

SHOALHAVEN CITY COUNCIL
D E V E L O P M E N T C O M M I T T E E

To be held on Tuesday, 5 April, 2016
Commencing at 4.00 pm.

30 March, 2016

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 the Council Chambers, City Administrative Centre, Bridge Road, Nowra on Tuesday, 5 April, 2016 commencing at 4.00 pm** for consideration of the following business.

R D Pigg
General Manager

Membership (Quorum – 5)

Clr White (Chairperson)
All Councillors
General Manager or nominee

BUSINESS OF MEETING

1. **Apologies**
2. **Adoption of Minutes of Previous Meeting**
3. **Declarations of Interest**
4. **Mayoral Minutes**
5. **Deputations**
6. **Report of the General Manager**
 Planning and Development
7. **Report of Director – Planning and Development**
8. **Notices of Motion**
9. **Addendum Reports**
10. **Confidential Report of the General Manager**
 Planning and Development

Delegation:

Pursuant to s377 (1) of the Local Government Act 1993 the Committee is delegated the functions conferred on Council by the Environmental Planning & Assessment Act 1979 (EPA Act), Local Government Act 1993 (LG Act) or any other Act or delegated to Council, as are specified in the attached Schedule, subject to the following limitations:

- i. The Committee cannot make a decision to make a local environmental plan to classify or reclassify public land under Division 1 of Part 2 of Chapter 6 of the LG Act;
- ii. The Committee cannot review a s82A or s96AB EPA Act determination made by the Council or by the Committee itself;
- iii. The Committee cannot exercise any function delegated to the Council which by the terms

- of that delegation cannot be sub-delegated;
- iv. The Committee cannot exercise any function which s377(1) of the LG Act provides cannot be delegated by Council; and
 - v. The Committee cannot exercise a function which is expressly required by the LG Act or any other Act to be exercised by resolution of the Council.

Schedule

1. All functions relating to the preparation, making, and review of local environmental plans (LEPs) and development control plans (DCPs) under Part 3 of the EPA Act.
2. All functions relating to the preparation, making, and review of contributions plans and the preparation, entry into, and review of voluntary planning agreements under Part 4 of the EPA Act.
3. The preparation, adoption, and review of policies and strategies of the Council in respect of town planning and environmental matters and the variation of such policies.
4. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which breaches a development standard by more than 10% and the application is accompanied by a request to vary the development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 or an objection to the application of the development standard under State Environmental Planning Policy No. 1 – Development Standards.
5. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the General Manager requires to be determined by the Committee
6. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
7. Review of all determinations of development applications under sections 82A and 96AB of the EP&A Act.
8. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.

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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MINUTES OF THE DEVELOPMENT COMMITTEE MEETING HELD ON TUESDAY, 1 MARCH, 2016 IN THE COUNCIL CHAMBERS, CITY ADMINISTRATIVE CENTRE, BRIDGE ROAD, NOWRA COMMENCING AT 4.00PM

The following members were present:

Clr White - Chairperson
Clr Gash
Clr Tribe
Clr Robertson
Clr Kearney
Clr Anstiss
Clr Wells
Clr Baptist
Clr Findley
Clr Watson
Clr Kitchener
Russ Pigg – General Manager

Apologies:

Apologies were received from Clr Guile

1. Confirmation of the Minutes of the Development Committee meeting held on Tuesday 2 February 2016 [Index](#)

MOTION:

Moved: Kearney / Second: Baptist

(MIN16.129) RESOLVED that the Minutes of the Development Committee meeting held on Tuesday 2 February 2016 be confirmed.

CARRIED

2. Declarations of Interest [Index](#)

Conflict of Interest Declaration - Clr Robertson – Significant non pecuniary interest – Confidential Item 1 – The person named in confidence is known to him and close friends of his, with whom he has long standing disagreements, it may be perceived that my vote on this matter may be swayed by my friendship with those he is in conflict with – will leave the room.

Conflict of Interest Declaration - Clr Watson – Non significant non pecuniary interest – Confidential Item 1 – A party to the legal proceedings is known to him – will remain in the room.

REPORT OF THE GENERAL MANAGER

PLANNING AND DEVELOPMENT

3. Development Application - Proposed Subdivision of Dual Occupancy at Lot 18 DP1045765 Wattlevale Place Ulladulla. Applicant: Rygate & West. Owner: H & C Martin
File SF10490 (PDR) [Index](#)
-

MOTION: Moved: Wells / Second: Baptist

(MIN16.130) RESOLVED in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Confirms support for the proposed exception; and
- b) The application be determined under delegated authority.

CARRIED

FOR: White, Gash, Tribe, Robertson, Kearney, Anstiss, Wells, Baptist, Findley, Watson, Kitchener, Russ Pigg

AGAINST: Nil.

