue regarding this application.

The concerns relating to this proposal are not just that the proposed Lot will have an area of less than 500m² or a depth of less than 30m. It is the accumulation of the number of variations sought.

Having said that, Council has in the past agreed to the creation of lots with variations to acceptable solutions, especially where such variations are mitigated or off-set by other factors such as additional width. Council has also sought to encourage diversity in housing options including smaller lots that may appeal to those wishing to have reduced maintenance.

This is a complex application to assess given the nature and extent of the 'variations' or alternative solutions put forward. Issues such as the location of dwellings, width of street, scale of existing housing plus potential impacts on existing residences are crucial considerations which are difficult to appreciate without an on-site inspection.

Given the number of issues involved it is considered that the Committee should inspect the site prior to making a policy decision.

Tim Fletcher
DIRECTOR, DEVELOPMENT AND ENVIRONMENTAL SERVICES

R.D Pigg
GENERAL MANAGER

ADDENDUM REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 5 MAY 2009

DEVELOPMENT AND ENVIRONMENTAL SERVICES

1. **Development Application - Proposed Demolition of existing Motel building and Construction of 54 room Boutique Hotel, Conference Room, Activity Room, Cafe, Retail Spaces, Manager's Residence and a two-level basement car parking area for 59 vehicles. Lot 101 DP 607632 and Lot 6 DP 7025, 41-43 Owen Street, Huskisson. Applicant: David Remanic. Owner: David Remanic and Waimare Investments Pty Ltd. File DA08/2689 (PDR)**
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PURPOSE OF THE REPORT:

The submitted proposal does not comply with a number of provisions contained in the Council adopted Development Control Plan 54 (Huskisson Town Centre) (Amendment No. 3) for this area. The matter is reported to Council as it involves consideration of a number of policy variations and, as such, direction is sought from Council on these policy matters prior to the determination of this development application.

Whilst it is acknowledged that a number of these inconsistencies with the current DCP will largely comply with the proposed new provisions contained within DCP 54, Amendment No 4 if adopted by Council, the proposal will not comply with one of the proposed new provisions relating to limiting the 4th storey to 50% of the building's footprint. A report on Amendment No 4 is before this Development Committee meeting for consideration.

RECOMMENDED that:

- a) **The variations to Development Control Plan 54 (Amendment 3) - "Huskisson Tourist Town Centre" be supported subject to architectural merit and a high degree of articulation being further negotiated;**
- b) **Council agree to vary the 3 metre setback at Owen Street subject to that setback being added to the Field Street side at ground level (to enable on-site parking) and that the Owen and Field Street façades have additional articulation treatment;**
- c) **The applicant be requested to modify the proposal by introducing greater detailed articulation and vertical architectural elements into both street elevations to reduce the apparent bulkiness of the current design; and**
- d) **Upon the above matters being satisfactorily resolved, the application be determined under delegated authority.**

OPTIONS:

- a) Refuse the request for variation to DCP 54 (Amendment No 3);
- b) Re-affirm Council's previous resolution in supporting the variations to DCP 54 (Amendment No 3) in request to the current application; or
- c) Support the requested variations to DCP No 54 (Amendment No 3) and determine that any limitation introduced by DCP 54 (Amendment No 4) in regard to 4th storey 50% of the footprint not apply to the current application on the basis that the application was lodged and largely assessed prior to its formal adoption (if adopted by Council).

DETAILS/ISSUE:**The Site**

- # The subject land is located within the Huskisson Town Centre precinct and comprises Lot 101 DP 607632 and Lot 6 DP 7025 which has a street address of 41-43 and 45 Owen Street, respectively (see **Attachment 'A'**). The site is located on the northern side of Owen Street and is approximately 40 metres east of Sydney Street. The site also has dual street frontages, to both Owen and Field Streets, and a total land area of 1,538m².
- # 41-43 Owen Street is zoned 3(f) (Business "F" (Village) Zone) and 45 Owen Street is zoned 3(a) (Business "A" (Retail) Zone) under the Shoalhaven Local Environmental Plan 1985 (as amended) (see **Attachment 'B'**).

