

## SHOALHAVEN CITY COUNCIL

### DEVELOPMENT COMMITTEE

To be held on Tuesday, 7<sup>th</sup> April, 2009  
Commencing at the conclusion of the Crown Reserve, Community and Commercial Operations  
Committee (commencing at 4.00pm).

1<sup>st</sup> 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, 7<sup>th</sup> April, 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

#### 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, 7 APRIL 2009**

#### **STRATEGIC PLANNING AND INFRASTRUCTURE**

##### **1. Status of Contribution Plans**

**File 39338**

**Purpose of the Report:** To advise Council how recent changes to legislation and the imposition on an 'affordability threshold' on Development Contributions will affect Council's contributions planning.

##### **RECOMMENDED that:**

- a) **The report on the status of Contributions Planning be received for information;**
- b) **A Councillor Briefing and further report to Council be made after the Department of Planning's Practice Notes for Local Contributions Plans have been published; and**
- c) **Priority in Contributions Planning be given to Contributions Plan Amendments already resolved by Council and the preparation of the new Contributions Plan as required by changes to legislation.**

##### **Options:**

This report is for the information of Councillors, the community and local developers. Consideration of options will be detailed in further reports.

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

###### *Background*

Under Section 94 of the Environmental Planning & Assessment Act (the Act), Council can require monetary or certain non-monetary contributions as a condition of development consent, provided Council has a Contributions Plan (CP) which authorises it to do so. Amongst other things, a CP identifies the scope of works that are the subject of contributions, how the works relate to the development (the nexus) and how contribution rates are calculated. For residential subdivision, Council usually requires contributions at subdivision stage. For medium density residential development, and commercial and industrial development, contributions are required as new development proceeds.

Council's CP, which has been amended many times since it was adopted in 1993, requires contributions towards roads, public car parking, drainage, sporting facilities, community facilities, public open space, fire and emergency facilities and a contribution to offset the costs of administration of the CP. Some 200 capital works projects are

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included in Council's CP, with developer contributions representing a significant income stream for Council.

Following lobbying from the development industry and debate in NSW Parliament, amendments to the Act in relation to development contributions have been assented to (June 2008) but not yet gazetted. Despite the amendments foreshadowing repeal of all existing CPs in March 2010, Councils are still waiting for guidance from the NSW Department of Planning on how the amendments are to be applied. One of the reasons for this delay has been the decision of the NSW Government following the November 2008 mini-budget to impose a \$20,000 per dwelling cap, referred to as an affordability threshold, to local Council contributions.

#### *Affordability Threshold Imposed*

The development industry has successfully argued with Government that local Council contributions are one of the causes of the housing affordability crisis in NSW.

By direction of the Minister for Planning, issued 13<sup>th</sup> January 2009, Council's CP is now subject to the \$20,000 per dwelling affordability threshold. For the vast majority of developments in the Shoalhaven, contributions are typically between \$5,000 and \$15,000 per dwelling, so unaffected by the cap. However, a number of rural road projects do exceed the cap, because of the amount of construction work required to service what is usually a small number of new dwellings.

Council was advised that the Minister can approve contributions in excess of the cap by a 2 stage application by Council. A notice of intent was submitted to the department on 2<sup>nd</sup> February 2009, with a formal request and justification submitted by the deadline of 2<sup>nd</sup> March 2009. Council's submission related only to those road projects that are likely to result in contributions exceeding the cap. Submissions will be reviewed by a panel appointed by the Department and assessed against specific criteria that have been made available to Council.

It is unclear how the cap will be applied to non-residential development.

#### *Environmental Planning & Assessment Act Amended*

The following sections describe how the amendments to the Act will apply. This is based on a 'best bet' interpretation of the amendments, in the absence of Departmental guidelines. The amendments also relate to State Infrastructure Levies, which are not applicable in the Shoalhaven.

#### *Key Considerations*

The development industry has long argued that Council's have acted unreasonably in requiring certain contributions, that Council's have not spent large sums of developer funds collected over the years and base their planning assumptions on unreasonable data. The response of Government is to scrutinise Council CPs more closely, with an expectation that accumulated developer funds be spent in reasonable time.

The Act will prescribe the following factors, listed as 'Key Considerations', which Council, the Minister and others must consider in making a CP:

- 
- Can the facility be provided in reasonable time?
  - What will be the impact on affordability of development?
  - Is there reasonable apportionment between existing and new demand?
  - Is the cost estimate reasonable?
  - Are the estimates of demand reasonable?

#### *Key Community Infrastructure*

The amendments restrict Councils in the types of works that can be the subject of contributions, referred to as 'Key Community Infrastructure', being:

- a. Local roads
- b. Local bus facilities
- c. Local parks
- d. Local sporting, recreational and cultural facilities
- e. Local social facilities (community and child care centres, volunteer rescue, volunteer emergency services)
- f. Local car parking facilities
- g. Drainage and stormwater management works
- h. Land for any community infrastructure
- i. District infrastructure of the kind referred to in paragraphs (a)–(e) but only if there is a direct connection with the development to which a contribution relates.

Council's CP reasonably reflects these types of works, but there is concern over what is yet to be defined as 'local' and 'district', and what might be meant by 'direct connection' in item (i) above. Council awaits further advice from the Department on this issue, but it seems the intention of Government is that district facilities, which benefit a wider community than just the incoming residents of a new development, should be funded other than by contributions.

#### *Additional Community Infrastructure*

Council can apply to the Minister to include capital works projects that are not Key Community Infrastructure, and these will be referred to as Additional Community Infrastructure. Council must supply a business plan and an independent report that assesses any proposal against the Key Considerations. It is expected that Council will need to avail itself of this option for some capital works projects, likely to be deemed district facilities.

#### *Transition Arrangements*

Existing CPs are to be repealed by 31<sup>st</sup> March 2010. Council can make a new CP (or multiple CPs), which must comply with the amendments to the Act, or can request the Minister to remake an existing plan. Such a request is not limited to Key Community Infrastructure and will be considered if:

- There is a contract for construction, or
- There is a loan or other finance arrangement with recognised financial institution, or
- There is a commitment to construct in the 07/08 budget, or
- Land acquisition has commenced.

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Council may need to consider this option for certain projects in the CP, most notably to ensure continuity of contributions for the Shoalhaven Entertainment Centre. However, there are a number of capital works projects under Council consideration that are not yet at such a stage of commitment.

It is noted that Council cannot amend a plan after it is remade, except for minor changes, and remaking of a plan by the Minister cannot be appealed.

Consent issued under a plan that is repealed carries over.

*Impact on Works Projects in Existing Contributions Plan*

The following major capital works projects are included in Council's current CP and might be deemed district facilities, thereby requiring a special case to be made to the Minister as Additional Community Infrastructure:

- Shoalhaven Entertainment Centre
- Shoalhaven Fire Control Centre
- Shoalhaven Arts Centre
- Shoalhaven Hockey Centre

The following major projects are included in Council's CP but need clearer direction for implementation:

- North Nowra Link Road
- Nowra Community Centre
- Worrigeer Community Centre
- Shoalhaven Library Facilities

These are the subject of ongoing investigations and their status in a future CP will be the subject of a further report to Council.

It appears that recovery of the costs of CP administration is unlikely to be supported by Government.

*Impact on Works Projects Not in Existing Contributions Plan*

The following capital works projects are under consideration by Council. If they are to be included in a future CP, it is possible they may be deemed Additional Community Infrastructure and thereby requiring a commitment by Council for implementation:

- Northern Shoalhaven Multi Purpose Indoor Stadium  
*Comment: Some existing s94 funds may be available, but the existing CP does not recognise the scope of this project*
- ENSA  
*Comment: a draft CP amendment has been exhibited but not adopted by the previous Council.*
- Northern Shoalhaven Leisure (Aquatics) Centre

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### *Impact on Voluntary Planning Agreements*

Under Section 93 of the Act, Voluntary Planning Agreements (VPAs) provide an alternative vehicle for Council and developers to negotiate the provision of public facilities and services, in addition to, or as a replacement of, S94 conditions of development consent. The amendments to the Act require VPAs entered into by Council to meet the same considerations as a CP.

Council has negotiated one draft VPA, which is to be exhibited in March 2009 and is unlikely to be affected.

Council's Policy on VPAs will need to be amended to reflect the amendments to the Act.

### *CP Amendments in Progress*

Council staff are progressing with further amendments to the existing CP; specifically, draft Town Centre Contributions Plans for St. Georges Basin, Huskisson and Ulladulla in accordance with previous resolutions of Council. This is done in anticipation of the new legislative provisions, and to test the amendments with the Minister.

Work has commenced on infrastructure and contributions planning for the Nowra Bomaderry Structure Plan land release areas.

Work associated with the previous major review of the CP, halted until the legislative framework became better known, has recommenced with a focus on local roads, open space and sporting facilities. Council staff have commenced a review of alternative indexing methods.

It is possible that Council's project-based CP might need to be renewed as several CPs (for example, by locality, Planning Area or type of facility) to clarify compliance with the amended Act.

### *Administrative Issues*

Council staff, assisted by external resources where possible, have commenced preparing a new draft CP for Council's consideration with a view to its adoption during 2009, subject to the content of new Regulations and Practice Notes. This process has effectively overtaken the previous major review of the CP.

Capital works projects which do not meet the new legislative framework will need additional effort to be considered for Ministerial concurrence as Additional Community Infrastructure. Capital works projects that do not gain Council commitment are unlikely to be included in any new CP.

Council policies relating to development contributions will be progressively updated and forwarded to Council for consideration.

Council's systems for maintaining, monitoring and reporting contributions, and their linkages to Council's DA and Finance systems, will need adjustment.

Council is encouraged to recognise the amount of work required to meet these requirements, and that it may not be possible to create additional minor amendments to the CP during 2009 within existing resources.



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Development Contributions will not be under Section 94 of the amended Act so it will be confusing to continue the current practice of referring to Development Contributions as "Section 94s".

Most recent feedback from the Department of Planning is that 30 April 2009 is the cut-off date that Council can impose a Development Contribution in excess of \$20,000 for residential development without prior approval from the Minister of Planning. Development Contributions which exceed this threshold have been submitted by Council to the Department for consideration, and feedback on this submission is likely to be received by 10 April 2009. Initial verbal feedback from the Department indicates that some 80 Councils have forwarded submissions to the Department for Development Contributions that exceed the threshold.

Additional feedback from the Department has also indicated that the likely release date of the new Regulations for Development Contributions is early July 2009. This release date will impact on Council resources to meet the new Contribution Plan effective deadline of March 2010.

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

Any contraction of Council's ability to require Development Contributions will reduce Council's ability to provide essential infrastructure works and community services. The full extent of this impact cannot be determined until further advice is received from the NSW Government. Developer contributions are not applied to environmental works.

**Financial Considerations:**

The amendments to the Act and the imposition of the affordability threshold are likely to reduce Council's income from Developer Contributions, which comes at a time when Council's other sources of income are under challenge due to the wider economic climate. The full impact cannot be determined until Ministerial concurrence with Council's new Contributions Plan(s) has been determined. The first step in this process will be the publication of Practice Notes from the Department of Planning, which is expected to provide more detailed guidance to Councils. Council will be advised when this occurs.

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

R D Pigg  
**GENERAL MANAGER**

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## **REPORT OF GENERAL MANAGER**

### **DEVELOPMENT COMMITTEE**

**TUESDAY, 7 APRIL 2009**

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

#### **2. Adult Shops Policy (Draft Amendment No 1)**

**File 16748**

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

The purpose of this report is to inform Council of the public exhibition of draft amendment no 1 to Council's Adult Shops Policy and recommend that the amendments to the Policy be adopted as publicly exhibited.

##### **RECOMMENDED that:**

- a) **Council adopt Amendment No 1 to the Adult Shops Policy (POL08/165) as publicly exhibited; and**
- b) **The adopted policy be notified to Community Consultative Bodies and be included on Council's website.**

##### **OPTIONS:**

Council may:

- a) Resolve to adopt the recommendation in the report; or
- b) Resolve to make further amendments to the subject Policy and specify such amendments.

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

Council, at its meeting of 16 December 2008 considered a report on a development application for an adult shop (File DA08/2218) and resolved in part to amend Council's Adult Shops Policy as follows:

*"...That Policy 04/121 – Adult Shops be amended as follows; Section 3.3 to read as follows:*

##### *Buffer Zones*

*Land must not be used for an Adult Shop if the site is within 100m walking distance of:*

- a) A residential zone; or*
- b) Land reserved or used for a church or a primary or secondary school; or*

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c) *Community facilities regularly frequented by children or a public park; or*  
d) *Any building, facility, shop or agency that is predominantly orientated towards the provision of children's services, whether or not that service is provided by government, charity, church or commercial interests.*

*Land must not be used for an Adult Shop if the site is adjacent to a pedestrian thoroughfare that is used by children or young people in accessing:*

a) *A residential zone; or*  
b) *Land reserved or used for a church or a primary or secondary school; or*  
c) *Community facilities regularly frequented by children or a public park or moving between those facilities; or*  
d) *Any building, facility, shop or agency that is predominantly orientated towards the provision of children's services, whether or not that service is provided by government, charity, church or commercial interests. "*

Accordingly, the draft amendment was made and the Policy was placed on public exhibition between 14 January and 13 February 2009, in accordance with Council's Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies.

No submissions were received in relation to the public exhibition of the draft amendment to the Adult Shops Policy.

The draft amendments to the subject Policy have been publicly exhibited and given the lack of public response are considered appropriate and consistent with Council's intentions. Council is now in a position to adopt those amendments, as exhibited.

A copy of the draft Policy as amended is included in the Councillors' Information Folder.

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

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

**FINANCIAL CONSIDERATIONS:**

Not applicable in the context of this report.

**3. Review of the Clear Air Regulations**

**File 9398**

**PURPOSE OF THE REPORT:**

To seek Council's preferred option for being listed on Schedule 8 of the Clean Air Regulation to prohibit back yard burning of domestic waste and/or vegetation in urban areas across the City.