4. NSW Right to Farm Policy - Release File 21709e [Index](#)
-

MOTION: Moved: Wells / Second: Kearney

(MIN16.131) RESOLVED, in accordance with the Committee's delegated authority from Council, that:

- a) The report on the release of the NSW Right to Farm policy be received for information;
- b) In the preparation of future documents relating to Planning and Development, that the right to farm be taken into account.

CARRIED

-
5. Worrigee Urban Release Area - Planning Proposal (Rezoning) - Shoalhaven Development Control Plan 2014 draft Chapter NB2 and Shoalhaven Contributions Plan 2010 draft Amendment No. 7 - Owners: Umbene Pty Ltd and R&J Coney
File 49004e, 49572e, 49573e (PDR) [Index](#)
-

MOTION:

Moved: Robertson / Second: Baptist

(MIN16.132) RESOLVED, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Adopt the Planning Proposal (Rezoning) for the Worrigee Urban Release Area with the following changes:
 - i) Rezone the existing R1 General Residential land to R2 Low Density Residential, instead of R5 Large Lot Residential
 - ii) All other provisions, including the minimum lot size of 2,500m² retained as exhibited
 - iii) If necessary include site specific provisions to facilitate the intended and desired subdivision outcomes, particularly related to the rural or environmental protection zoned residue components of the subject land.
- b) Adopt Shoalhaven Development Control Plan Chapter NB2 and Shoalhaven Contributions Plan 2010 Amendment No. 7 as exhibited
- c) Submit the Planning Proposal for the Worrigee Urban Release Area to the NSW Parliamentary Counsel Office with instructions to prepare an amendment to Shoalhaven Local Environmental Plan 2014 under Section 59(1) of the Environmental Planning and Assessment Act 1979.
- d) Notify the adoption of Shoalhaven Development Control Plan Chapter NB2 and Shoalhaven Contributions Plan 2010 - Amendment No. 7 in local newspapers in accordance with the requirement of the Environmental Planning and Assessment Act 1979 and its Regulations.
- e) Advise the NSW Department of Planning and Environment and the people/agencies who made submissions on the Planning Proposal of Council's resolution.

CARRIED

FOR: White, Gash, Tribe, Robertson, Kearney, Anstiss, Wells, Baptist, Findley, Watson, Kitchener, Russ Pigg

AGAINST: Nil.

NOTICES OF MOTION

6. Willows Caravan Park Full Compliance and Fire Audit

File 25006E [Index](#)

MOTION:

Moved: Watson / Second: Baptist

(MIN16.133) RESOLVED, in accordance with the Committee's delegated authority from Council, that a full compliance, fire and regulatory audit of the Willows Caravan Park be conducted.

CARRIED

CONFIDENTIAL REPORT

PLANNING AND DEVELOPMENT

CONSIDERATION OF ITEMS OF A CONFIDENTIAL NATURE

| Item | Reason |
|---|---|
| Land and Environment Court Case No.40252 2004 – Legal Proceedings | Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege 10A(2)(g) |
| Jerberra Estate Land and Environment Court Legal Proceedings | Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege 10A(2)(g) |

Pursuant to Section 10(A)(4), the public were invited to make representations to the Development Committee before any part of the meeting is closed, as to whether that part of the meeting should be closed. The Chairperson asked the General Manager if any written representations had been received as to whether that part of the meeting should be closed.

MOTION:

Moved: Wells / Second: Baptist

That the Development Committee Meeting exclude the press and public from the Meeting pursuant to Section 10(A)(1)(a) of the Local Government Act, 1993 as it was to consider items of a confidential nature in relation to matters pursuant to Section 10(A)(2)(g).

CARRIED.

Note: Clr Robertson left the room.

The meeting moved into confidential the time being 4.07pm.

The meeting moved into open session, the time being 4.08pm.

The following resolutions of the Confidential session were made public.

7. Land & Environment Court Case No. 40252 2004 – Legal Proceedings
File DA03/1859, 32740E [Index](#)
-

(MIN16.134) RESOLVED that the recommendation remain confidential until the legal action has concluded.

8. Jerberra Estate Land & Environment Court Legal Proceedings File 28040 [Index](#)

(MIN16.135) RESOLVED that the recommendation remain confidential until the legal action has concluded.

There being no further business, the meeting concluded, the time being 4.09pm.

Clr White
CHAIRPERSON

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 5 APRIL 2016

PLANNING AND DEVELOPMENT

ITEMS TO BE DEALT WITH UNDER DELEGATED AUTHORITY

1. **Update on land use at Lot 2, DP1154597 Woncor Avenue, Nowra Hill**
File ON2016/4099 [Index](#)
-

SECTION MANAGER: Colin Wood.

PURPOSE:

The purpose of this report is to update Councillors on the compliance action undertaken at Lot 2 DP 1154597 Woncor Ave NOWRA HILL.