Proposal

The submitted development application proposes the demolition of an existing motel building (Jervis Bay Motel) and the construction of a 54 room boutique hotel, conference room, activity room, cafe, (2x) retail spaces , manager's residence & a two-level basement car parking area for 59 vehicles

- # Refer to **Attachment 'C'** for a copy of the current Development Application plans (including revisions).

Background

The subject application was received by Council on 4 December 2008. An initial review of the application by Council staff indicated that the submitted plans did not comprehensively comply with DCP 54 (Amendment 3). The main issues relate to the submitted proposal's non-compliance with a number of adopted provisions specified in this Plan (DCP 54 - "Huskisson Town Centre"), Development Control Plan 18 "Car Parking Code" (DCP 18) and Australian Standard 2890 (AS 2890).

In this regard, the aspects which do not appear to comply with the current provisions of DCP 54 (Amendment 3) are:

- whether, or not, the proposal demonstrates "*a high degree of architectural merit and a high degree of articulation*" in order to justify granting the DCP 54 "bonus provision" for a four (4) storey (13 metre high) building in this location. Further, as

the building is proposed to actually exceed the 13 metre height limit there is addition concern for the potential negative affect this development may have on the amenity of other existing and future developments which are located in close proximity to the subject site;

- the 60° building height plane for developments over two (2) storeys as detailed in “Diagram 1” of DCP 54 (Amendment 3); and
- the provision of a three (3) metre building setback for the full Field Street frontage and for Nos. 41-43 Owen Street (zoned 3(f)) in accordance with “Map 3” of DCP 54 (Amendment 3).

It is acknowledged that the former elected Council considered these variations in relation to a separate development application for this site involving a development proposal not too dissimilar to that which is currently proposed albeit not for a hotel complex. Accordingly, as variations to adopted DCPs are specific to the application under consideration, it is open for Council to reaffirm support for the variation requests as they relate to this current application. Alternatively, Council may wish to give further consideration to these matters.

The conventional way in which departures to adopted DCPs are carried through from application to application is by amending the DCP formally, as is proposed in Amendment No 4.

Policy Issues

At its meeting held 22 July 2008, Council considered similar DCP variation requests to that applying to the current application and subsequently resolved:

- “a) The variations to Development Control Plan 54 (Amendment 3) - “Huskisson Tourist Town Centre” be supported at this stage subject to the architectural merit and articulation being addressed;*
- b) Council agree to vary the 3 metre setback at Owen Street subject to that setback being added to the Field Street side at ground level (to enable on-site parking) and that the Field Street façade have additional articulation;*
- c) Council not accept variations to DCP 18 with respect to a Section 94 car parking contribution in lieu of the “residential visitor” parking spaces which have not been provided on-site as this will have a negative financial impact on Council’s own funds in the future and residential visitor spaces should be provided on-site to minimise any impact on the amenity of surrounding streets;*
- d) Upon the above matters being satisfactorily resolved the application be determined under delegated authority;*
- e) Council agree to the variations in part a) because Council has departed from the “Wedding Cake” articulation in the Draft DCP 54;*
- f) Council also reflect the zero setback to Owen Street in part b) in the new Draft DCP 54.”*

The proposed variations to DCP 54 Amendment No 3 are discussed in greater detail, as follows:

1. Height Restrictions (Bonus Provisions)

DCP 54, states that:

“Council may consider bonus provisions for buildings that demonstrate high architectural merit and a high degree of articulation.

On the northern side of Owen Street a maximum of up to four (4) storeys where the development site consists of two or more lots and has a minimum area of 1200 square metres.”