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**RECOMMENDED that Council replies to the Department of Environment and Climate Change, requesting that it be added to Part 2 and Part 3 of Schedule 8 of the Clean Air Regulation.**

**OPTIONS:**

- a) Council nominates to be added to Part 1 of Schedule 8 of the Clean Air Regulation. This provides strict control with no burning allowed within the whole City;
- b) Council nominates to be added to Part 2 of Schedule 8 of the Clean Air Regulation. This option would mean that burning any vegetation in urban areas will be prohibited and blanket approval would be given to burning vegetation in rural areas;
- c) Council nominates to be added to Parts 2 and 3 of Schedule 8 of the Clean Air Regulation. This option would mean that burning any vegetation in urban areas will be prohibited and blanket approval would be given to burning vegetation in rural areas. This option also prohibits the burning of domestic waste, except for people who do not have a domestic waste collection service; or
- d) Council nominates to NOT be added to Schedule 8 of the Clean Air Regulation. This option will require Council to continue to dedicate resources to assess and process applications from residents to undertake backyard burning and respond to complaints where appropriate burning methods are not implemented. This option will also continue to create extra work for NSW Fire Brigade. There will be no environmental benefit in terms of improving local air quality or reducing greenhouse gases from adopting this position.

**DETAILS/ISSUE:**

**Background**

The NSW Department of Environment and Climate Change (DECC) is undertaking a review of the Protection of the Environment Operations (Clean Air) Regulation 2002 and requires nominations from Councils by the end of April 2009.

The Regulation has been highly successful in eliminating backyard burning of waste in the greater metropolitan area as well as in many regional areas of NSW. An important component of the Regulation is Schedule 8 which enables Councils to exercise a level of control on burning in the open that is appropriate to local conditions. Councils are listed under the three Parts of Schedule 8 according to the preferences advised by Councils during the last remake of the Regulation in 2000. Shoalhaven City Council is not currently on any part of Schedule 8 of the Act and therefore has little control on whether or not backyard burning is undertaken in the Shoalhaven.

The Clean Air Regulation provides a comprehensive range of controls on burning in the open and in incinerators, including a framework for Councils to exercise a level of control that is appropriate to local conditions. This is achieved by Councils nominating their local government area (LGA) for listing on Schedule 8 of the Regulation:

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- Part 1 of Schedule 8 lists LGAs where all open burning is effectively prohibited;
  - Part 2 lists LGAs where the burning of vegetation requires approval by Council;
  - Part 3 lists LGAs where domestic waste burning is prohibited, except for on site burning of domestic waste on residential premises where domestic waste management services are not available.

Council previously recommended that:

*“Council nominate not to be added to Schedule 1 of the Protection of the Environment Operations (Control of Burning Regulation)”.*

### **Options for Listing on Schedule 8**

In a Council area listed on Part 1 of Schedule 8, all open burning is effectively prohibited. This is the highest level of control available under the Regulation and there is no need for that LGA also to be listed on Part 2 or Part 3 of the Schedule.

In a Council area listed on Part 2 the burning of vegetation is generally prohibited but may be approved by Council in circumstances determined by Council. For example some Councils have used these provisions to allow burning of dead and dry vegetation in rural areas within the LGA while prohibiting such burning in designated urban areas.

Listing on Part 3 is aimed at preventing the burning of domestic waste (other than vegetation). Where a Council wishes to be able to approve the burning of vegetation but still have a high level of control on open burning, it is possible to be listed on both Part 2 and Part 3 of the Schedule.

In addition to the above framework which can be used by Councils to adopt controls that are relevant to their local government area, the Regulation also:

- imposes a general obligation to prevent or minimise air pollution when burning in the open or in an incinerator;
- specifically exempts bushfire hazard reduction work from the Regulation’s requirements;
- prohibits the burning of certain articles such as tyres and treated wood;
- exempts open burning associated with the destruction of prohibited drugs and diseased animal carcasses; and
- allows open burning in Schedule 8 listed areas for the purposes of cooking, campfires, agricultural operations and fire fighting instruction.

### **Other Councils**

At present there are 43 Councils listed on Part 1, 51 on Part 2 and 59 on Part 3. Local Councils of Shellharbour and Wollongong are listed on Part 1 so that all burning of vegetation and domestic waste is prohibited except with an approval. Eurobodalla, Kiama, Wingecarribee and Wollondilly are listed on Part 2 so that burning of vegetation is prohibited except with approval and Eurobodalla, Wingecarribee and Wollondilly are also listed on Part 3 so that all burning is prohibited, except for on-site burning of domestic

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waste on residential premises where domestic waste management services are not available.

### **Benefits**

Burning of waste materials produces greenhouse gases and can create air pollution problems through excess smoke emission or toxic fumes from burning inappropriate materials. Many complaints received by Environmental Services relate to smoke nuisance or localised air pollution caused by burning. The NSW Fire Brigade (Nowra) also attend many calls relating to backyard burns being conducted inappropriately. Station commanders from the Nowra station are very supportive of SCC being added to Schedule 8. By nominating to be on the Schedule, Council will maintain a level of control on whether or not people can conduct backyard burning and what materials are burnt. This control will assist in reducing greenhouse gas emissions and alleviate local air quality issues created from smoke nuisance.

### **Implications**

Council currently has a co-operative, negotiated arrangement with the NSW Fire Brigade to prepare letters permitting a person to conduct a backyard burn. The Nowra Fire Brigade will not allow anyone to burn without this letter from Council. This is a free service provided by Environmental Services. Listing on Schedule 8 will remove this requirement from both Council and the NSW Fire Brigade.

Council currently processes about 130 applications per year to undertake backyard burning, all from urban areas. There will be no impact on revenue as Council does not collect any revenue for this service. Council's resources will be shifted to education and monitoring compliance with the Regulation. There should also be a reduction in smoke nuisance complaints. Council dealt with about 30 smoke nuisance complaints last year, with the NSW Fire Brigade also playing a role in addressing fire-related complaints.

The implications for the community will be that in many circumstances it is likely that residents will need to use the existing waste facilities provided by Council, rather than undertake backyard burning. Those people who do not have a domestic waste collection service will still be able to burn materials and Council can approve burns for vegetation in rural areas. Any required bushfire hazard reduction works are exempt from the regulation.

Council can avoid the need for applications by issuing blanket approvals in rural areas. Providing Council undertakes a public education program regarding changes, then smoke nuisance and compliance with the Regulation complaints should be minimised. The role of Environmental Services will shift from processing approval to burn letters to ensuring compliance with the Regulation. The role of compliance will be shared with NSW Fire Brigade and will not require extra resourcing as it should fit within the current work program of Environmental Services.

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

Including the Shoalhaven Local Government Area on Schedule 8 of the Clean Air Regulation would help to maintain the social integrity and economic viability of our community by reducing the incidence of air pollution and associated respiratory conditions including asthma. It would also reduce the likelihood of toxic substances and

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particulate matter being emitted into the air. The economic benefits would be reduced health care costs. Community safety would also be increased by the reduction in the risk of backyard burning becoming uncontrolled bushfires.

The program also provides other environmental health and ESD outcomes including reduction of carbon dioxide, particulate matter and toxin emissions and therefore improved air quality.

#### **FINANCIAL CONSIDERATIONS:**

Nomination on Schedule 8 of the Regulation would reduce the financial and resource burden on Council and NSW Fire Brigade through the removal of the need to assess and process applications for backyard burning and response to smoke nuisance complaints about residents issued approvals that are using inappropriate burning methods.

#### **CONCLUSION**

# Council has the opportunity to be added to Schedule 8 of the Clean Air Regulation. As outlined above, it would be appropriate for Council to nominate to be added to Parts 2 and 3 of Schedule 8 so that the burning of vegetation is prohibited in urban areas and a blanket approval be granted for the burning of dead and dry vegetation on the premises on which the vegetation grew in rural areas. The burning of domestic waste will also be prohibited except for people who do not have a domestic waste collection service. This option will provide environmental (air quality) benefits for people living in Shoalhaven. The NSW Fire Brigade (Nowra) have offered their complete support for this proposal - see **Attachment 'A'**.

#### **4. Development Control Plan 57 (Draft Amendment No 5) - Dual Occupancy Guidelines and Development Control Plan 100 (Draft Amendment No 2) - Subdivision Code (Element DO1) File 5262, 34829, 5034**

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

This report considers submissions received following the public exhibition of the draft amendments to Development Control Plan (DCP) 57 and DCP 100 as well as feedback received from two (2) Councillor Briefings. The report recommends that Council adopts the draft documents subject to further amendments as outlined in this report.

#### **RECOMMENDED that:**

- a) **Council adopt DCP 57 - Dual Occupancy Guidelines (Amendment No 5) and DCP 100 - Subdivision Code (Amendment No 2), as exhibited, subject to further amendments outlined in this report;**
- b) **As a result of adopting a) above, the Shoalhaven Planning Policy (SPP) No 5 be revoked;**

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- c) The adoption of DCP 57 (Amendment No 5) and DCP 100 (Amendment No 2) and the revocation of SPP 5 be publicly exhibited in accordance with Clause 21 of the *Environmental Planning and Assessment Regulation 2000*;
  - d) The adoption of DCP 57 (Amendment No 5) and DCP 100 (Amendment No 2) and the revocation of SPP 5 be notified to the submitters, the building and development industry, Community Consultative Bodies and be highlighted in Council's website;
  - e) The adoption of the DCP 57 (Amendment No 5) and DCP 100 (Amendment No 2) be incorporated into the draft Shoalhaven DCP 2009; and
  - f) Council adopt the 700m<sup>2</sup> minimum lot size for dual occupancy subdivision and the corresponding provision within Clause 4.1A of the draft Shoalhaven Local Environmental Plan 2009 be amended to be consistent with this position.

#### **OPTIONS:**

- a) Council adopt the recommendation; or
- b) Council may propose a new or an amended recommendation.

#### **DETAILS/ISSUES**

The development controls for dual occupancy development are contained within DCP 57. Where a dual occupancy subdivision is also proposed, the controls are contained within Shoalhaven Planning Policy (SPP) No 5 - Dual Occupancy Development Subdivision Policy, which was originally adopted on 28 November 2006 and further amendments which added the localities where the policy applied, was adopted on 25 June 2007. DCP100 - Subdivision Code also applies to the subdivision proposals.

The intention of the current considerations and report is to incorporate relevant parts of SPP 5 into DCP 57 (design matters) and into DCP100 (subdivision matters) and subsequently, revoke SPP 5. This is in accordance with Council's resolution at its meeting of 28 November 2006 when adopting SPP 5 that "*Council incorporate the Policy into DCP 57 (Dual occupancy) and DCP 100 (Subdivision Code) at the next appropriate opportunity*".

#### **Background**

The draft amendments to both Development Control Plan (DCP) 57 and DCP 100 were publically exhibited from 12 March to 24 April 2008, in accordance with Council's resolution of 26 February 2008. Eleven (11) submissions were received in respect of the public exhibition of both draft DCPs. Following a report to the Development Committee meeting of 24 June 2008 a Councillor Briefing was held on 14 July 2008. Due to the local government election period, consideration of the amendments was deferred. A further Councillor Briefing was held on 1 December 2008 to brief Council's newly elected representatives on the matter. A summary of the report recommendations is included at the end of this report.



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## Supporting information

The following supporting information is provided in the Councillors, Information Folder:

- a. Copy of submissions received; and
- b. Copy of the exhibited DCP 57 (draft Amendment No 5) and DCP 100 (draft Amendment No 2), including further amendments proposed following consideration of submissions as a result of public exhibition and Councillor briefings, shown by shading.

## Submissions

Eleven (11) submissions were received, including four (4) from planning consultants, four (4) from community consultative bodies and three (3) from individual residents.

The report incorporates considerations of submissions, councillor input and a review of current controls. A number of issues were raised in the submissions and these are identified as follows:

1. Localities where a dual occupancy may be subdivided;
2. Lot size appropriate for dual occupancy and dual occupancy subdivision;
3. Standardising Floor Space Ratios (FSR) and other site development standards, including car parking;
4. Provisions for Adaptable Housing standards;
5. Release of a Subdivision Certificate in conjunction with a dual occupancy development;
6. Torrens Title, Strata and Community Title subdivisions; and
7. Provisions for infrastructure and contributions.

## Discussion of Issues

### **1. Localities where a dual occupancy may be subdivided**

Under SPP 5, Council will allow a dual occupancy to be subdivided in certain localities, and the Policy states:

*“This Policy applies to certain land zoned Residential 2(a1), 2(c) or 2(e) under Shoalhaven Local Environmental Plan 1985 (SLEP 1985), and that is located in Nowra, Bomaderry, North Nowra, West Nowra, South Nowra, Worrigeer, Huskisson, Vincentia, Sanctuary Point, St Georges Basin, Culburra Beach, Sussex Inlet, Mollymook, Mollymook Beach, Milton, Ulladulla, Callala Bay, Callala Beach, Greenwell Point, excluding the flood liable areas as designated on “Attachment A” and Shoalhaven Heads excluding Hay Ave.*

*This Policy only applies in existing developed areas, and aims to discourage grouped dual occupancy developments. “*

Some submissions requested a reduction in the number of localities as it was thought there would be an increase in applications and a loss of residential character.

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Comment:

Council adopted the Shoalhaven Housing Strategy 2006 on 27 June 2006. The Strategy recognises the ageing population into the future and a need to provide for housing options. It concluded that dual occupancy subdivisions and adaptable housing could be considered in the major towns of Nowra-Bomaderry and Milton-Ulladulla and some medium density in selected areas in the Bay and Basin and Sussex Inlet, where these areas are close to commercial and retail centres.

The concerns about the character of a village being changed if there is a proliferation of dual occupancy subdivision were considered, when in 2006 (and further amendments in 2007) Council adopted the SPP 5 localities where the policy would apply. In addition, Council has determined that dual occupancy development is a way of achieving low density integrated "urban consolidation" goals and to provide housing options. The impacts of development applications and the capacity of infrastructure is assessed at the time of considering each development proposal under Section 79C of the *Environmental, Planning and Assessment (EP&A) Act 1979*.

Nevertheless, Council in considering a Section 82A Review of a DA at its meeting of 26 August 2008 partly resolved that:

*"as part of the DCP 57 and DCP 100 review, Council consider further subdivision applications for dual occupancy dwellings that were approved prior to the adoption of SPP 5."*

Whilst this resolution suggests that in certain circumstances (ie, approved prior to SPP 5), more localities which allows for the subdivision of dual occupancy development should be introduced in the review of DCPs 57 and 100, this report considers that the amendments to DCPs 57 and 100 should only reflect the localities prescribed within the current SPP 5.

The localities where dual occupancy development may be subdivided, proposed in the subject amendments to DCPs 57 and 100 (currently contained within SPP 5) are consistent with Council's Housing Strategy and Council's urban consolidation goals to provide for greater housing options.