RECOMMENDED that in accordance with Committee's delegated authority from Council, the Committee receive the report for information.

OPTIONS

1. Adopt the recommendation
2. Adopt recommendation with variation on the direction
3. Do not accept any of the recommendations

DETAILS

Background

On 23 November 2015 Council's Compliance Team became aware that the property known as Lot 2 DP 1154597 Woncor Ave Nowra Hill was being used as a "waste or resource transfer station". Councillors would identify this property as the one visible from the Princes Highway near BTU Road.

Several emails were received from Councillors raising concerns on the state of the property.

A waste or resource transfer station is defined by the Shoalhaven Local Environmental Plan 2014 (SLEP2014) as a building or place used for the collection and transfer of waste material or resources, including the receipt, sorting, compacting, temporary storage and

distribution of waste or resources and the loading or unloading of waste or resources onto or from road or rail transport.

On 24 November 2015 Council's officer inspected the site and spoke with a gentleman who indicated he was in a lease agreement with the property owner. The alleged tenant advised he was using the site to store and sort his material however, he was not selling anything from the property. Council's officer advised him that the use of the property as a waste or resource transfer station was prohibited and he would need to vacate the land.

A draft Clean-Up Notice was served on the alleged tenant on the 28 November 2015 and a formal clean-up direction was issued on 18 December 2015. The direction required he remove all stored material from the site by 11 January 2016.

Some improvements were noted during an inspection of the premises in late January 2016 however, full compliance was not achieved. On 8 February 2016 Council's officer issued a \$4000 penalty notice to the tenant for non-compliance with the direction.

Given the state of the premises, Council's officer commenced dialogue with the owner in an effort to achieve compliance. Notices and orders were served on the owner and we understand he worked collaboratively with the tenant to resolve the issue.

Council's officer inspected the premises on a number of occasions and kept in contact with the owner. On 18 March 2016 Council's officer noted the land had been totally cleared and the order has been complied with.

FINANCIAL IMPLICATIONS:

There are no financial implications.

2. Update - Planning Proposal - Falls Creek/Woollamia Deferred Rural Residential Area - Rezoning investigations **File 38279E** [Index](#)

SECTION MANAGER: Gordon Clark.

PURPOSE:

- Seek direction on the Planning Proposal (PP) in relation to bushfire planning issues.
- Clarify proposed cost recoupment arrangements.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Acknowledge the NSW Rural Fire Service's concerns including that a significant portion of the investigation area is unlikely to comply with the property and public road access requirements of Planning for Bushfire Protection 2006.**
- b) Address these concerns and enable the Planning Proposal to be finalised in a timely manner, by including appropriate detail in the Planning Proposal that**

would limit the extent of subdivision to the creation of one additional lot on each existing lot (i.e. a total yield of 15 additional lots).

- c) **Subject to adoption of part b):**
- i) **Prepare draft site-specific chapter (Chapter N16) of Shoalhaven Development Control Plan 2014, to be reported back for consideration prior to public exhibition.**
 - ii) **Invoice each landowner for 50% of the costs prior to exhibition of the Planning Proposal, and the remaining 50% after Council has resolved to finalise the Planning Proposal.**

OPTIONS

1. Adopt the recommendation. *Implications:* This would largely address the NSW Rural Fire Service (RFS) concerns and enable the PP to be progressed in a timely and cost effective manner.
2. Council engage a bushfire consultant to prepare a detailed report which addresses the requirements of Planning for Bushfire Protection (PBP) 2006 and the specific comments/concerns made by the RFS, with the aim of maximising the lot yield. *Implications:* This will delay progression of the PP and add further cost. There is no guarantee that the outcome would be favourable and for almost half of the lots, the maximum yield is one additional lot. Thus this option is not recommended.
3. Provide an eight (8) week period for the landowners in each of the five (5) clusters of properties to collectively provide their own detailed bushfire report prepared by a suitably qualified consultant, addressing PBP 2006 and the RFS specific comments/concerns with the aim of maximising the lot yield. *Implications:* This option will also delay progression of the PP as a whole. The landowners in each cluster of properties will collectively need to consider pros and cons of commissioning their own bushfire report.

DETAILS

Council initially resolved to commence this PP and the investigations associated with it in 2011, in accordance with the action in the Jervis Bay Settlement Strategy (JBSS) to investigate increased densities in the rural residential deferred areas. The JBSS states that a potential lot size of one (1) hectare is the *minimum* lot size to be considered. The Gateway determination issued by the Department of Planning and Environment (DP&E) for this PP in 2012 originally covered 87 lots, which over the course of the investigations, has been reduced to the current 15.