DCP 54 defines “articulation” as being:

“...the treatment of a façade of a building which forms part of the public domain (i.e in relation to streets, view corridors, open space, Jervis Bay/Currumbene Creek) and how it is emphasised architecturally. Articulation may be achieved by using distinctive architectural elements such as variation in setbacks, fenestration, entryways, balconies, bay windows etc.”

Even though the submitted Development Application is proposed on an amalgamated area of land which exceeds the minimum DCP requirement of 1200m² (1,583m²), it is still a matter of opinion as to whether this proposal demonstrates “*high architectural merit and a high degree of articulation*” in order to comply with the “bonus provision requirement” for a four (4) storey building in this location. It must be noted that the previous proposal for a four (4) storey mixed-use residential flat building (DA07/2677) on this site was issued with a non-operational “Deferred Commencement” consent which required the applicant to submit revised (Owen & Field) street elevation plans which demonstrated “*a higher degree of architectural merit and articulation*”, prior to the issue of an operational consent. The applicant did not pursue the finalisation of this issue and accordingly, there has been no agreement on the final architectural design treatment for the building’s presentation to the street, for that application.

As noted earlier, a separate report on DCP 54 (Amendment No 4) advises on the preferred option to address building height in the DCP. This may have implications for the assessment of the application depending on what option is adopted by Council or whether, on the basis that this application was lodged in December 2008, some dispensation/exemption will be afforded this proposal in regard to the 4th storey 50% footprint.

Applicant’s Comment

In order to justify the four (4) storey “bonus provision” the applicant’s Architect stated in the submitted Statement of Environmental Effects, that:

“Consolidation of the two lots will provide a site area of 1538m². The consolidation to provide an overall site in excess of 1200m² and the site specific design, prepared by a fully qualified and New South Wales registered Architect, qualifies the proposal for the 4 storey bonus provision available under the DCP (54)”.

Council's Comment

It is important to note that the current design treatment of the proposed building elevations to the two streets are different to those provided with the previous application and to some extent contain less articulation than the elevations that were the basis of the deferred commencement consent for the former application which, it was deemed, needed further architectural improvement.

When viewing the submitted elevations, the building reads as a large somewhat bulky structure especially when viewed from the public domain with the form of "articulation", in addition to the 1 metre recess located in the vicinity of the building's southern lift-well, being confined to:-

- The protrusion of the 2nd and 3rd floor balconies which are cantilevered a maximum of 50mm (millimetres) over the property boundary, along the entire **Owen Street** frontage, in addition to a 2 metre recessed balcony setback proposed on the 4th floor.
- Rectangular balconies which protrude from the building in a linear fashion along the **Field Street** frontage in addition to a 1.8 metre recessed balcony setback proposed on the 4th floor.

(See **Attachment 'D'** - 3D Perspectives).

As a result, the defined building articulation associated with this proposal is not considered to be as substantive as it could be (especially in areas such as the front entrance) nor does it provide sufficient distinctive architectural elements which offer enough relief and interest. By its nature, the proposed development is somewhat large and bulky. Greater articulation and attention to detailing is required to mitigate and improve the visual impact of the proposal.

In addition, Clause 6(g) (Height Restrictions) of DCP 54 states that:

"Height and bulk will generally be more likely to be larger in a retail business zone 3(a) than in the adjoining village zone 3(f)"

Council previously considered this issue in relation to the former application and indicated that it was supportive of the building form provided the 4th storey had greater indentation and architectural merit and articulation was addressed further.

Providing this achieved, there will be greater integration with adjoining development of an appropriate scale and provide a more compatible streetscape appearance in the subject location.

2. Building Height Control and Facade Articulation

DCP 54 (Amendment No 3) (see **Attachment 'E'**) requires a building height plane for 13 metre high buildings, projected upward in a 60° direction from the outer edge of the 2nd floor level through to the outer edge of the 3rd floor, when viewing the proposal as a cross-section. The reason for this requirement is to ensure that higher buildings step into the site as the height increases, decrease overshadowing opportunities onto the existing Owen Street CBD area and to assist in reducing the proposal's bulk and scale to both street frontages.