**It is recommended that the current localities (in SPP 5) where dual occupancy development may be subdivided be retained in the amendments to DCP 57 and DCP 100. Further that the considerations of requests following the resolution of 26 August 2008 apply to these localities.**

## ***2. Lot size appropriate for dual occupancy and dual occupancy subdivision***

Under DCP 57, an attached dual occupancy may be developed on a minimum 500m<sup>2</sup> lot size and a detached dual occupancy may be developed on a minimum 700m<sup>2</sup> lot size, subject to satisfying a number of siting and design criteria. Under SPP 5, a dual occupancy development may only be considered for subdivision if the lot is at least 800m<sup>2</sup>, and if the proposed development is located off a cul-de-sac, a minimum lot size of 900m<sup>2</sup> is required to cater for a reduction in available on-street visitor parking. SPP 5 provides that some consideration may be given to a lesser lot size based on proximity to a commercial centre or if the design includes some measures of adaptable housing. SPP 5 further provides that after a dual occupancy subdivision, the resultant lots are to have a minimum area of 350m<sup>2</sup>.

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Some submissions received requested the retention of the 800m<sup>2</sup> and 900m<sup>2</sup> lot requirements before subdivision to effectively reduce the number of potential applications. One submission requested the minimum resultant lot after subdivision to be 250m<sup>2</sup>.

Comment:

This report acknowledges the inconsistency between the minimum lot sizes prescribed in DCP 57 for attached and detached dual occupancy development and the minimum dual occupancy subdivision size prescribed in SPP 5. This inconsistency is confusing and has been of concern to both applicants and assessment staff.

This inconsistency in lot sizes should be reviewed. Consideration of this matter suggests that the minimum lot sizes prescribed within DCP 57 of 500m<sup>2</sup> for attached and 700m<sup>2</sup> for detached dual occupancy, should be retained in DCP 57 and the minimum lot size to allow consideration for their subdivision be proposed at 700m<sup>2</sup> (to apply to both attached and detached dual occupancy development). This consideration also suggests that the 900m<sup>2</sup> minimum lot size requirement as currently prescribed in SPP 5 to allow the subdivision of dual occupancy lots off a cul-de-sac is too limiting and that the 700m<sup>2</sup> minimum lot size be applied instead, for such circumstances.

This consideration was raised at both Councillor briefings and at the briefing of 1 December 2008, Councillors in attendance suggested that the minimum lot size for a dual occupancy subdivision (either attached or detached) may be 700m<sup>2</sup> subject to the application satisfying other siting and design criteria, the objectives of the requirement and performance criteria. This suggested minimum lot size is also consistent with the current SPP 5's requirement that resultant lots after subdivision shall be 350m<sup>2</sup>. In addition, Element RE14 within DCP 100 currently allows a minimum small lot subdivision to be 350m<sup>2</sup> in accordance with Council's adopted Housing Strategy.

**It is recommended that DCP 57 retain its current standard and DCP 100 prescribe the minimum lot size for a dual occupancy subdivision at 700m<sup>2</sup>, subject to the application satisfying other siting and design criteria, the objectives and performance criteria.**

**In line with this recommendation, it is also recommended that a complementary amendment be made to the draft SLEP 2009, clause 4.1A to reflect a consistent lot size of 700m<sup>2</sup> to allow a dual occupancy subdivision (whether attached or detached).**

### ***3. Standardising Floor Space Ratios and other site development standards***

The dual occupancy provisions under DCP 57 - Dual occupancy Guidelines and single dwelling provisions under DCP 91 - Single Dwellings and Ancillary Structures have similarities because they are both low scale residential development and it is proposed to have the relevant standards as similar as possible as part of the review.

#### ***(a) Floor Space Ratios (FSR)***

Under DCP 91 the maximum FSR allowed is 0.5: 1, including all outbuildings. If the garage is proposed within the dwelling or outbuilding, and allowance of the garage floor area up to a maximum 50m<sup>2</sup> may be excluded from the gross floor area calculation.

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Under DCP 57 the maximum provision for any dual occupancy lots up to 1000m<sup>2</sup> is 0.4:1. For lots greater than 1000m<sup>2</sup> in a residential area, no FSR is prescribed however the maximum total floor area prescribed must not exceed 400m<sup>2</sup>.

It should be noted that there is currently an inconsistency within DCP 57 in relation to its definition of gross floor area and its calculation of FSR. Its FSR calculation shows that total floor area includes carports; however the DCP definition for gross floor area excludes carports and garages. It is prudent that the proposed definition for floor area and gross floor area in draft SLEP 2009 be used in the review of DCPs 57 and 100.

Some submissions suggested the FSR should remain as 0.4:1 and some supported a consistent definition.

Comment:

Given the need for consistency across the board for low scale residential development, it is proposed that FSR provisions within DCP 57 be consistent with that of DCP 91.

**It is recommended that the maximum 0.5:1 FSR be applied to dual occupancy developments (which includes the gross floor area of all buildings on the allotment), with up to a 50m<sup>2</sup> concession being given for garage floor area being applied as an aggregate across both dwellings. It is further recommended that for lots greater than 1000m<sup>2</sup> in residential and rural zones, the maximum total floor area is 500m<sup>2</sup>.**

**It is also recommended that the definition for FSR used within DCP 57 be made consistent with that of draft SLEP2009.**

*(b) Landscaping and stormwater management*

Landscaping provides permeable and pleasant areas that improve the resident amenity and streetscape.

Under DCP91, minimum landscaping area is not expressly specified, however is included as part of the requirement for stormwater management, that, where pervious areas are proposed, among others, landscaping is utilised to reduce stormwater runoff. The acceptable solution to this requirement where such impervious area exceeds 65% of the site area is that the proposal provides details of reducing stormwater runoff and the area set aside for landscaping should include 50% for deep soil landscaping to encourage tree and shrub growth.

DCP 57 currently prescribes for dual occupancy development that a minimum of 40% of the total site area be set aside for landscaping. Council at its meeting on 26 February 2008, in considering a report to publicly exhibit Amendment No 4 to DCP 57, resolved that the minimum landscaping requirement for DCP 57 be modified to 30%.

Some submissions suggested the 40% landscape requirement should be retained to support on-site stormwater management.

Comment:

In accordance with Council's resolution of 26 February 2008 in relation to landscaping provision, this report recommends that the minimum landscaping provisions for dual occupancy development within draft DCP 57, is prescribed at a minimum 30% of the total

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site area. It is also recommended that for consistency with DCP 91, this requirement includes “deep soil” plantings, and that details for the reduction of stormwater runoff be submitted if the impervious site area (including provision for future driveways or paths) exceeds 65% site area.

*(c) Rear setbacks*

Amendments to the rear setback requirement was not included in the exhibited draft, however further consideration is now proposed because Council is regularly considering variations to the rear setback for dual occupancy developments, particularly where a rear detached dwelling is proposed or the development is on a corner lot.

Under DCP 91, the required rear setback is 4.0m. Where a single dwelling is proposed and area at the rear of the dwelling is less than 4.0m, the rear setback for such cases is considered on its merits, based on privacy or overshadowing considerations.

Under the current DCP 57, the rear setback is 4.0m and there is a further requirement that in the case of detached dual occupancy development, the dwelling furthest from the street, must be single storey. This requirement is to reduce the impacts of overlooking, overshadowing and visual impacts of obtrusive developments.

Comment:

There can be merit-based consideration for dual occupancy developments for corner lots or if a rear battle-axe subdivision is proposed because of the lot size or shape. For example, if the 4.0m rear setback is on the southern side of a proposal, it may be preferable if the greater aggregate open landscaped area was located on the northern side for better amenity and solar access for residents while not compromising the amenity of adjoining properties. In this regard an “average 4.0m rear setback” may be more appropriate.

**It is recommended that DCP 57 prescribes the rear setback for rear detached dwellings for low density residential zones at average 4.0m and variations on corner lots may be considered based on impacts on adjoining properties.**

*(d) Detached rear dual occupancy dwelling*

The current DCP 57 provides that the rear dual occupancy dwelling is to be single storey and the height is limited to 3.0m height to the underside of the eaves.

Submissions requested the height be increased to 3.6m so that the design could include timber floor frame systems and 2.7m ceiling heights more readily.

Comment

There are no objections to the increase in height being 3.6m to the eaves.

**It is recommended that DCP 57 provides for the rear dual occupancy dwelling to be single storey and with a height to the eaves of 3.6m.**

*(e) Car parking*

DCP 91 requires two (2) car parking spaces behind the building line, either covered or uncovered, for single dwelling developments. Current DCP 57 requires a minimum of one (1) space per dwelling up to 125m<sup>2</sup> of floor area, and a minimum of two (2) spaces where the dwelling is more than 125m<sup>2</sup> for dual occupancy developments.

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SPP 5 requires that in a cul-de-sac, a subdivided dual occupancy should be on a minimum 900m<sup>2</sup> to cater for a reduction in available on-street visitor parking. As reported earlier it is proposed to recommend that a dual occupancy development may be subdivided if the lot is a minimum of 700m<sup>2</sup> and other site criteria are satisfied.

Submissions have been concerned with changes to residential character and increased density, and this includes impacts of more vehicles on the street if on-site parking is inadequate.

Comment:

Car parking requires consideration where there may be two (2) dwellings and additional vehicles on site. Council has also received dual occupancy applications where a three (3) bedroom design is contained within a 125m<sup>2</sup> floor area dwelling and this design type is likely to have more than one vehicle associated with the dwelling occupants.

**It is recommended that the current provisions for car parking under DCP 57 be amended in this review; to include:**

- **a minimum of two (2) on-site car parking spaces be provided for each three (3) bedroom dwelling, irrespective of floor area;**
- **where the lot is in a cul-de-sac, a minimum of two (2) car parking spaces be provided for each dwelling;**
- **given the other changes recommended in this review and the potential for additional dual occupancy, parking spaces should not be stacked to minimise parking nuisance to adjoining properties.**

*(f) Cumulative Effects of Dual Occupancy Development*

Both DCP 57 and SPP 5 have objectives, performance criteria and acceptable solutions to minimise the cumulative impacts of dual occupancy development where a number of dual occupancies are developed in a street or locality. This could occur over time or with a number of concurrent applications.

Submissions have been made about the likely impacts of such developments on a streetscape or locality if multiple dual occupancies are developed and especially in conjunction with their subdivision. The terms used in those submissions were the impacts of “clustering” or “grouping” of dual occupancy developments within a locality.

Comment:

It can be argued that in some cases proposals may seek to create a de-facto small lot residential subdivision by proposing a number of dual occupancy developments and associated subdivision so the result may be a number of consecutive 350m<sup>2</sup> lots and a perceived dense development. This situation is likely to be proposed in new Greenfield areas rather than as infill development affecting one or two standard lots. In considering the cumulative effects of a number of adjacent dual occupancy developments, there are design features and consideration for sympathetic streetscape treatment that can be applied to minimise any impact, but the fact remains that such multiple or clustered dual occupancy development will give the impression of a higher density location.

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**In this regard, it is recommended that the clause in DCP 57 relating to “Cumulative Impacts” be strengthened to discourage the concentration of repetitive dual occupancy developments within a street or locality. Acceptable solution should include quantifying what is considered to be an excessive number; ie, no more than three (3) similar dual occupancy development in close proximity in a cul-de-sac or street; and architectural or design features to be considered, so that desirable streetscapes are not detrimentally impacted upon and areas retain a low density character.**

*(g) Other matters*

In the current SPP 5 and the exhibited draft DCP 100 - (Element DO1), there are “Mandatory Provisions” as a statement of what council requires as a minimum to consider a dual occupancy subdivision as well as objectives; and guides to kerb and gutter criteria to assist applicants. Submissions have suggested that the use of the term “mandatory” is in conflict with Council’s performance based DCP format.

**It is recommended that DCP 100 - Element DO1 be amended to refer to mandatory provisions as “Essential Requirements”.**

**4. Provisions for Adaptable Housing standards**

Adaptable Housing is about designing buildings to enable adaption to suit occupants’ mobility needs as they age. SPP 5 sets out the case for adaptable housing and this is **encouraged** for at least one of the dual occupancy dwellings **and is optional** for the applicant to include in the design. If a lot is less than 400m walking distance from a commercial centre and the lot is less than 800m<sup>2</sup>, as a concession, the Council will consider a subdivision if one dwelling contains some listed adaptable housing design features. SPP 5 does not require inclusion of all the requirements of Australian Standard AS2499. The assessment of what may constitute a “commercial centre”, the stated distances and providing adaptable housing as criteria for a concession to the lot size to allow a dual occupancy subdivision has caused uncertainty for both applicants and assessment staff.

Submissions support the inclusion of adaptable housing design requirements being required rather than voluntary, while some submissions requested the status quo.

Comment:

The requirements for adaptable housing take into account the ageing population, Census data and population projections which enable owners to adapt their dwelling to changing life and health situations. By implementing the requirements at construction stage there is limited additional costs involved. SPP 5 does not require full compliance with Australian Standard 2499, but includes reinforcement that some adaptable housing design features be applied. These are listed under “acceptable solutions’ in SPP5. Nevertheless this view was supported at the Councillor briefing held 1 December 2008.

The SPP 5 “encouraged” provisions were waived if the topography of the land did not allow for adaptable housing. It is considered that this should only be a consideration if the topography did not enable a car parking space to be located within adjacent and reasonable levels of the dwelling or that graded pathways were not possible. The situation should be an exception and critically assessed.

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**It is recommended that the adaptable housing provision be “required” within DCP 57 rather than simply “encouraged” as required by SPP 5, and that the distance from a commercial centre or a minimum lot size criteria for adaptable housing, not constitute a criteria for adaptable housing. It is also recommended that adaptable housing inclusions be required for each new dwelling being built as part of the dual occupancy development and if one is an existing dwelling that is being significantly altered, such as a new or altered bathroom or that improved access into the dwelling is possible.**

***5. Release of a Subdivision Certificate in conjunction with a dual occupancy development***

A Development Application (DA) may be lodged for a dual occupancy development only or for a combined dual occupancy development and its associated subdivision. The proposal may constitute an addition of another dwelling to an existing dwelling on the land as an attached dual occupancy development or may constitute the building of two (2) separate dwellings on a vacant lot known as detached dual occupancy development.

The completion of the entire dual occupancy development before the issuing of a Subdivision Certificate is provided within the consent conditions of the development approval. The exhibited draft DCP 100 – Element DO1 proposes that the second dwelling of a dual occupancy proposal reach a mandatory inspection framework stage before the Subdivision Certificate is issued.