Council last considered this PP on 14 July 2015, when it resolved to:

- c) *Recoup the investigation costs associated with the Planning Proposal through a direct invoice to affected landowners prior to public exhibition with the option to pay via an 18 month (or as agreed separately with Council) payment plan.*

-
- d) *The advancement of the planning proposal to public exhibition be contingent on affected landowners paying the invoiced costs or entering into a payment agreement with Council to meet the investigations costs incurred by Council*
- e) *Dependent on the outcome of part (d), receive a further report, prior to formal exhibition, on the detail of the draft Planning Proposal/proposed amendments to the Shoalhaven LEP 2014 and the draft Area Specific Development Control Chapter that will support any rezoning.*

The Gateway determination was due to lapse on 5 September 2015 but has been extended to 5 September 2016. It should be noted that DP&E did not support, as a way forward, the proposed inclusion of a local clause setting out matters for consideration at the development application stage. This effectively means that the relevant matters must be considered as part of the PP process, and cannot be deferred to development application stage. However, DP&E has also confirmed that due to the reduction in the number of lots in the PP (from 87 to 15) some studies previously anticipated are no longer required before the PP can be publicly exhibited.

The 15 lots currently under consideration are shown below:



The status of the assessments/studies that are required before the PP can be publicly exhibited is as follows.

- **Flora and fauna:** the current investigation area was informed by a preliminary assessment completed by Council in 2014. High conservation value land has generally been excluded from the investigation area (the area being considered for subdivision). This assessment should be sufficient for the purposes of exhibiting the PP.

-
- **Water cycle assessment:** completed in October 2015. The assessment report included two components; a stormwater assessment; and an onsite effluent management assessment.
 - **Flooding:** the Draft Currumbene and Moona Moona Creek Flood Study prepared by WMA Water (currently on exhibition) has been reviewed and the flood mapping has been incorporated into the PP.
 - **Bushfire:** the Falls Creek / Woollamia area is identified as bushfire prone land and hence the PP must be consistent with PBP 2006. Council has received advice from the RFS expressing concerns about the consistency of the current PP with PBP 2006, primarily in relation to road access. These concerns must be addressed to enable the PP to progress. Options to resolve this are discussed later in the report.

In addition to informing and allowing progression of the PP, any relevant findings and recommendations from the abovementioned investigations would also need to be incorporated into a new site-specific chapter (Chapter N16) in Shoalhaven Development Control Plan (DCP) 2014. The intention would be to exhibit draft DCP Chapter N16 at the same time as the PP.

Statutory Bushfire Planning requirements for Planning Proposals

Under Section 117 of the Environmental Planning and Assessment Act 1979, PPs in bushfire prone areas must, among other things:

- *consult with the Commissioner of the NSW Rural Fire Service ... prior to undertaking community consultation ... and take into account any comments so made*
- *have regard to Planning for Bushfire Protection 2006*
- *avoid placing inappropriate developments in hazardous areas*
- *contain provisions for two-way access roads which links to perimeter roads*
- *minimise the perimeter of the area of land interfacing the hazard*
- *provide asset protection zones (APZs) incorporating*
 - *an Inner Protection Area ... inside the perimeter road*
 - *an Outer Protection Area ... on the bushland side of the perimeter road*

NSW Rural Fire Service advice

Advice was initially sought from the RFS in November 2015, following completion of the Strategic Water Cycle Assessment. The RFS subsequently provided advice including:

- An email dated 28 January 2016, which included comments on a rough conceptual plan adapted from the Strategic Water Cycle Assessment showing the creation of up to 25 new dwelling entitlements (20 at Seasongood Road and 5 at Woollamia Road).
- A follow-up letter dated 9 February 2016.

A copy of the above correspondence is provided as **Attachment “A”**. The key issues are summarised in Table 1 below.