- # Currently, the floor setbacks proposed by the applicant do not comply with the 60° incremental setback provision to both street frontages as indicated in **Attachment 'F'**. However, it must be noted that this requirement has not been retained in the DRAFT amendment to DCP 54 (Amendment 4) and Council previously supported a variation to this control in its consideration of the former application.

Applicant's Comment

In a letter to Council dated 26 March 2009, the applicant's Architect provided the following comment under the heading "*Architectural Articulation*" in order to further substantiate that the building met compliance with the requirements of DCP 54 and, therefore, justified the 4th storey "bonus" provision:-

"The (proposed) architectural style reflects contemporary coastal architecture typical in many villages on the south coast. Articulation is embodied in the design with balcony projections and recession, variable timber shutter facades, upper floor treatment, variety of colour and material to express articulation components".

Council's Comment

Even though Council's Strategic Planning Group have advised that the "Building Height Control and Façade Articulation Diagrams (1, 2 and 3)" requiring the 60° building height plan provision will be deleted from the draft amendment (No. 4) to DCP 54, current policy states that Draft DCPs are not to be considered in relation to DA Assessment. A mixed use three (3) storey commercial/residential building has been previously approved for 37 Owen Street (DA07/1145), two lots west of the subject site, together with another similar proposal at 51 Owen Street (DA08/1317), which both comply with this provision (see **Attachment 'A'**).

It is acknowledged that Council previously accepted a departure from this control with the former application and it is envisaged that any departure from this requirement will result in a development which is potentially inconsistent with other approved proposals that have already complied with the "60°" requirement. In this regard, if there is no genuine attempt to provide some greater articulation within the building form, there is likely to be some negative impacts on the future contextual amenity and aesthetics of both streetscapes.

3. Ground Floor Setback

- # 'Map 3' (Setbacks of Ground Floor) of DCP 54 indicates that a 3 metre ground floor garden setback must be achieved along the frontage for 41 and 43 Owen Street and for the entire building fronting Field Street (see **Attachment 'G'**).
- # Currently, the submitted application proposes a variation to the setback requirements within the DCP as the entire Owen Street ground floor front setbacks are set at zero while the Field Street setbacks have been reduced to 0.6 metres via the cantilevered parts of the subject development, encroaching into the required 3m setback, in this location (see 'East' and 'West' Elevations in **Attachment 'F'**).

Council's Comment

It is again noted that Council previously resolved to support a variation to these setbacks providing that the 3 metre setback normally required to Owen Street is added to the Field Street setback at ground level to enable on-site parking to be more effectively achieved. This position is reflected in the current plans for the proposed development.

It should also be noted that this requirement has also been removed in the DRAFT amendment to DCP 54 (Amendment 4) in compliance with the previous Council resolution.

4. Car Parking

Clause 6(e) (Car Parking) of DCP 54 states that *“Tourist accommodation/residential units and large space uses would be required to provide the total component of car parking on site.”*

In accordance with Council’s “Car Parking Code” (DCP 18), a development of this magnitude requires the provision of 81 car parking spaces to be provided on-site; however, those spaces associated with the commercial component of this development may be the subject of a Section 94 contribution in lieu of on-site provision. The applicant is seeking to provide 59 parking spaces wholly on-site and 6 spaces which remain largely within the Field Street road reserve and make a contribution for the remaining 16 spaces associated with the “retail” component of this development. As a result, the total Section 94 contribution payable, in lieu the required car parking spaces which cannot be provided on-site, amounts to \$195,743-04.

The extent to which Council envisaged the parking off Field Street to be accommodated on-site by the increased setback has therefore not been achieved. Accordingly, Council could charge s94 contributions for these spaces (as they largely lie on Council land) and reimburse the agreed construction costs to the developer. In this way, Council would at least be compensated for land value. This approach applied at Berry when dealing with a development by Mr T Broomfield. This aspect can be dealt with under delegation although Council may choose to provide direction on this point.