Submissions were received that sought a relaxation to the issuing of Subdivision Certificate within Element DO1 of DCP 100; ie, a request for the “early release” of Subdivision Certificate, prior to either dwelling building work being commenced or completed, for a variety of reasons.

Comment:

Where a subdivision is involved, the applicant requires Council to issue a Subdivision Certificate to lodge with the Land Titles Office to obtain Title and to then enable completion of the sale of the new land and dwelling. This process of registration may take a few weeks.

In the context of SPP 5 and the draft DCP 100 for the subdivision of a dual occupancy, the resultant lots after subdivision may be 350m<sup>2</sup> in the form of integrated housing lots which is considerably less than the standard minimum residential Torrens Title subdivision criteria of 500m<sup>2</sup>.

It is considered that a number of issues may arise should a subdivision for 350m<sup>2</sup> integrated housing lots be approved prior to the actual dual occupancy development being constructed. One issue would be if the dual occupancy development would ever get constructed on the already subdivided lots meant for integrated housing. Another issue would be, should such approval be granted, a future owner deciding to amend or seek a new development on the 350m<sup>2</sup> lot meant for integrated housing, may wish to develop a single dwelling on that land; controlled by single dwelling development provisions under DCP 91 rather than DCP 57. This may potentially lead to the difficulty whereby Council would be requested to consider significant variations to DCP 91, from what would otherwise apply; ie provisions under DCP 57.



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One option canvassed in the submissions was for Council to apply a Section 88B Restriction to User over the land that linked the dual occupancy approval to the total development site which therefore covers any undeveloped part or lot on the site that the site is to be developed as dual occupancy development only. Nevertheless, if this option was pursued, it can be argued that this alone does not eliminate the potential for an application to the Supreme Court to remove the Section 88B Restriction to User. The current or new owner seeking a new proposal on the undeveloped lot may also appeal the original consent conditions. In this regard, it is considered that the option of applying a Section 88B Restriction to User is not recommended. This view was supported at the Councillor briefing held 1 December 2008.

**It is recommended that the exhibited draft DCP100 – Element DO1 timeframe for release of a Subdivision Certificate is appropriate, whereby, the first or existing dwelling comprising the dual occupancy development be completed and the second dwelling within a dual occupancy subdivision reach at least the required inspection framework stage of construction before consideration is given to the issuing of a Subdivision Certificate. The conditions of Consent will be composed to satisfy Section 109J of the *Environmental Planning and Assessment Act 1979*. This relates to compliance with consent conditions before the release of a Subdivision Certificate.**

#### **6. Torrens Title, Strata Title and Community Title subdivision**

Council at its meeting of 26 February 2008 when considering the report recommending the exhibition of the draft DCP 57 and 100 amendments raised the issue of whether Strata and Community Title subdivision applications had in the past been treated differently to Torrens Title type subdivision for dual occupancy development. In this regard Council partly resolved that:

*“a further report be submitted on Strata and Community title subdivision”*

Accordingly, this report provides a discussion on the three (3) forms of subdivision:

- (a) Torrens Title - where a parcel of land is subdivided and each lot has separate title with a single ownership. It is the most common form of land subdivision.
- (b) Strata Title - where the subdivision results in a number of lots and common property with a “unit entitlement” being described. The “proprietors” of the new lots have rights and obligations and there is a body corporate established. The management of the property is administered through the *Strata Schemes Management Act 1996* and there are dispute resolution mechanisms.
- (c) Community Title - where a parcel of land is subdivided and includes a lot that is community land. The proprietors of the land have rights and obligations under the *Community Land Management Act 1989*. There is a neighbourhood association and a neighbourhood plan. This form of subdivision has been used for both rural and urban areas.

Where the LEP zoning permits a dual occupancy on an original lot and then a subdivision, all three (3) forms of subdivision are permitted. With Strata Title or Community Title there is an administrative body involved which makes the process slightly more onerous than Torrens Title subdivision; and may result in future common services disputes; it is generally expected that Torrens Title is the preferred ownership outcome. The suggestion that had been made that Strata and Community Title

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subdivision applications had in the past been treated differently over Torrens Title type subdivision for dual occupancy development is not the case as such treatment may have the potential of undermining the value of land subjected to such subdivisions.

**It is recommended that a simple and fair approach to any subdivision of dual occupancy development is to treat all three (3) forms of subdivision as equal and the onus be placed on the applicant to choose which type of subdivision is preferable to them.**

## **7. Provisions for infrastructure and contributions**

### *(a) Provision of kerb and gutter*

Current policies lead to issues for applicants and assessment staff and clarification is recommended. Some submissions requested clarification of kerb and gutter requirements and the recommended further amendments seeks to provide this.

DCPs 91 and 57 do not prescribe the requirement for kerb and gutter. DCP 71 - Medium Density Development requires kerbing and guttering to be provided for developments of three or more units. Element RE9 of DCP 100 requires the provision of kerb and gutter for residential subdivisions, to apply to the subdivision of infill lots and two-lot subdivisions, however, this requirement does not apply across the entire dual occupancy subdivision but only limited to apply to the new dwelling of the dual occupancy proposal that is being created.

Comment:

Where a DA proposes a dual occupancy development, the result would be a doubling in density on an allotment of land. Whilst it is recognised that there is no certainty that the dual occupancy development would be subdivided, the resultant density on that allotment of land would still double when compared to if a single dwelling were to occupy that land. The doubling in density would result in the doubling in the demand for drainage and access to the land. In this regard, it is considered prudent that the requirement for kerbing and guttering be prescribed up front at development application stage prior to the subdivision application stage of the dual occupancy development (if any); to apply to the full frontage of the allotment or, if located on a corner lot, to apply to each frontage of the dual occupancy development.

The Director Strategic Planning and Infrastructure (SPI) Group advises that in some exceptional circumstances, the provision of kerbing and guttering may not be relevant, however, in such circumstances a merit assessment would be required.

**It is recommended that DCP 57 reflects the requirement for kerbing and guttering to apply to the full frontage of the allotment or, if located on a corner lot, to apply to each frontage of the dual occupancy development.**

### *(b) Provision of paved footpaths*

This issue was not part of the exhibited draft DCP 57 and 100 but was raised at the Councillor briefing of 1 December 2009.

There is no current requirement for paved footpaths in conjunction with a dual occupancy development. There are locations where there is an approved Pedestrian Access and Mobility Plan (PAMP) that includes paved footpaths. There may also be cases where there are pedestrian safety issues to be resolved and circumstances where paved

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footpaths provide a satisfactory solution. It is considered appropriate that in those cases where it involves a footpath improvement the applicant should provide the appropriate footpath paving in conjunction with the dual occupancy development. This proposal is consistent with current provisions in DCP100 –Element RE5.

The Director SPI Group advises that in some exceptional circumstances, the provision of paved footpaths may not be relevant, however, in such circumstances a merit assessment would be required.

**It is recommended that DCP 57 include the requirement that where a PAMP applies or where pedestrian safety is an issue, a paved footpath be provided, as an acceptable solution, for the primary frontage of the subject lot.**

*(c) Section 94 and Section 64 Contributions*

Water and Sewer Headwork charges for dual occupancy development under Section 64 of the *Water Management Act 2000* are based on the increased demand for water and sewer created by an additional residential development.

The Section 94 developer contributions under the *EP and A Act* are based on the additional demands on community facilities and infrastructure created by an increased residential development.

The Section 94 developer contributions for a dual occupancy are levied at 1.0ET (Equivalent Tenement) for the first or largest dwelling and 0.6ET for the second dwelling (total of 1.6ETs). The Section 64 contributions are based on bedrooms with the first dwelling at a rate of 1 bed=0.4ET, two bed=0.6ET, three bed=0.8ET and four bed=1.0ET; and the second dwelling at the same rate. The total for the dual occupancy dwellings is calculated based on the addition of each dwelling rate assessed.

One submission considered the basis of assessing Section 64 and Section 94 contributions was inequitable.

Comment:

The variation in the ET calculation outcomes for dual occupancy and subdivision may be a source of confusion. The issues were discussed at the two Councillor briefings. There is no detailed guidance in SPP5 or the Contribution Plan (S94) at present to enable investigation of alternatives. Council is required to review and create a new Section 94 Plan in 2009 incorporating criteria yet to be set by the State Government.

It is not considered appropriate given the review period to change the current basis for assessing the contributions that are applied for either a dual occupancy or a dual occupancy subdivision. This may be addressed in conjunction with the new Section 94 Contribution Plan.

**It is recommended that there be no change to the current provisions in DCP 57 and 100 for Section 64 and Section 94 contributions relating to dual occupancy developments.**

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### **Summary of matters within the Report:**

A summary of the proposed amendments that are incorporated into the recommendation are as follows:

- (a) There be no change to the localities where subdivision of a dual occupancy may occur (Reflected in both DCPs 57 and 100).
- (b) For dual occupancy developments approved prior to SPP 5 being adopted ( 18 July 2007), applications for subdivision be considered on merit only in the localities included in the current SPP 5, and adopted in the DCP 100 (Amendment No 2) (Reflected in DCP 100 - Element DO1).
- (c) The size of a lot containing a dual occupancy development that may be subdivided be a minimum of 700m<sup>2</sup> subject to satisfying performance criteria and DCP 57 requirements, while retaining the minimum resultant lot size of 350m<sup>2</sup> (Reflected in both DCPs 57 and 100).
- (d) In line with (c) above, should this minimum lot size of 700m<sup>2</sup> for dual occupancy subdivision be adopted, that the corresponding Clause 4.1A of the draft SLEP2009 being amended accordingly to reflect this position.
- (e) The recommendations relating to FSR, minimum landscaping and stormwater management provisions, rear setback, rear dwelling height, car parking requirements and provisions to minimise cumulative impacts of “clustering” of dual occupancies be adopted (Reflected in DCP 57).
- (f) The new dwellings in a dual occupancy development be designed with the minimum specified criteria for adaptable housing, and where an existing dwelling that is part of a dual occupancy development is significantly altered, such as a new or altered bathroom and where improved access into the dwelling is possible the specified criteria be required (Reflected in DCP 57).
- (g) the first or existing dwelling comprising the dual occupancy development be completed and the second dwelling within a dual occupancy subdivision reach at least the required inspection framework stage of construction before consideration is given to the issue of a Subdivision Certificate (Reflected in DCP 100 - Element DO1).
- (h) that requirements for kerb and gutter be applied to a road frontage be applied to the full frontage and where there is a corner lot the requirement be applied to both road frontages. (Reflected in DCP 57).
- (i) that requirements for paved footpaths be considered where there is an adopted Pedestrian Access and Mobility Plan (PAMP) or where there are pedestrian safety issues, for the primary frontage of the original lot (Reflected in DCP 57).
- (j) the provisions for Section 64 and Section 94 contribution for dual occupancy assessment be retained and be further reviewed in conjunction with the preparation of a new Contribution Plan (Reflected in both DCPs 57 and 100).

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Following the public exhibition, Councillor briefings and review of the proposed amendments, it is recommended that draft DCP 57 (Amendment No 5) and draft DCP100 (Amendment No 2) - Element DO1, as exhibited, be adopted with further amendments as outlined in this report. The attached documents show the proposed amendments in shading and are included in Councillors' Information Folder.

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

There are no economic and social issues identified in this report. ESD issues are separately addressed within DCPs 57 and 100.

**FINANCIAL CONSIDERATIONS:**

There are no financial issues identified in this report.

**5. Food Regulation Partnership - Enforcement activities of Council for the first six monthly reporting period from 1 July 2008 to 31 December 2008. File 7467-05**

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**PURPOSE OF THE REPORT:**

The purpose of this report is to advise Council about its first six monthly report to the NSW Food Authority as part of the Food Regulation Partnership. The first reporting period was from the 1 of July 2008 to the 31 of December 2008.

**SUBMITTED for information.**

**DETAILS/ISSUE:**

**Background:**

The Shoalhaven City Council LGA has a total of 871 food premises. 549 are high risk, 123 are medium risk and 199 are low risk food premises. High risk premises require 2-3 initial inspections per year while medium and low risk premises are inspected at least once per year.

**Results of Council's inspections:**

For the first reporting period under the NSW Food Regulation Partnership 366 premises were inspected. Of these inspections 314 (86%) complied with all Critical Food Handling Practices.

Of the 52 food premises (14%) that did not comply, upon re-inspection 43 premises (83%) were subsequently found to be compliant with all Critical Food Handling Practices.

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**Other related issues:**

During the reporting period, Council received 22 complaints concerning food premises. The majority of these complaints related to general food hygiene and handling and incidents where foreign matter was found in food.

Council's enforcement action during this period resulted in 72 warning letters being sent, with 1 Improvement Notice being issued. There were no Prohibition Orders, Food Seizures, Penalty Notices or Court Prosecutions during this period.

With regard to food handler education programs, Council provided the following training:

- on-site technical advice, support and training during daily inspections;
- food handler training to community groups and non-profit organisations;
- participation in surveys conducted by the NSW Food Authority;
- distribution of food hygiene literature including hand washing and temperature control posters as well as thermometers;
- issuing of Media Releases targeting various food handling issues;
- distribution of "Food News" newsletter to all food premises; and
- participation in the annual Food Safety Week (10-16 November 2008).

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

Council's Food Surveillance Program helps to maintain the social integrity and economic viability of our community by providing safer food for consumers through the reduction of foodborne illness from the retail food sector and the associated costs to health care and local businesses when foodborne illness occurs. The program also strengthens the food safety response capacity of Council. The benefits for local business include protection of reputation as suppliers of quality safe food and improved industry performance.

A higher level of confidence in the food sector will provide a significant boost to the wellbeing of the community and maintain the City as a leader in tourism through the protection of reputation as a supplier of quality safe and food.

The program also provides other environmental health and ESD outcomes by encouraging cleaner business operations, waste minimisation and recycling and incorporates the monitoring non-reticulated water supply and on-site sewage management.

**FINANCIAL CONSIDERATIONS:**

There are no financial considerations relating to this report.

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6. **Section 96 Application to Modify Development Consent for Home Activity - Refreshment Room, Mrs Top Bed and Breakfast - Lot B DP 159214, 63 Wason Street, Milton. Applicant/Owner: Antolij and Vanessa Slabaspyckj.**

**File DA07/3174**

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**PURPOSE OF THE REPORT:**

# A Section 96 Modification application has been submitted to amend conditions of consent. Council approved a Home Activity - Refreshment Room within an existing bed and breakfast under DA consent 07/3174 on 24 June 2008. A copy of the original report and resolution of Council is included as **Attachment 'A'**.