Table 1 - Summary of Rural Fire Service concerns / comments

| General | Detail |
|--|---|
| <p>The PP has the potential to result in a significant increase in the number of rural residential lots in the area.</p> <p>Council should carefully consider facilitating additional residential development in this area, having regard to the above and the context of the sites.</p> <p>The RFS is concerned that a significant portion of the subject land is unlikely to comply with the acceptable solutions provided in PBP 2006 for property access roads and public road access.</p> <p>Given the nature of the PP and the fragmented ownership of the land, it would not appear to be viable to provide perimeter roads.</p> <p>It would be the preference of the RFS that short property access roads are provided, or in their absence, alternative access is provided, for the safety of evacuating residents and emergency service personnel.</p> <p>Watercourse crossings can pose operational difficulties. PBP 2006 requires access to be all weather.</p> | <p>Broader landscape has extensive areas of bushland and bushfires can approach from several directions. The sites are also located in areas where land is not managed in a minimum fuel condition (when looking at the broader landscape).</p> <p>Jervis Bay Road and Seasongood Road pass through heavily forested areas, and access from the precincts to appropriate places to shelter from a fire may be difficult in a bush fire situation.</p> <p>The area is known to be affected by bushfires, e.g. the ‘Hylands fire’ in the 2001/2002 fire season.</p> <p>The nearest Neighbourhood Safer Places (NSP) are at Huskisson, Tomerong and Albatross, involving significant travel distances through somewhat heavily vegetated areas.</p> <p>Secondary property access roads are required if the dwelling is more than 200 m from a public road.</p> <p>The interface with the bushfire hazard should be minimised in accordance with PBP 2006. This is most commonly achieved through the use of perimeter roads. [PBP 2006 states that perimeter fire trails should not cross multiple residential allotments.]</p> <p>Where access to a development comprises 3 or more lots, the provisions of 4.1.3 Access [1] Public Roads in PBP 2006 applies.</p> <p>Dead end roads are not recommended but where unavoidable, should be less than 200 m in length.</p> <p>The RFS’s main concern with the access to these lots is the potential for access roads to be cut/blocked during a bush fire event. The risk of this increases where land adjacent to access ways is vegetated and where utility services (power lines) are above ground and adjacent to the access way.</p> <p>Should Council consider pursuing the current [maximum development] configuration, a suitable legal mechanism to ensure the management of vegetation adjacent to internal access roads should be considered. This is to ensure roads will not be blocked by fallen trees in a bush fire situation.</p> <p>This affects numbers 18, 21 and 23 Seasongood Road (Lots 122A, 113 and 113A). Bridges must be capable of carrying a load of 15 tonnes, where they service only 2 lots, or 28 tonnes (9 tonnes per</p> |

| General | Detail |
|---|--|
| Where APZs are proposed over adjacent properties, Council should be satisfied that a suitable legal mechanism can be established to ensure ongoing maintenance. | <p>axle) for access roads that service 3 or more lots and in a non-reticulated area.</p> <p>For the purpose of the PP, future dwellings should not be subject to radiant heat of greater than 29 kW/m².</p> |

Discussion

The detailed issues raised by the RFS will need to be addressed before the PP can be progressed. Information on the potential lot yield for each of the lots and an outline of the issues included in the PP is provided as **Attachment “B”**. A constraints map is also provided as **Attachment “C”**.

To enable the PP to be progressed, Council can respond to the RFS comments by either:

1. Modifying the PP (e.g. scaling it back to enable one additional lot on each existing lot). This will generally enable the additional dwellings to be located within 200 metres of a public road, hence avoiding the need for secondary access roads; and significantly reduce the bushland interface, reducing the likelihood that perimeter roads will be required, or;
 - 2.1. Engaging a bushfire consultant to prepare a detailed report for the overall PP area which addresses the requirements of PBP 2006 and the specific comments/concerns raised by the RFS, with the aim of maximising the lot yield, or;
 - 2.2. Providing a limited period of time (8 weeks) for the landowners to commission their own detailed bushfire report(s) (prepared by a suitably qualified consultant) to address PBP 2006 and the specific comments/concerns raised by the RFS with the aim of maximising the lot yield. A maximum of one report for each cluster of properties should be accepted, meaning that there would need to be consensus among each group of landowners.

A comparison of these options is provided in Table 2 below.

Table 2 - Comparison of options to address bushfire concerns

| Option | Implications | Advantages / disadvantages |
|---|--|--|
| 1. Yield limited to one additional lot from each existing lot | <p>Yield = 15 lots</p> <p>The additional dwellings would generally be able to be located within 200 m of public road</p> | <p>+ Simplest/quickest option for finalising the PP</p> <p>+ No additional costs incurred</p> <p>+ Equal yield for all lots in PP</p> <p>+ Lower bushfire risk</p> |

| | | |
|--|---|---|
| | Lot yield not impacted for half of the lots | <ul style="list-style-type: none"> + Smaller interface with bushland + Road infrastructure requirements minimised - Potentially lower yield for half of the lots |
| 2.1 Council engage bushfire consultant, pursue a maximum density outcome | <p>Must address requirements of PBP 2006 and RFS comments/concerns</p> <p>Theoretical maximum yield = 26 lots although at least 6 of those are highly uncertain</p> <p>Measures must be financially viable and practical</p> | <ul style="list-style-type: none"> + Potentially higher yield for half of the lots - PP will be delayed - Uncertain outcome - Additional cost - Potentially more difficult and costly to implement |
| 2.2 Allow landowners to commission their own bushfire report(s). | <p>Landowners in each 'cluster' to collectively decide if they will commission a report</p> <p>Must be time-limited</p> <p>Must address requirements of PBP 2006 and RFS comments/concerns.</p> <p>Consultants must have Bushfire Planning & Design (BPAD) accreditation and have an appropriate level of experience.</p> | <ul style="list-style-type: none"> + Potentially higher yield + Landowners can decide whether or not cost/delay is justified + Lower demand on staff resources than Option 2 - PP will be delayed - Risk that reports may not adequately address all/some issues, resulting in further delays - Uncertain outcome |

Cost Recoupment

In July 2015, Council resolved to:

- c) *Recoup the investigation costs associated with the Planning Proposal through a direct invoice to affected landowners prior to public exhibition with the option to pay via an 18 month (or as agreed separately with Council) payment plan.*
- d) *The advancement of the planning proposal to public exhibition be contingent on affected landowners paying the invoiced costs or entering into a payment agreement with Council to meet the investigations costs incurred by Council*

At this stage if no further assessments are required before the PP can be publicly exhibited, the total cost for preparing the necessary technical and planning assessments will be \$2,847 per benefiting landowner. This excludes the cost of preparing any further bushfire assessments or preparation of deeds of agreement, if these are pursued.