A copy of the parking calculation matrix has been provided (see **Attachment ‘G’**).

Strategic Planning and Infrastructure Group (SPIG) Comments

“This application is similar in many ways to the previous application over the subject site for a mixed use commercial/residential development, which received a “deferred commencement” consent in late 2008.

Initially, it is considered important that the proposed development be identifiable as a hotel, via entrance design and façade treatment.

Further (although Council previously resolved otherwise) several of the comments provided by SPIG in relation to the previous application are considered to remain relevant including:

- *appropriate setback to Field Street which allows for a safe parking arrangement. It would be preferable for all parking to be provided on site; and*

- *the upper level of the proposed development remains bulky and dominant. An increase in the side setback on this level or a higher degree of articulation is encouraged.”*

Community Consultation and Comment

The original proposal was placed on public exhibition between 11 February and 11 March 2009 which included two separate notifications in the ‘South Coast Register’ on the 18 February and 4 March 2009, respectively. A total of thirteen (13) submissions were received during the exhibition period with seven (7) of these expressing ‘objection’ to this proposal in addition to another six (6) that offered strong support for the subject development. A summary of these submissions are as follows:

- Height, scale, bulk and design of the proposed development do not comply with the provisions specified in DCP 54 (Amendment 3);
- Lack of sufficient parking on-site;
- Loss of Huskisson coastal character;
- Increased traffic, parking and servicing issues;
- Proposal will be aesthetically unattractive;
- Increased overshadowing to the surrounding area, particularly to the existing Owen Street CBD area; and
- Loss of privacy to other residential properties in Field Street.

ECONOMIC, SOCIAL & ENVIRONMENTAL (ESD) CONSIDERATION:

It is considered that the development of a boutique hotel will enhance the economic development of Huskisson and its environs. It will provide greater choice of accommodation to tourists and the corporate sector as a destination for business conferences and seminars.

It could provide a stimulus to the economic recovery of the local area in response to the globe financial crisis.

The environmental impact of the proposed building will largely be in relation to its height and bulk and the potential shadow cast that will result across Owen Street in the winter months.

FINANCIAL CONSIDERATIONS:

The financial implications of this proposal relate in large to the likely upgrading works required within Field Street to accommodate additional servicing and traffic movements generated by this and other future developments relying on this street for access.

CONCLUSION

This matter is being reported to Council to ascertain whether or not Council is supportive of the requested variations, as discussed in the body of this report, in accordance with the specified DCP 54 (Amendment 3) provisions relating to “Height Restrictions”, the “60° building height plane” (as indicated in ‘Diagram 1’ on Page 12) and the 3 metre ground floor (street) front setbacks as detailed on ‘Map 3’ (Page 18). It is acknowledged that similar variations were granted by Council for the former application over the site.

The assessment process has concluded that there are design modifications that could further mitigate the bulk and scale of the proposal which would improve the integration of the development within the future streetscape. It is therefore recommended that the applicant introduce greater articulation into the detailed design of the elevations to Owen and Field Streets in order to reduce the impact of the building on the existing urban structure.

Unlike the previously approved mixed-use residential flat building (RFB) (DA07/2677), the provisions contained in State Environmental Planning Policy No.65 (*Design Quality of Residential Flat Development*) (SEPP 65) and the associated Residential Flat Design Code (RFDC), cannot be applied to the subject Motel (tourist) proposal. As a result, the subject development does not have to adopt or demonstrate compliance with the “design principles” specified in SEPP 65 or the RFDC, which were fundamental issues with the previous proposal.

Tim Fletcher

DIRECTOR, DEVELOPMENT AND ENVIRONMENTAL SERVICES

R.D Pigg

GENERAL MANAGER