As the Home Activity - Refreshment Room was determined by the Council contrary to staff recommendations; the request for modification is submitted to the Development Committee for consideration.

**RECOMMENDED that in respect to the application to modify Development Consent 07/3174 for Home Activity - Refreshment Room:**

- a) **The classification of the building under the Building Code of Australia be amended on the consent from Class 4 and 6 to Class 3 and 6;**
- b) **Condition 32 to be amended to delete the reference to condition 22;**
- c) **Condition 4 be replaced with a condition requiring the provision of fire extinguishers, smoke detectors and emergency lighting in accordance with Part E of the Building Code of Australia;**
- d) **Condition 5 be deleted; and**
- e) **All other conditions remain unchanged.**

**OPTIONS:**

The following options are available to Council:

- a) Agree to change the classification of the building but in lieu of the change requested, amend the classification from Class 4 and 6 to Class 3 and 6 under the Building Code of Australia and delete condition 5 and amend conditions 4 and 32 as detailed in the body of this report;
- b) Agree to change the classification of the building but in lieu of the change requested, amend the classification from Class 4 and 6 to Class 3 and 6 under the Building Code of Australia and agree to all or some of the proposed amendments to the conditions of consent; or
- c) Agree to change the classification of the building but in lieu of the change requested, amend the classification from Class 4 and 6 to Class 3 and 6 under the Building Code of Australia and reject all the other amendments proposed.

Option 1 is the preferred option as detailed in the body of the report.

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## DETAILS/ISSUE:

### Background

Council approved an application for a Home Activity - Refreshment Room (DA07/3174) on 24 June 2008 that enabled the B & B owners to operate as a restricted restaurant to serve meals on Thursday to Saturday for eight (8) non guests subject to specific conditions detailed within the consent.

This consent modified the BCA classification from 1b and 10a to class 4 and 6 necessitating an upgrade of the building in accordance with the new classification. An additional (2) car parking spaces were required taking the total on-site car parking requirement to (6) spaces in addition to the existing garage. The remaining conditions related to the operation and management of the activity to minimise amenity impacts to the surrounding residential properties.

# It would appear that the restaurant has continued to operate without activating the approval in that they have not complied with the conditions of consent, particularly conditions 4, 5, 6, 8, 9, 10, 11, 14, 22 and 32. A copy of the consent is included as **Attachment 'B'**.

### Site

# The subject land is located at 63 Wason Street, Milton on a 1037m<sup>2</sup> allotment that runs east west and is surrounded by residential properties. Locality and zoning plans are provided as **Attachment 'C'** and **Attachment 'D'** respectively.

### The Proposal

The owners are seeking:

1. Reclassification of the building to class 1a and 1b under the Building Code of Australia (BCA) in order to eliminate the need to assess the need to upgrade the premises under the BCA (i.e. conditions 4 and 5);
2. Deletion of conditions 9 and 10 so that no additional car parking is required onsite;
3. Modification of condition 22 to permit windows on the dining room to be opened equivalent to 5% of the floor area of the dining room floor;
4. Modification of condition 25 to reduce the maximum area permitted for the home activity from 60m<sup>2</sup> to 23.5m<sup>2</sup> (related to the request for reclassification); and
5. Modification of condition 32 by deletion of reference to condition 22 as they consider this to be an operational requirement that cannot be satisfied prior to occupation. Condition 22 requires that windows and doors remain closed when the dining room is being used as a restaurant to reduce the potential for noise issues to adjoining premises.



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# The applicant's submission in relation to the proposed amendments is included as **Attachment 'E'**, a précis of their reasons for the each of the amendments are:

1. *Classification under BCA (conditions 4&5) - They claim that the area used by the restaurant is less than 10% of the floor area of the storey and present a plan included in **Attachment 'E'***
2. *Deletion of conditions 9 and 10 - They do not consider that additional onsite parking is necessary and they will need to remove a tree to provide the additional space, they consider that the need for parking could be reviewed following the end of the three year term of the consent before any extension was given.*
3. *Amendment of condition 22 - They consider that there needs to be reasonable ventilation of the dining room and that the restriction on the times and numbers of diners is sufficient so that there will be no unreasonable impact on any neighbours.*
4. *Amendment of condition 25 - They have no intention of expanding the area used by the home activity and they want the area limited to the area on their plan so that they can maintain the existing classification under BCA.*
5. *Amendment of condition 32 - They argue that as condition 22 is an operational condition is cannot be complied with prior to occupation.*

### **Modifications under Section 96 EPA Act 1979**

The application was made Under Section 96 (1A) which is for modifications involving minimal environmental impact, however following discussions the applicant has revised this to section 96 (2) as it is considered that the modifications proposed have the potential for more than minimal environmental impact.

In assessing an application under section 96 (2) Council needs to be satisfied it is substantially the same development, notify the application and consider submissions may and evaluate the application relevant matters under section 79C of the act.

It is considered that the proposed modifications would, if approved, be substantially the same development, the application was notified and a summary of submissions is included in this report. The application has been assessed under the relevant provisions of section 79C and this is detailed below.

### **Assessment under Section 79C of the EPA Act 1979**

#### ***Environmental Planning & Assessment Act Provisions***

Clause 98 of the EPA Regulations provides that the following condition is a prescribed condition on all development consents that involve building work:

*“that the work must be carried out in accordance with the requirements of the Building Code of Australia”*

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Clause 93 of the EPA Regulations provides that:

*“(1) This clause applies to a development application for a change of building use for an existing building,....., where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building.*

*(2) In determining the development application, the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building’s proposed use.*

*(3) Consent to the change of building use sought by a development application to which this clause applies must not be granted unless the consent authority is satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building’s proposed use.”*

The owners have requested a review of the building classification under the Building Code of Australia (BCA) as they wish to avoid upgrading the building required to bring the facility into compliance with the requirements for a class 4 and 6 building.

A thorough review of the BCA classification was carried out which found that the current building classification is incorrect and should in fact be class 3 and 6 as the total floor area of the building exceeds 300m<sup>2</sup>. It therefore follows that the building should be reclassified to a class 3 and 6 building with the consent tied to the new classifications in order to be compliant with the BCA and the EP&A Regulations 2000.

The arguments by the applicant in relation to whether the class 6 use exceeds 10% of the floor area are not supported as they do not include all of the area that is currently being utilised for the serving of meals. As part of the assessment the senior planner inspected the premises and chairs and tables were in place for 16 persons, this included tables and chairs in the hallway that they wish to exclude. Also it is not possible to serve meals to the dining area or access the dining area without using the hallway. It is also likely that most patrons would enter from the front door and part of this hallway is used for the restaurant activity.

The area used as class 6 is at an absolute minimum is 34 m<sup>2</sup> and the floor area of the storey is 235m<sup>2</sup>, representing at least 13.5% and in accordance with the BCA requires to be classified as a separate classification and a change of use.

However, the applicant’s main concern appears to be whether they need to carry out any alterations to the building to comply with the BCA. This matter has been reviewed and as they do not intend to carry out any building work the condition requiring a construction certificate is not required. In reconsidering the proposal it is considered that in relation to the proposed use and the construction of the existing building, clause 93 (2) and (3) are satisfactory, provided that fire extinguishers and smoke detectors are installed in accordance with Part E of BCA and emergency lighting in accordance with part E of the BCA even though the floor area of the storey is less than 300m<sup>2</sup>.

It would be appropriate to replace condition 4 with a condition requiring the installation of fire extinguishers, smoke detectors and emergency lighting in accordance with Part E of BCA and delete condition 5 as no building work is proposed and amend the classification to Class 3 & 6 in accordance with the BCA.

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**1(a) (i) the provisions of any environmental planning instrument**

Shoalhaven Local Environmental Plan 1985 - The subject land is zoned 2(a1) Residential and Home Activity is a permissible use in the zone with development consent. Council resolved on 25 March 2008 that this proposal meet the definition of a Home Activity.

**1(a) (ii) any draft environmental planning instrument that is or has been placed on public exhibition** – none relevant

**1(a)(iii) any development control plan**

DCP 109 – Home Activity Guidelines

**Condition 25** - Maximum Floor Area states:

*“The floor area occupied by the home activity must not exceed 60m<sup>2</sup>”*

This condition merely states the maximum floor area permitted for a home activity in an urban zone in accordance with Part 3.1 of DCP 109. There is no need to amend this condition.

**Condition 9** - requires: *“In accordance with DCP109 - Home Activity Guidelines, a minimum of two (2) additional car parking spaces must be provided on-site. These spaces must not be less than 2.6m x 5.5m with adequate manoeuvring area”*

*The owners are seeking deletion of this condition. The applicants contend that plenty of parking is available on the street and therefore no need is generated for additional spaces on site.*

The roadway in front of the development has a width of approximately 9m between the kerbs. When parking occurs on street on both sides of the road, the remaining space is inadequate for 2 vehicles to pass thereby reducing the roadway to a single lane. This reduces the safety and capacity of the roadway. A review of the parking requirements for the development indicates that the requirement for construction of two additional car parking spaces on-site is justified and should remain.

**Condition 22** - requires: *“All openings to the approved dining areas must be closed during approved operating hours. No external dining on the adjoining deck area is permitted”.*

The owners are seeking modification of condition 22 to permit windows on the dining room to be opened equivalent to 5% of the floor area of the dining room floor. By imposing this condition, council recognised the need to minimise amenity noise impact to adjoining residential properties from the home activity use. Adequate ventilation could be provided from other windows in the building or by mechanical ventilation and it is considered that this condition should not be changed.

*The applicants contend that the restriction on the times and numbers of diners is sufficient so that there will be no unreasonable impact on any neighbours.*

**Condition 32** - requires: *“The following conditions must be complied with prior to the issue of an Occupation Certificate: Condition 4, 8, 14, 15, and 22. A copy of the Occupation Certificate and evidence that the above conditions have been complied with must be submitted to Council prior to the use commencing.”*

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The owners are seeking modification of condition 32 by deletion of reference to condition 22. As condition 22 is an operational condition there is no objection to the deletion of the reference to condition 22 in condition 32

**1(a)(iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F - none relevant**

**1(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates - discussed above under the Act**

**1(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,-** The proposed modifications to the consent would increase the likelihood of increased noise impact to the adjoining residential properties, and continuing traffic conflict between on-street parking and passing traffic.

**1(c) the suitability of the site for the development,** - This issue was addressed in the original application.

**1(d) any submissions made in accordance with this Act or the regulations,**

The proposal was notified in accordance with Council's Community Consultation Policy from 24 February to 10 March 2009 resulting in three [3] submissions being received.

Issues raised in objection to the development were:

- Acoustic impacts if dining room windows were permitted to be opened;
- Hallways leading from the front door to the dining room and verandas should be included in the floor area calculation for the home activity;
- Use of outside dining outside of approved days;
- Inadequate on-site parking for residents, visitors, patrons and staff;
- Inappropriate use of street for private parking and narrowness of road;
- Locality in Wason Street poorly lit at night which could lead to pedestrian accidents at intersection with Charles Street;
- Disadvantage to existing restaurants/commercial uses in Milton;
- Impact on amenity;
- Believe that owners are using modification to reduce impact of original development consent for what is essentially a commercial activity in a residential area; and
- Precedent allowing this form of development in any residential neighbourhood.

**1(e) the public interest** - It is in the public interest to reduce on-street parking in Wason Street fronting the development to improve traffic flow and safety for drivers and pedestrians.

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

Discussed in detail in 79C assessment above.

## **FINANCIAL CONSIDERATIONS:**

Not Relevant to this application.

## **CONCLUSION:**

The modification of classification is supported, not as proposed but to correct the appropriate classification of 3 and 6 under the BCA, as well as the amendment of condition 32. Other amendments proposed by the applicant are not supported as they are likely to increase the potential for amenity impact to the surrounding neighbourhood contrary to DCP 109 Home Activity Guidelines.

It is also considered appropriate under clause 93 of the EPA Regulations to replace the condition requiring upgrade of the building to comply with the BCA with a more specific condition that requires the installation of fire extinguishers, smoke detectors and emergency lighting in accordance with the BCA. It is not considered that any alterations to the structure of the building are necessary to satisfy clause 93.

- 7. Development Applications for the construction of a hotel/retail development and associated application for consolidation of lots and boundary adjustment.**  
**File DA07/1466-02 and SF10022**
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## **PURPOSE OF THE REPORT:**

Two (2) development applications have been received by Council for a hotel/retail development and consolidation/subdivision of land. Both applications relate to Council owned land. This matter is being reported to the Council due to the need for transparency of process in the assessment and determination by Council of development applications relating to Council owned land. This is in accordance with the Independent Commission Against Corruption (ICAC) recommendations. Specifically, ICAC, in their report "Taking the Devil out of Development" made the following statements with respect to potential conflicts of interest when Council is determining applications where they have a clear conflict:

*"Councils must take every reasonable step to ensure that the conflicts of interest which are enshrined in legislation, that is councils preparing, assessing and determining their own applications for developments, are ameliorated to the greatest extent possible..."*

*Where appropriate, having regard to cost to council, public interest in the matter, value of the development and complexity of the project, council should engage a suitable independent expert to undertake the assessment."*

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**RECOMMENDED that:**

- a) Council endorse the recommendations of the independent assessment reports prepared by Cardno Forbes Rigby Pty Ltd; and
- b) The subject applications (DA08/1467 and SF10022) be determined under delegated authority.

**OPTIONS:**

Council may:

- a) Resolve to adopt the recommendation(s) in the report;
- b) Resolve to change a recommendation/s; or
- c) Resolve to require a further report or briefing.

**DETAILS/ISSUE:**

**Background**

Both development applications (DA08/1467 and SF10022) were lodged with Council on 8 April 2008 by the Huscorp Group Pty Ltd and Allen, Price and Associates respectively.

In summary, DA08/1467 proposes the construction and operation of a four (4) storey hotel development with the following main elements:

- 98 rooms consisting of 92 studio hotel rooms and 6 x 1 bedroom hotel suites (Levels 1, 2 and 3);
- 3 functions rooms (Level 1);
- 5 retail shops (4 with frontage to Bridge Road), café, restaurant and lounge bar with outdoor eating areas (Ground Floor);
- Office space and conference facilities (Ground Floor); and
- Basement level car parking for 96 cars and a service zone.

SF10022 proposes to consolidate all existing lots to create a single allotment and then subdivide to create four (4) lots to accommodate the proposed hotel development, Council's Administration Building and Shoalhaven Entertainment Centre, proposed road widening for future pedestrian overpass and a portion of land to be consolidated with Harry Sawkins Park.