Rather than issuing a single invoice prior to public exhibition as suggested in the above resolution, it is proposed (subject to Council's support) to split repayment into two, as follows:

-
1. 50% (\$1,423.50) prior to public exhibition of the PP.
 2. The balance (\$1,423.50) once Council has resolved to finalise the PP.

Invoices are payable within 30 days. To ensure that all costs are recouped, it is proposed that the LEP will not be finally amended until all invoices have been paid, unless a deed of agreement has been entered into with any landowners who require additional time to repay their costs. The cost of preparing deeds of agreement would be added to the landowner's fee.

FINANCIAL IMPLICATIONS:

Scaling back the PP as recommended would keep the costs which Council needs to recoup from the landowners to approximately \$2,847 per landowner.

Pursuing the maximum lot yield has a more uncertain outcome and will place additional demand on staff resources (to engage and manage a consultant, and consult with stakeholders). Council would need to cover the consultant's fees until such time that the costs are able to be recovered from the landowners.

COMMUNITY ENGAGEMENT:

This PP primarily impacts on the directly affected landowners. Landowners have been engaged throughout the process of preparing and refining this PP. Regardless of which option Council chooses to address the bushfire issues, further consultation with landowners and the broader community will be undertaken as part of the formal public exhibition process.

CONCLUSION

To address the bushfire issues raised by the RFS, it is recommended that Council limit the resulting subdivision potential to enable the subdivision of each existing lot into two, yielding a total of 15 lots. This will minimise the road infrastructure requirements at subdivision stage and enable the PP to be concluded in a timely manner.

Alternatively, if Council wishes to maximise the lot yield additional detailed work will be required. If Council wishes to take this approach, it is recommended that the landowners be given eight weeks to provide a bushfire assessment which must fully address the RFS comments and the requirements of PBP 2006.

3. Draft Planning Proposal (PP010) - Council Land Reclassification (Housekeeping) **File 50767e [Index](#)**

SECTION MANAGER: Gordon Clark.

PURPOSE:

To detail legal issues preventing the finalisation of Draft Planning Proposal (PP010) – Council Land Reclassification (Housekeeping) and outline a proposed way forward.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, the Committee

- a) **Reclassify the following parcels of land from "operational" to "community" in accordance with Section 33 of the Local Government Act 1993:**
- Lot 21 DP 252581 – 50 Shoalhaven Heads Road, Shoalhaven Heads
 - Lot 12 DP 617101 – Bolong Road, Coolangatta
 - Lot 3 DP 597223 – Bolong Road, Coolangatta
 - Lot 4 DP 550354 – Island Point Road, St Georges Basin
 - Lot 2081 DP 216860 – Lively Street, Vincentia
- b) **Prepare an LEP amendment in accordance with Section 73A of the EP&A Act to reclassify the following parcels of land from "community" to "operational", with interests removed:**
- Lot 21 DP 252581 – 50 Shoalhaven Heads Road, Shoalhaven Heads
 - Lot 12 DP 617101 – Bolong Road, Coolangatta
 - Lot 3 DP 597223 – Bolong Road, Coolangatta
 - Lot 4 DP 550354 – Island Point Road, St Georges Basin
 - Lot 2081 DP 216860 – Lively Street, Vincentia (land along the rear of Nos. 83-109 Frederick Street and No. 7 Sutton Street, Vincentia only)
- c) **Write to the NSW Minister for Planning to request the LEP amendment be made in accordance with Section 73A(1)(c) of the EP&A Act for the following reasons:**
1. **An error occurred in the drafting of Shoalhaven Local Environmental Plan 2014 whereby the following parcels of land (subject land) were inadvertently listed in Schedule 4 Part 1 – 'Part 2 - Land classified, or reclassified, as operational land—no interests changed' instead of 'Part 2 - Land classified, or reclassified, as operational land—interests changed':**
 - Lot 21 DP 252581 – 50 Shoalhaven Heads Road, Shoalhaven Heads
 - Lot 12 DP 617101 – Bolong Road, Coolangatta
 - Lot 3 DP 597223 – Bolong Road, Coolangatta
 - Lot 4 DP 550354 – Island Point Road, St Georges Basin
 - Lot 2081 DP 216860 – Lively Street, Vincentia