# Additional information in relation to each application is contained in **Attachments 'A' and 'B'** to this report.

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## Independent Assessment

# Council, upon receipt of the applications, has appointed an independent planning consultant (Cardno Forbes Rigby) to undertake and prepare a Section 79(c) Assessment Report for each of the subject development applications. The 79(c) Assessment Reports have been completed and are included as attachments to this report - see **Attachment 'A'** (DA08/1467) and **Attachment 'B'** (SF10022). The conclusions and recommendations of the reports are as follows:

### DA08/1467 (Nowra Hotel Development)

#### *“Conclusion*

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

*Following a detailed assessment, we analyse the above options of determination as follows:*

#### *1. Approval*

*We consider that the outstanding matters, in particular the issues relating to traffic impact, servicing and loading/unloading, insufficient car parking, possibility of incorporating a left slip lane, visual impact, impacts on adjoining heritage items, are critical issues that will require a revised design of the proposed development. This revised design may require a re-exhibition of the application. We consider that this information needs to be assessed before any approval can be issued. Some of these issues may render the proposed development impractical.*

#### *2. Deferred Commencement*

*Deferred commencement can be applied to some outstanding items such as materials, colour scheme, heritage impact assessment on adjoining items and visual impact assessment. However, traffic impact, servicing, loading/unloading and car parking are considered critical items that we consider need to resolve with the applicant now, prior to any consent being issued.*

#### *3. Refusal*

*In view of the number of letters and telephone conversation we have had with the applicant, and the nature of the information is still outstanding, we consider that it would be appropriate to issue a refusal of this proposal. As discussed, some of these outstanding items are critical issues that need to be resolved for the proposed development to be practical. The applicant has, so far, provided additional information to justify the non compliance but without, apparently, an intention to resolve the issues by reviewing the design of the development. We have requested meetings with the applicant to discuss these issues however, there has been no indication from the applicant that they will meet with us or with Council.*

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## Recommendations

Based on the information currently submitted with the application, it is recommended that Development Application No DA08/1467 be **refused** based on the following grounds:

- The proposed development will result in significant traffic impact on the existing road network, in particular on Bridge Road and the entrance to the subject site. It fails to address potential traffic impact. (S.79C 1(b) of Environmental Planning and Assessment Act 1979)
- The proposed development does not comply with DCP 18 Car Parking Code in terms of number of car parking spaces, parking for service vehicles and access to loading area. (S.79C 1(a)(iii) of Environmental Planning and Assessment Act 1979)
- The proposed development will result in significant traffic conflict around the access point of the service tunnel. (S.79C 1(d) of Environmental Planning and Assessment Act 1979)
- The proposed development will result in significant visual impact on the adjoining land uses. (S.79C 1(b) of Environmental Planning and Assessment Act 1979)
- The proposed development does not comply with Clause 20G of the SLEP1985 with respect of the submission of a heritage impact assessment to consider the potential impacts on the adjoining heritage items. (S.79C 1(a)(i) of Environmental Planning and Assessment Act 1979)
- The proposed development has not adequately addressed the issue of access for servicing vehicles and has not provided an adequate solution for internal services for waste disposal. (S.79C 1(b) of Environmental Planning and Assessment Act 1979)
- The proposed development does not comply with DCP 80 with respect to landscaping on the site (S.79C 1(a)(iii) of Environmental Planning and Assessment Act 1979)
- The proposed development does not comply with the principles of Crime Prevention Through Environmental Design and will result in negative social impacts on the adjoining occupants (S.79C 1(b) of Environmental Planning and Assessment Act 1979)
- The proposed development does not comply with the requirements of Clause 40K of SLEP1985, which does not permit development on the subject site before the preparation of a DCP addressing all criteria under Clause 40K(3). (S.79C 1(a)(i) of Environmental Planning and Assessment Act 1979)
- The proposed development does not consider the potential social and economic impacts on the existing tourism industry and existing and proposed hotel accommodation in the area. It does not consider the cumulative economic impact on the locality (S.79C 1(b) of Environmental Planning and Assessment Act 1979)
- The proposed development has not sufficiently address flooding issue in the basement car park and loading dock in accordance DCP 119 (S.79C 1(a)(iii) of Environmental Planning and Assessment Act 1979)
- The proposed development does not comply with Clauses 8(a), (d), (m), (n) and (p) of SEPP 71. (S.79C 1(a)(i) of Environmental Planning and Assessment Act 1979)



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## **SF10022 (Consolidation and Subdivision)**

### *“Conclusion*

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

*Following a detailed assessment, we analyse the above options of determination as follows:*

#### *1. Approval*

*Approval of the proposed subdivision will entail the endorsement of the subdivision boundary and the proposed right of way. Because of the uncertainty in the Nowra Hotel DA, it is not considered appropriate to approve the subdivision and right of way at this time.*

#### *2. Refusal*

*The proposed subdivision is fundamentally linked to the Nowra Hotel DA. In view of our recommendation that the Nowra Hotel be refused and interrelationship between the two applications we recommend that this application for subdivision should also be refused.*

### *Recommendations*

*It is recommended that Subdivision Application No. SF10022 refused based on the following grounds:*

- The potential refusal of the Nowra Hotel DA means that the boundary and right of way under subject subdivision application cannot be confirmed.”*

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

Economic, social and environmental (ESD) considerations are addressed within the independent planning consultants Section 79(c) assessment reports.

## **FINANCIAL CONSIDERATIONS:**

Not applicable in the context of this report.

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**8. Review of Development and Environmental Services Group Policies 2008 - Round 1 - Following Request for Councillor Briefing.**

**Files: 5266, 8397-02, 5297, 15164, 31533, 23618, 31509, 1422-02, 23139 & 17432**

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**PURPOSE OF THE REPORT:**

The purpose of this report is to seek Council's direction on current Development and Environmental Services (DES) Group Policies, as reviewed in this report.

**RECOMMENDED that:**

- a) **Council rescind the following policies:**
- **Tasman Park Estate (DP 8082) - Building Lines - (File 5266, POL8/196)**
  - **Termite Protection Policy - (File 8397-02, POL08/197)**
  - **Determination of Development Applications - Draft Policies and Development Control Plans (File 5297, POL08/175)**
  - **Dual Occupancy Development - Subdivision Restriction (File 15164, POL08/176)**
- b) **Council reaffirm the following policies, subject to certain minor updates being made for consistency purposes (as attached), as described in this report :**
- **Fees - Waiving of Development Application and Other Fees for Charitable Organisations and Community Groups (File 23618, POL08/178)**
  - **Verons Estate - Sussex Inlet (File 1422-03, POL08/198)**
- c) **Council reaffirm the following policy until such time that SLEP 2009 is gazetted, upon which this policy will be automatically rescinded:**
- **Crematoriums in Funeral Parlours (File 31533, POL08/172)**
- d) **Council reaffirm the following policies:**
- **Private Burial Grounds - (File 31509, POL08/189)**
  - **Companion Animals (Impacts on Native Fauna) - Conditions of Development Consent - (File 23139, POL08/188)**
  - **Parking of Caravans for Commercial or Community Activities - (File 17432, POL08/187)**

**OPTIONS:**

Council may:

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

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## **DETAILS/ISSUE:**

# This matter was considered by Council at its meeting of 20 January 2009 whereby Council resolved to defer Round 1 of Development and Environmental Services' policy review pending a Councillor Briefing (see **Attachment 'A'**).

Accordingly, a Councillor Briefing was held on 19 March 2009 to explain each policy being reviewed. Council is now in a position to determine the matter as per the options above.

Copies of the policies are included in the Councillors' Information Folder.

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

Economic, social and environmental (ESD) considerations are addressed within each individual policy document.

## **FINANCIAL CONSIDERATIONS:**

Not applicable in the context of this report.

9. **Development Application for Rural Shed for the Conduct of a Rural Industry - Lot 1 DP 112860, 5 Nobblers Lane, Terara. Applicant: Cowman Stoddart Pty Ltd. Owner: David Anstiss. File DA08/1785**
- 

## **PURPOSE OF THE REPORT:**

A development application for the establishment of a "rural industry" on the subject land was lodged with Council on the 6 June 2008.

This application is being reported to Council for two reasons:

1. Council has adopted an **Effluent Pump-out Policy** to specify where such services can be made available. This Policy requires that pump-out services only be provided by resolution of Council, and if so approved, the applicant is to meet all associated costs in relation to provision of the service, including the reticulation services within and outside the land (to properly serve the land) and pay the full calculated developer charge for any newly created dwellings and/or lots. In this regard, the proposal does not meet all the specified criteria and the applicant has requested Council consider the provision of a pump-out service in this instance; and
2. The property is owned by a member of staff and there is a need for transparency of process and a clear demonstration of impartiality by the decision-maker/determining authority.

Given the above, it is appropriate for Council to determine the application

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**RECOMMENDED** that in relation to Development Application No DA08/1785 on Lot 1 in DP 112860, 5 Nobblers Lane, Terara, Council determine that the impact/issues outlined in the Section 79C Assessment associated with the development proposal as proposed on the subject land are acceptable and resolve to determine the application by way of approval subject to appropriate conditions of consent as set out in Attachment 'A'.

#### **OPTIONS:**

There are two options that Council may consider in relation to determining Development Application DA08/1785:

1. Determine that the impact issues outlined in the Section 79C Assessment associated with the development as proposed on the subject land are acceptable and resolve to determine the application by way of approval subject to appropriate conditions of consent. A set of draft conditions is included as **Attachment 'A'** - *draft conditions* should Council adopt this option.
2. Determine that the impact/issues outlined in the Section 79C Assessment of key consideration associated with the development as proposed are unacceptable and resolve to determine the application by way of refusal for reasons of adverse social, economic and environmental impact. In this respect, draft reasons for refusal are provided in **Attachment 'B'**. Council should however, note that the staff Section 79C Assessment does not support this conclusion.

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

##### **The Proposal**

The application proposes to establish a "rural industry" consisting of the following:

- Construction of a single storey, masonry and colour-bond shed measuring 20m x 7m;
- Attached 20m x 3m covered verandah;
- The layout of the building is designed to provide for:
  - Initial processing of primary produce;
  - Dry Storage facilities;
  - Cool Room;
  - Administration office for the rural industry;
  - Staff Room / Workers meeting / lunch room; and
  - Amenities.
- The use of the rural shed as a rural industry involving the handling and packaging of primary foods product for distribution off the site;
- The provision of amenities;
- Construction of a small shed for keeping of poultry for the supply of eggs; and
- The provision of three (3) on-site car parking spaces.

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The works are proposed to be undertaken in conjunction with the use of the land for agricultural production, including the growing of vegetables and herbs.

# Proposed development plan is provided as **Attachment 'C'**

## **Background**

The proposed rural industry would involve handling, consisting of cleaning, cutting and mixing of primary produce such as fruit and vegetable products, along with repacking for distribution off the site to the Reflections retail café or through other catering activities of the owner.

Wastewater is proposed to be stored on the site within septic tanks, pending collection by pump-out tankers. A water tank would be provided to collect roof water from the proposed building to supply the activity. Landscaping would be provided in the form of native shrubs to supplement existing trees.

The proposed shed building is designed to be accessible by disabled persons in accordance with AS 1428 and the kitchen facilities would comply with the requirements of Council's Food Premise Code.

Primary produce proposed to be used in the rural industry would be sourced from the subject land. The development would result in the employment of the following personnel:

- 2 supervisors present at all operating times;
- 8 special needs persons x 2 days per week; and
- 2 school aged trainees from a local education establishments x 1 day per week.

The activity would operate from 7:30am to 5:00pm on Mondays to Fridays, with no work to be undertaken on weekends.

The proposal would be undertaken in conjunction with the use of the land for agricultural purposes (market gardening) by the owners who have established a "not-for-profit" business, the Slice of Life which employs people with disabilities in the hospitality sector.

## **The Subject Site**

The subject land has an area of 3,623 m<sup>2</sup> with a frontage of some 57.46 metres to Nobblers Lane and 58.03 metres to Terara Road. The adjoining roads are sealed and an indented driveway is provided off Nobblers Lane near the northern boundary of the site. It is located on the western approach to the village of Terara. The site is essentially cleared, with vegetation largely confined to pasture grasses. It is relatively level and ranges from RL 3.1M up to RL 3.6M at its northern boundary.

The applicant advises the subject site has been selected because of its manageable size and because it would yield a reasonable quantity of primary produce in a location which is close to market and is accessible to the businesses to be supplied.

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Surrounding the subject site are rural lands that are essentially developed for the following purposes:

- To the north towards the Shoalhaven River is a large parcel used for residential and ancillary purposes;
- To the east, opposite Nobblers Lane, is a parcel of land used for residential purposes containing a single storey masonry dwelling and an ancillary outbuilding;
- To the west, is an access handle driveway servicing an allotment locate to the north-west of the subject site and beyond, a property containing a single storey clad dwelling; and
- Opposite Terara Road to the south, is a large rural parcel which has been developed with cattle yards and a dairy building situated near the road frontage.

The site is not serviced by a reticulated sewerage system, however reticulated water, electricity and telephone services are located in the vicinity.

# Locality and zoning plans are provided as **Attachment 'D'** and **Attachment 'E'** respectively.

## **ECONOMIC, SOCIAL & 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, they are discussed individually below:

- Threatened Species Conservation Act 1995;
- Environmental Planning and Assessment Model Provisions 1980;
- NSW Coastal Policy NSW Coastal Policy 1997;
- State Environmental Planning Policy 71 - *Coastal Protection*;
- Illawarra Regional Environmental Plan No.1;
- Shoalhaven Local Environmental Plan 1985;
- draft Shoalhaven Local Environmental Plan 2009;
- Development Control Plan 18 - *Car Parking Code*;
- Development Control Plan 78 - *On-site Sewerage Management*;
- Development Control Plan 93 - *Site Waste Minimisation and Management*;
- Development Control Plan 106 - *Flood Management*; and
- Council's Pump-out Effluent Disposal Policy.

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## 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.**

- **Threatened Species Conservation Act 1995**

Due to past uses and disturbances, the subject site contains no native vegetation of any nominated significance and, as such, the provisions of the Threatened Species Conservation Act are considered to have no further implications for this proposal.

- **Model Provisions 1980**

Under Cl.4 of PART II - DEFINITIONS of the EP&A Model Provisions 1980, “**rural industry**” means handling, treating, processing or packing of primary products and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality.

The application involves works that would be undertaken in conjunction with the use of the land for agricultural production, including the growing of vegetables and herbs (i.e. primary products).

It is noted that the applicant has amended the application so that the only activity to be carried out on the site comprise the "sorting and grading, washing, cutting, packing and distribution of agriculture produce". The agricultural produce would include *"a variety of garden and salad vegetables, including lettuce, carrots, tomatoes, capsicum and cucumbers, along with herbs and eggs"* that would be grown on the site.

There would be no refining or processing of the vegetables on the site. It is further noted that the size of the kitchen has been reduced from that originally submitted.

The amended application makes it clear that the activities on site would be limited to the handling of primary products. Garden and salad vegetables are a primary products, and the cleaning, packaging and boxing of these vegetables is defined as a rural industry.

Council's Legal Services Manager is now satisfied that the amended proposal meets with the subject definition and is therefore a permissible landuse, with consent, as a "Rural Industry".

- **NSW Coastal Policy 1997**

The subject land is within the area affected by the NSW Coastal Policy. Given the relatively minor nature and location of the proposed development, the proposal is consistent with the objectives and provisions of the NSW Coastal Policy.

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The key principles of the Coastal Policy in regard to this proposal requires consideration of issues related 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.

- **State Environmental Planning Policy 71 (SEPP 71) - Coastal Protection**

Cl. 2 of SEPP 71 outlines the aims of the Policy and Clause 8 specifies additional matters for consideration. Specifically with reference to this application:

- The proposal is located within the Coastal Zone identified under SEPP 71;
- The proposal is not located within the Sensitive Coastal Zone under SEPP 71;
- The proposal is not State Significant Development; and
- The proposal is not located below the Mean High Water Mark.

Given the nature of the property and the development proposed, many of the aims and additional matters for consideration under SEPP 71 do not have relevance to this application. It is considered the proposed development is consistent with the requirements and provisions of SEPP 71.

- **Illawarra Regional Environmental Plan (IREP)**

The Illawarra Regional Environmental Plan No. 1 applies to the subject land. The proposed development satisfies the relevant objectives of the Illawarra Regional Environmental Plan No. 1. A series of maps attached to IREP No.1 indicates where specific policy issues apply. In this regard, the subject land is not identified as rainforest vegetation, nor does it support rainforest vegetation species. In addition, the subject land does not support a wildlife corridor. It is however identified as Prime Crop and Pasture.

### **Prime Crop and Pasture**

NSW Agriculture identify land using a classification system consisting of five classes, with Class 1 being the most arable and suitable for intensive cultivation and Class 5 being land least suitable for agricultural purposes. The subject land is identified by mapping prepared by the Department of Primary Industry (NSW Agriculture) as mostly Class 1 agricultural land.

The 3,623 m<sup>2</sup> area of the subject land is relatively small however, it is unlikely to lend itself solely to agricultural use as this would be financially unviable. The current proposal appears to represent a reasonable balance between agricultural activities and the rural industrial use. Despite the relatively limited size of the property, the proposal would enable a proportion of the site to be used for genuine agricultural purposes. This appears to be an efficient use of the limited Class 1 prime crop and pasture resource, given the limited size of the property.

The subject land is identified as having valuable natural environmental attributes under the *Illawarra Region Landscape and Environmental Study* published by the Department of Environment and Planning in August 1981. In this regard, the land is



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identified as land with landscape or environmental attributes. The study supports the regional plan and provides recommendations.

The site, is located within Unit 6 - Shoalhaven Delta as identified in the Study. The relevant aspects of these policy recommendations stipulate that “prime crop and pasture land zoning should ensure agronomic and pasture-based enterprises only”.

The proposed rural industry development, together with the agricultural activities which are also to be carried out on the subject land, are consistent with the policy recommendations. It is considered the proposal does not conflict with the aims and provisions of the IREP No.1.

- **Shoalhaven Local Environmental Plan 1985**

**Aims of SLEP 1985**

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

**Zoning**

*The subject land is zoned No. 1(g) (Rural “G” (Flood Liable) Zone) under SLEP 1985. The objectives of the Zone No 1(g) (General Rural) are as follows:*

*Cl. 9(1)(a) to limit the erection of structures on land subject to periodic inundation;*

*Cl. 9(1)(b) to ensure that dwelling-houses are erected on land subject to periodic inundation only in conjunction with agricultural use;*

*Cl. 9(1)(c) to ensure that the effect of inundation is not increased through development;*

*Cl. 9(1)(d) to restrict development and how it is carried out so that its potential to have an adverse impact on site and off site on acid sulfate soils is reduced or eliminated; and*

*Cl. 9(1)(e) to conserve and maintain the productive potential of prime crop and pasture land.*

The proposal is considered generally consistent with the Rural 1(g) zone objectives because:

- Whilst the proposal is an additional structure it is relatively small, aligned with the direction of flood flows and in the shadow of existing development during major floods;
- The proposal does not include a dwelling house or the residential use of the land;
- The proposal is unlikely to increase the effects of inundation (refer below to Development Control Plan No.106 - Flood Management);

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- The building is limited in size to that necessary to enable the proposed rural industry to be carried out, although there has been submissions that suggest the building is more elaborate than normally required for the proposed use;
  - The proposal would be undertaken in conjunction with the agricultural use of the land, being market gardening;
  - The proposal would not result in significant excavation works and, therefore, is unlikely to impact on acid sulphate soils; and
  - The proposal would preserve the limited productive capacity of the property by using the land for agricultural purposes.

It may be noted that “agriculture” (other than on land to which Clause 21, 23, 25 or 27 applies) can be carried out within the Rural 1(g) zone without obtaining Council consent.

Relevantly, “*rural industries*” are permitted in the Rural 1(g) zone with development consent.

### **Heritage Conservation**

Division 4A of SLEP 1985 applies to heritage conservation and generally seeks to conserve the heritage significance of existing fabric, relics, settings and views associated with the heritage significance of heritage items and conservation areas. Division 4A also identifies specific properties which have heritage significance. Clause 20G requires that consideration be given to the impact development has on heritage items within the vicinity.

It may be noted that Terara village is not located within a heritage conservation area and that the subject land at this stage is not identified as having heritage significance. However, Council at its meeting on 11 November 2008 has resolved that “*The General Manager investigate and report back to Council on the possibility of and the process involved, in declaring Terara Village a Heritage Conservation Area*”. Council’s Strategic Planning and Infrastructure Group is currently in the process of preparing a report in relation to the above.

It is also noted that the closest boundary of the allotment containing the nearest heritage item, at 3 Fox Street to the north-east of the subject land, is located approximately 40 metres from the north-eastern corner of the subject site. In this regard, the nearest heritage item (located at 3 Fox Street) would be sited approximately 100 metres from the modified location of the proposed rural industry shed building. There are other heritage items located in the Terara area, however, these are located further away from the subject land than the item at 3 Fox Street.

### **Development in the Vicinity of a Heritage Item**

*Cl. 20G(1) Before granting consent to development in the vicinity of a heritage item, the consent authority must assess the impact of the proposed development on the heritage significance of the heritage item and of any heritage conservation area within which it is situated.*

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A Heritage Assessment was prepared in response to Clause 20G of the Shoalhaven Local Environmental Plan 1985.

# Refer to **Attachment 'F'** for Heritage Assessment.

The Heritage Assessment found that ***“the proposed building in this Development Application is consistent with the form of outbuildings in a rural landscape and thereby satisfies the provisions of a harmonious insertion.”***

The Heritage Assessment recommended that conditions be imposed upon the proposed development to ensure compatibility with surrounding development.

The submitted rural shed design has been amended to ensure a better visual compatibility with the surrounding village context. This has been achieved by employing a roof pitch and external colours and materials similar to those used on other rural sheds in the vicinity.

### **Objectives**

Given the conclusions of the Heritage Impact Statement, the proposed development should not compromise the heritage objectives of SLEP 1985.

The proposed development is unlikely to have an adverse impact on any of the heritage items located within the general area of Terara, given that:

- The proposal is of a relatively small scale that would not adversely impact on the setting or visual curtilage of any identified heritage item;
- The rural nature of the proposal is consistent with the existing rural setting and character of the area;
- The proposal is of a design (as amended) and size that would not adversely dominate or intrude into the surrounding landscape;
- Landscaping would further reduce the presence of the development on the site;
- The proposed setback of the building would be consistent with the established development on nearby surrounding land; and
- The proposal would be clustered amongst existing development that is located on the nearby surrounding land.

### **Independent Review of Heritage Issue**

Given the nature of submissions received and the questioning of the heritage assessment undertaken, Dutailis Architects Pty Ltd was engaged by Council to undertake an independent review of Council's initial assessment. This document is entitled "Review of Heritage Advice, Statements and Conditions", dated 13 January 2009 and can be viewed in full on the DA tracking system.

# The Heritage Impact component of the Review of Heritage Advice, Statements and Conditions document is provided as **Attachment 'G'** to this report.

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The review report concludes that *“the proposal is consistent with the domestic scale village style building type common to the Terara village”* and that *“hedging will line Terara Road and Nobblers Lane, further screening the site while maintaining the existing urban form of the village”*.

In addition, Dutailis Architects confirmed that *“the proposal is consistent with Shoalhaven Local Environment Plan 1985 (amended), requirements for rural zoning”* and states that *“the proposal is therefore considered to have only minimal impact on the heritage item and surrounding village. The proposal is considered an appropriate insertion into the existing urban fabric”*.

### **Statement Regarding Heritage and other Impacts of the Proposed Development**

In response to Council’s independent assessment of heritage issues, the owners of ‘The Old House’, a Heritage item located at 3 Fox Street, Terara commissioned a “Statement Regarding Heritage and Other Impacts of the Proposed Development”. The Statement was prepared by David Wilson Architects and is dated the 20 January 2009.

# The Heritage Impact component of the *“Statement Regarding Heritage and other Impacts of the Proposed Development”* document is provided in **Attachment ‘H’**.

In summary, the Wilson Heritage Impact Statement concludes that *“the activities described in the proposal are generally allowable within the Zone, but in this transitional location, within the composite curtilage of the village core, any development should be required to have a strong relation to that which would be required within the village core, so as to create a moderating element between the relatively unrestricted surrounding rural areas, and the heritage requirements within the core”*.

To achieve this, the Wilson Heritage Impact Statement suggests a higher standard of design is required than for a rural outbuilding on a substantial farming property in order to reduce the negative urban design and heritage impacts of the Proposal.

#### **Comment:**

The report prepared by David Wilson Architects has been referred to Dutailis Architects Pty Ltd for comment. Dutailis Architects Pty Ltd have advised that *“the David Wilson report appears to be supporting the conclusions reached by Council - i.e. the domestic scale and urban form of the building are appropriate for the village setting”*.

Further, *“the proffered solution by [David Wilson Architects] does not in my opinion offer a realistic solution as there are no rendered buildings within the visual range of the subject heritage site”*. According to Dutailis Architects Pty Ltd, *“there has to be some commonsense applied to the construction especially considering the motivation for the project in the first place. Perhaps increasing the roof pitch is an option, however, when comparing the building to some adjacent structures - the weathertex clad garage for example, arguments imposing such restrictions on the proposal become difficult to sustain. While Mr Wilson does make reference to the conservation zone the important factor is that at present and when the proposal was submitted there is no conservation zone in place”*.

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Further according to Dutailis Architects Pty Ltd, *“the old house’ does not possess the qualities or significance of the sited example - Elizabeth Farm house, applying the same mentality to the preservation of “the old house” is extremely difficult to support.*

*Essentially, it appears that David Wilson Architects is in agreement that approval is imminent - it is just a question of what is approved.*

*Council’s heritage assessment was based on improved design by restricting colours to be commensurate with the rural environment and the use of custom orb (but not mini orb).*

*In addition, the original roof pitch of the buildings has been amended in order to reduce the negative urban design and heritage impacts of the Proposal, as suggested by David Wilson Architects”.*

In light of the above, it is considered that the proposed development should not compromise the Heritage objectives/requirements of SLEP 1985. In addition, the proposal is not expected to have any impact on the setting or significance of any heritage item as it is sited in a location where it has limited physical impact and does not disturb primary view lines to the heritage building.

## **Soil, Water and Effluent Management**

### **Soil**

All practical measures should be taken to ensure erosion and subsequent sediment movement off-site does not occur. In particular, a silt fence or equivalent should be provided downhill from the cut and fill area (or any other disturbed area). The fence should be regularly inspected and cleaned out and/or repaired as necessary and all collected silt should be disposed of to the satisfaction of the Principal Certifying Authority (PCA).

In addition in the event of any approval, the relevant sedimentation and erosion controls required should be implemented prior to commencement of any work and maintained until the work is completed and the site stabilised.

### **Water**

Reticulated water is available to the subject land and would be connected to the rural industry shed for its water supply.

### **Effluent Management**

It is not proposed to dispose of effluent waste on site. Instead, it is proposed to rely on the on-site storage and collection by way of pump-out tanks.

Council has adopted an **Effluent Pump-out Policy** to specify where such services can be made available. This Policy requires that:

- *New effluent pump-out services be generally allowed on existing lots within the existing un-sewered residential or commercially zoned areas within the City;*

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- *That pump-out services not be provided to new subdivisions or new rezonings;*
  - *That pump-out services not be provided to multi-unit development in villages not designed for future reticulation services. Future reticulation services are identified in Council's adopted 20 year financial and capital forward plan;*
  - *For proposed multi-dwelling and subdivision development in villages identified for future reticulation services; and,*
  - *Pump-out services only be provided by resolution of Council, and if so approved, the applicant meet all associated costs in relation to provision of the service, including the reticulation services within and outside the land (to properly serve the land) and pay the full calculated developer charge for any newly created dwellings and/or lots.*

### **Shoalhaven Water**

Shoalhaven Water advises that pump-out is permitted with Council's endorsement in accordance with Council's Pump-out Policy and that Council's Pump-out Effluent Disposal service is available to the proposed development. They recommend pump-out every four (4) weeks. In this particular case, the applicant states that, whilst the proposal does not comply with Council's Pump-out Policy, in order for the proposal to be viable, pump-out must be available because an on-site disposal system would reduce the potential area of the market garden.

Shoalhaven Water further advises that an additional pump-out service would not cause undue traffic or noise pollution as the service to the subject property could be undertaken at the same time as servicing other properties located nearby. Terara currently has two pump-outs operating. These are located at 24 West Berry Street and at 182 South Street.

Whilst Council's Pump-out Effluent Disposal Policy places restrictions on new subdivision creating allotments dependant on pump-out effluent disposal systems, variations to the Policy have been approved in the past, particularly where a reticulated sewerage system is planned to be introduced in the short term.