In addition, only part of Lot 2081 DP 216860 (land along the rear of Nos. 83-109 Frederick Street and No. 7 Sutton Street, Vincentia) was meant to be reclassified to operational and the remainder of the lot should have remained as "community".
 2. **Council needs to extinguish the interests in the subject land to enable the sale, lease or licensing of the land.**
 3. **The LEP is proposed to be amended to include Lot 21 DP 252581, Lot 12 DP 617101, Lot 3 DP597223, Lot 4 DP 550354, Lot 2081 DP 216860 (land along the rear of Nos. 83-109 Frederick Street and No. 7 Sutton Street only) at Schedule 4 'Part 2 - Land classified, or reclassified, as operational land—interests changed'.**

-
4. **The proposed amendment is suitable to be made in accordance with s73A due to it being of a minor nature and not having any adverse impact on the environment or adjoining land.**
- d) **If the Minister for Planning does not agree to make the LEP amendment under Section 73A, prepare a Planning Proposal to reclassify the following parcels of land to “operational” with interests removed under Section 30 of the Local Government Act:**
1. **Lot 21 DP 252581 – 50 Shoalhaven Heads Road, Shoalhaven Heads**
 2. **Lot 12 DP 617101 – Bolong Road, Coolangatta**
 3. **Lot 3 DP597223 – Bolong Road, Coolangatta**
 4. **Lot 4 DP 550354 – Island Point Road, St Georges Basin**
 5. **Lot 2081 DP 216860 – Lively Street, Vincentia (land along the rear of Nos. 83-109 Frederick Street and No. 7 Sutton Street only).**
- e) **Write to the NSW Government and raise Council’s concerns with the land reclassification process, and suggest associated changes to the Local Government Act 1993 which is currently under review.**

OPTIONS

1. Adopt the recommendation - this will enable the Local Environmental Plan (LEP) to be amended without having to go through the exhibition and public hearing process again.
2. Not seek to amend the LEP utilising Section 73A of the Environmental Planning & Assessment (EP&A) Act, and resolve to reclassify the land to “community” then prepare a new Planning Proposal (PP) to take the land back to “operational” and extinguish the interests in the land. This is not recommended as undertaking the PP process would require a further public exhibition and public hearing to be held at Council’s cost, and will delay the resolution of this minor issue by around six months. This will delay the sale, lease or licensing of the land.
3. Provide an alternative direction in this regard.

DETAILS

Background

The Council Land Reclassification (Housekeeping) PP received Gateway determination from the NSW Department of Planning and Environment (DP&E) on 10 September 2015. The PP aims to correct an administrative error which occurred in the final drafting of Shoalhaven Local Environmental Plan (LEP) 2014 which resulted in the land being reclassified as “operational”, but did not remove the interests, and inadvertently reclassified the whole of Lot 2081 DP 216860 Lively Street, Vincentia as operational.

Accordingly, for sites 1 to 5a below, the PP aims to remove the interests from the “operational” land and in relation to 5b, return its classification to “community”:

1. Lot 21 DP 252581 – 50 Shoalhaven Heads Road, Shoalhaven Heads;
2. Lot 12 DP 617101 – Bolong Road, Coolangatta;

-
3. Lot 3 DP 597223 – Bolong Road, Coolangatta;
 4. Lot 4 DP 550354 – Island Point Road, St Georges Basin;
 - 5a. Part Lot 2081 DP 216860 – Lively Street, Vincentia (land along the rear of Nos. 83-109 Frederick Street and No. 7 Sutton Street only); and
 - 5b. Lot 2081 DP 216860 – Lively Street, Vincentia (remainder of lot).

The PP was exhibited from 30 September to 16 October 2015. The Development Committee considered a report on the exhibition on 3 November 2015 and resolved to submit the PP to the DP&E for finalisation (copy of PP provided as **Attachment “A”**). However, after the PP was sent for finalisation, DP&E advised that the LEP could not be made as the Local Government Act 1993 (LG Act) does not allow removal of interests from land which already has an “operational” classification – this can only be done when land is classified from “community” to “operational”.

Advice was subsequently sought and this report recommends a way forward to resolve the issue.

Reclassifications under the Local Government Act 1993

The Local Government (LG) Act contains provisions regarding the classification and reclassification of public land. When Shoalhaven LEP 2014 was drafted, the subject land was reclassified from “community” to “operational”. While it was intended that the interests in the land be extinguished at the same time, due to a drafting error this did not occur. In addition, all of Lot 2081 DP 216860 – Lively Street, Vincentia was reclassified to operational, when this should really only have applied to part of the lot.

To correct these administrative errors, Council prepared and exhibited a PP which sought to:

- Remove the interests from sites 1 to 5a; and
- Reclassify site 5b to community.