### **Comment**

The proposal requires the resolution of Council in order to utilise a wastewater pump-out service, given that the property is rural as opposed to residential or commercial. However, it is considered that there are reasonable circumstances, in this particular case, to warrant support for the provision of a pump-out service for this development given that:

- There are two existing properties in the immediate locality that currently rely on pump-out services as a means of effluent disposal and, as such, servicing the subject property would not be inefficient and could be carried out at the same time other properties were being serviced. This would also ensure that additional heavy vehicle traffic would be minimal.
- The disposal of effluent waste on the site would not complement the agricultural use of the land as it would significantly diminish the area of land available for agricultural activities to the extent that it would be unlikely that the proposal would produce an adequate amount of produce.

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## Stormwater

The disposal of stormwater would be restricted to roof water from the proposed rural shed and this would be collected and stored for re-use within the proposed rural industry and also within the agricultural activities to be undertaken on the site.

## Development on Acid Sulfate Soils

The property is subject to a low probability for acid sulphate soils of between 1 and 3 metres below the ground surface level.

Given the agricultural nature and the relatively minor scale of the proposed development, it is unlikely that normal cultivation would disturb acid sulphate soils.

## Development of Flood Liable Land

Due to the agricultural basis of the proposed use, it is considered that the proposal is ancillary to the purpose of the land for agriculture. The application is supported by a Statement of Environmental Effects and a Report on Structural Conditions and Flood Assessment Report prepared by SEEC Morse McVey.

The development does not involve residential dwellings. The Natural Resources and Floodplain Section advises that the 1% AEP flood level at Terara village is 4.7m AHD, with a Flood Planning Level (FPL) of 5.2m AHD.

The Lower Shoalhaven River Floodplain Risk Management Study classifies the Terara Village area as a high hazard Flood Way area. The Section further states:

*“The SEEC Morse McVey report assumes the flow direction to be parallel to the river flow or West to East. However, according to Council’s Flood Engineer, as the river rises, it overtops the river bank and flows NORTH to SOUTH to fill the back swamp. This is Council’s understanding and it agrees with observations during floods and the experience of Terara residents.*

*The maximum velocity would occur sometime before the back swamp reaches its final peak level and drowns the inflow. The flood studies do not emphasise the flow direction, and only the velocity at peak water level is provided, not the actual velocity peak. This is borne out by Table 4 of the FPM Study, showing the ‘maximum’ velocity for various floods*

5% Flood .....	0.9 m/s
1% “ .....	0.4 m/s

*However, according to the Flood Engineer, a 1% flood must pass through the 5% stage, with a peak velocity also of 0.9 m/s rather than 0.4 m/s. For the present application, an estimate of possible maximum velocity by SEEC Morse McVey would be acceptable.*

*Council’s Flood Engineer has requested that, prior to issuing a Construction Certificate, the applicant should submit an appropriate consulting Engineer’s Report confirming that the structure will not become floating debris during a 1% (1:100 year) Annual Exceedance Probability (AEP) flooding scenario. The structural integrity of the completed works should be designed to withstand water and debris damage up to the 1 in 100 year*

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*storm event. In conclusion, if the issues raised are dealt with to Council's satisfaction then, the proposal could satisfy the flood requirements".*

## **Comment**

Given that the proposed works should not impact on the flood height at the levee, together with the re-location and re-alignment of the building, the proposed development should not have a significant impact on the flood characteristics.

The applicant has submitted an additional report by Geoff McVey Civil Engineering dated March 2009 on flooding that concludes in part that *"the affect of flood levels, flow velocities, sedimentation and debris will have a negligible impact on the agricultural activities on the site..... The building with modified construction material will perform satisfactorily under the normal conditions and under flood design load requirements..... The direction of flow of the flood water is from west to east and the proposed shed will not impact any buildings near this site. The proposed building is expected to have a negligible impact on flood levels and velocities of flow to adjacent buildings."*

Council's Flood Engineer has confirmed that the Geoff McVey Civil Engineering report dated March 2009 is accurate. However any consent issued should have a condition imposed that the walls that are designed for failure above a 1:100 year ARI event, should be sufficiently secured to not cause harm downstream.

The subject site, along with the other parts of the Terara area, would not be accessible during large flood events.

Given the non-residential nature of the proposed development and the implementation of an appropriate Workers Evacuation Plan, it is unlikely there would be any significant increase in demand for emergency services during times of flooding.

- **Development Control Plan 18 - Car Parking Code**

DCP 18 does not specify a particular car parking requirement for rural industries. However, it is considered that rates applying to uses similar to that proposed in the development would not be unreasonable. The proposal should provide five (5) spaces i.e. 3 formal spaces and room for two additional overflow spaces, if required. It is recommended that the car park and service area be repositioned closer to the proposed building away from Nobblers Lane.

- **Development Control Plan - Waste Minimisation and Management**

A Waste Minimisation and Management Plan (WMMP) has been prepared in accordance with Development Control Plan 93 - *Waste Minimisation and Management*. In the event of approval, the WMMP would need to be approved by Council or an Accredited Certifier prior to the issue of a Construction Certificate.

- **Development Control Plan 106 - Flood Management**

The application is accompanied by a Report on Structural Conditions and Flood Assessment Report prepared by SEEC Morse McVey [Report No. 08000010-R-01c.wpd dated May 2008]. Refer above to **Development of Flood Liable Land**.



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The proposed use is a “*rural industry*”. The Flood Related Development Control - *General Development Table* under Schedule 6 of DCP 106 does not contain a land use category specifying a “*rural industry*”. Thus, applying the land use category of “New Commercial / Industrial” appears reasonable in this case.

According to the relevant section of the Schedule 6 table, the commercial/industrial (rural industry) use of the subject land does not constitute unsuitable type of development, provided suitable development control conditions are imposed on any consent. The proposal is, therefore not precluded by virtue of the provisions of Development Control Plan No. 106 - *Flood Management*.

The table identifies that conditions relating to the following matters: Floor Level; Building Components; Structural Soundness; Flood Affection; Access; Flood Evacuation; and, Flood Awareness should be imposed on the development in the event of any approval.

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

**Access**

The subject site has legal and practical vehicular access over the eastern boundary off Nobblers Lane.

**Social/Economic Impact**

According to the Business Plan prepared by Slice of Life Australia:

*“Slice of Life Australia (SoLA) is a Shoalhaven based not-for-profit organisation whose purpose is to provide supported employment for People with Disabilities (PWD) while equipping them to move into open market employment.*

*To achieve this purpose, SoLA will operate a commercial catering business based at Reflections Café in the Shoalhaven Memorial Gardens and Cemetery at Worrigea. The Reflections Café will offer refreshment to people visiting or attending services at the Memorial Gardens and Cemetery in addition to offering off-site catering services to businesses and other organisations in and around Nowra.*

*Currently, there is a chronic shortage of skilled Hospitality personnel in the City area and it is impossible for PWD’s to obtain genuine work experience in the Shoalhaven region.*

*In this regard, SoLA offers PWD an authentic work place environment with real wages, TAFE Hospitality training and professional development with the guidance of skilled and experienced managers and mentors.*

*SoLA is modelled on a highly successful fifteen year-old program called “Dial a Lunch” based in Melbourne. SoLA is supported by a strong network of well-established organisations (Alliances) which will work with SoLA to establish and improve operational efficiency, quality control and market reach while, at all times, ensuring the well-being and professional growth of the PWD.*

*SoLA projects that it will break even in Year 1 and return a small profit in Year 2.*

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*The building is designed to be accessible by disabled persons in accordance with AS 1428 and the kitchen facilities would comply with the requirements of Council's Food Premise Code."*

**Comment:**

Given the nature of the Slice of Life Australia (SoLA) organisation, it is clear that profitability is not the sole criteria for establishing the proposed development. The training and development of disabled persons plays a large part in the management of SoLA. Thus, whilst the proposed development is designed to supply a part of the requirements to their catering enterprises, the social benefit to the broader community would relate to the employment of disabled people in a genuinely productive capacity.

Ultimately, the financial viability of the enterprise, and the importance of profit making, is a responsibility for the SoLA organisation. The proposal, if properly managed, is unlikely to lead to any adverse social or economic impacts on surrounding properties.

**Servicing**

Development Control Plan 18 - *Car Parking Code* (DCP) does not specify requirements for manoeuvring and servicing for rural industries. However, for industrial development, DCP 18 requires that a small rigid truck be allowed for in the servicing developments of less than 500 m<sup>2</sup> gross floor area. With the provision of a service bay that can accommodate a Pantech-sized type truck, the proposed development would satisfy this requirement.

In the event of approval, the Development Engineer has recommended an appropriate condition should be imposed on the development.

**Streetscape**

Whilst the village of Terara is not identified as a heritage conservation area under the local environmental plan, it is recognised that the locality does, nevertheless, possess a certain local history associated with the early urban settlement of the Nowra area. In this regard, the design of the proposed rural shed should reflect the character and streetscape of the Terara village and its environs.

**Traffic/Pedestrian Access**

The Roads and Traffic (RTA) Guide to Traffic Generating Development does not contain traffic generation figures specific to rural industries. However, traffic generation for industrial factories identifies 5 daily trips per 100 m<sup>2</sup> of gross floor area, and an evening peak of 1 trip per 100 m<sup>2</sup> of gross floor area.

The proposed development, therefore, could generate (140m<sup>2</sup>/100m<sup>2</sup> x 5) 7 vehicle trips per day, of which two are likely to be made within the peak hour. It may be noted that this figure compares to the estimated ten (10) trips per day traffic generated by a single residential dwelling house (RTA guidelines).

Council acknowledged that the proposed development would generate additional traffic onto the subject site, in addition to a number of car parking spaces. However, given the

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above traffic generation assessment, the proposal appears reasonable and would not be beyond the capacity of the local road network.

The applicant has however, indicated that a number of their potential clients would come together and this would reduce vehicle numbers. This increase in traffic will not exceed the environmental capacity of the road system and therefore is unlikely to adversely impact on the capacity of the local road intersection or the broader public amenity in this locality.

### **Cumulative Impact**

The surrounding and adjoining land is developed to the extent provided for under the local environmental plan. Given the findings of the technical input on matters such as flooding, heritage, environmental planning instruments, traffic and economic effects; the cumulative impact of the proposal should not lead to an unreasonable or acceptable environmental impact.

### **c) Suitability of the Site for the Development**

Use of the subject land in accordance with the proposal, would permit the SOLA applicant to advertise itself as a supplier of value added produce to the retail and other markets.

Given the nature and scale of the proposal, the site is considered suitable for the proposed development.

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

This development application was advertised in accordance with Council's Community Consultation Policy.

The initial advertising period was conducted from 17 June to 2 July 2008.

A second advertising period, for amended plans and a variation to the proposed rural industry process, was conducted from 26 September 2008 to 13 October 2008.

Thirty-nine (39) submissions were received.

# Refer to **Attachment 'I' - Assessment of Public Submissions DA08/1785 S79C(1)(d) Public Submissions made in Accordance with the Act or Regulations** for a detailed summary of the submissions.

In addition, a Residents Briefing Meeting (RBM) was conducted at the Council's Administration Centre on Monday 10 November 2008. Approximately 70 people attended this meeting. Twenty-eight (28) additional submissions have been received since the RBM. These submissions essentially raised issues previously highlighted in the letters of objection.

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## Public Submissions to be Addressed

Based on the number of times certain issues were raised in the submissions, the key main issues as perceived by the interested public are as follows:

- Traffic Impact;
- Flooding;
- Adverse Impact on the Amenity of the Village;
- Impact on Heritage Significance of Terara village;
- Prohibited within the 1(g) Zone;
- Undesirable Precedent;
- Does not comply with Pump-out Effluent Disposal Policy; and
- Probity, as a staff member is the applicant.

# Refer to **Attachment 'I'** for detailed assessment of Public Submissions.

The comments and issues identified within the public submissions have led to amendments to the proposal and the provision of additional information. They have also assisted in identifying local concerns for more detailed investigation, such as heritage impact.

### e) The public interest.

The issue of the size of the proposed rural shed was raised at the Residents Briefing Meeting. In this regard, discussions have been undertaken with the applicants who have already reduced the size of the building and believe it adequately caters for their needs. Given the nature of the SoLA organisation and the special requirements of disabled people that would be involved in the enterprise, there is a case for maintaining the shed size as currently proposed. The applicant has also stated that further reduction is not practical if the special needs of the disabled are to be met.

Should the proposed development not proceed, it would be difficult to otherwise use the subject land for viable agricultural production given its limited size. Appreciating the agricultural classification of the land, the proposal, is one of a limited number of uses, for utilising the available resource efficiently.

While it is acknowledged that a significant number of residents have raised concerns with the proposal, it is believed that Council needs to take a broad perspective. As such, the potential social benefits of the proposal must also be considered. In this regard, the imposition of appropriate and relevant conditions on any proposed approval should ensure that the broader public interest would not be compromised.

The above assessment addresses the key issues under Section 79C, all other issues have been considered and are regarded as acceptable.

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## **FINANCIAL CONSIDERATIONS:**

This proposal has no direct financial considerations for Council other than the potential cost of an appeal or legal challenge in relation to Council's determination either by the applicant or by objectors.

## **CONCLUSION:**

The development satisfies the definition of a "rural industry" and, as such, is a use that is permitted with Council consent. In this regard:

- The traffic generated is unlikely to impact adversely on the existing ambience of Terara village and would be similar or marginally greater than that resulting from a new dwelling house, when assessed over a full week.
- The proposed use does not constitute an unsuitable type of development on the flood prone land provided suitable conditions are imposed. The proposal is, therefore not precluded by virtue of the provisions of Development Control Plan No. 106 - Flood Management.
- The subject property is zoned as rural land and does not contain a heritage item nor is it located within a heritage conservation area. With the minor design changes, the building should not adversely impact on the existing character of the village.
- Provided suitable conditions were imposed, any impact of the proposed development on the nearby heritage items located within Terara village or elsewhere in the vicinity would be negligible.
- The proposed development comprises a rural industry located in a rural zone. The impact on the amenity of the Terara area would be similar to that resulting from other existing farming activities that are currently being carried out on nearby surrounding properties.
- Given the circumstances of this particular development, it is considered that an effluent pump-out system is an acceptable option.

Based on the assessment above and modifications that have been made to the design of the building and associated additional information submitted, it is considered that the proposal complies with regulatory requirements and is an acceptable form of development in this location.

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

R.D Pigg  
**GENERAL MANAGER**