After the PP was sent to DP&E for finalisation, Council was advised that the LEP could not be made as the LG Act does not allow removal of interests from land which is already “operational”. This can only be done when land is classified from “community” to “operational”.

In discussions with DP&E prior to preparing the PP, this was not raised as an issue. Nor was concern raised at the Gateway determination and Council was subsequently allowed to proceed with the preparation and exhibition of the PP. DP&E had previously advised other Councils (e.g. Moree Plains Planning Proposal PP_2015_MOREE_001_00 which received Gateway determination on 30 March 2015) that they needed to reclassify “operational” land back to “community” in order to remove the interests in the land via the reclassification process. It is unclear why Shoalhaven did not receive the same advice.

DP&E has advised that Council is now essentially required to undertake the following steps if it still wishes to deal in the subject land without risk:

1. Abandon the current PP;
2. Reclassify the land to “community” by Council resolution;

-
3. Prepare a new PP that classifies the land “operational” and removes the interests in the land;
 4. Undertake a public exhibition; and
 5. Hold a public hearing.

Following the above process will result in the reclassifications ultimately having been subject to four (4) public exhibitions and three (3) public hearings. It will also significantly delay the sale of 50 Shoalhaven Heads Road, Shoalhaven Heads (site 1) which Council has recently resolved to sell.

Legal Advice

After receiving advice from DP&E, independent legal advice was obtained. Details of the legal advice is provided in a confidential report to this meeting.

As a result of the advice received, it is recommended that Council pursue an expedited amendment to the LEP utilising Section 73A(1)(c) of the EP&A Act. This section of the EP&A Act enables certain types of minor amendments to be made to LEPs without following the usual procedures (such as preparation of a PP and public exhibition) if “they will not have any significant adverse impact on the environment or adjoining land”. The removal of interests and classification of part of the Lively Street land from “operational” to “community” will not have adverse impacts on the environment or adjoining land.

In addition, if the request is successful Council will have saved the time and expense of preparing a new PP, including a public exhibition and public hearing. If the request is unsuccessful, or Council chooses to start the PP process again now, it is expected that it would take around six months for a new PP to be finalised.

LOCAL GOVERNMENT ACT REVIEW

This experience (and others) has highlighted issues with the reclassification process in the LG Act and its interaction with the EP&A Act. The main issues with the reclassification process are:

- Inability to remove interests from “operational” land no matter how minor the matter;
- Requirement to hold a public hearing even when no submissions are received during the exhibition of a reclassification planning proposal; and
- Requirement to have public hearings chaired by an independent person (at Council’s cost), even when no submissions are received or no-one registers to attend.

If the NSW Government is intent on cutting red tape, the provisions of the LG Act should be amended to enable the removal of interests from “operational” land in appropriate circumstances. This would allow Councils to more efficiently meet their land management objectives and reduce the pressure on resources. Further, the requirement for an independently chaired public hearing is onerous and costly, particularly when there is no community interest in a reclassification. This could be simplified to allow reclassification PPs that receive no comment during the exhibition period to be exempt from the public hearing process. Alternatively, the requirement to have an independent person chair the public hearing could be relaxed if there is no interest expressed.

As the LG Act is currently under review, it is appropriate and timely that these concerns be raised with the NSW Government.

FINANCIAL IMPLICATIONS

The cost involved in seeking an expedited amendment to Shoalhaven LEP 2014 will essentially be in the staff time to prepare the submission. By comparison the cost of undertaking the PP process again could be in the vicinity of \$5,000 (cost of Independent Chair for the hearing etc).

COMMUNITY ENGAGEMENT

The reclassifications have been subject to extensive community consultation across three separate exhibition periods, and two public hearings to date. A further public exhibition and public hearing will be required if Council chooses not to request the Minister for Planning to amend the LEP utilising Section 73A of the EP&A Act.

CONCLUSION:

If the Minister agrees to amend the LEP using Section 73A, Council will avoid having to spend resources and time in going through the PP process again. It is therefore recommended that Council requests the Minister to amend Shoalhaven LEP 2014 to remove the interests from the subject land.

It is also appropriate that a submission is made to the NSW Government outlining Council's concerns with the LG Act reclassification process.

4. Nowra CBD Urban Design Development Controls Report - Adoption and next steps **File 48168E [Index](#)**

SECTION MANAGER: Gordon Clark.

PURPOSE:

Detail the outcomes of the public exhibition and obtain Council's final adoption of the Nowra CBD Urban Design Development Controls Report.

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee

- f) Adopt the Nowra CBD Urban Design Development Controls Report as exhibited with the following minor changes:**
 - i) Include a note in Section 3.2 of the report to ensure corner building setbacks do not impact on planned intersection upgrades in the CBD.**
 - ii) Include a note in Section 3.9 of the report that outlines the requirements for active ground floor uses under Clause 7.16 of Shoalhaven Local Environmental Plan 2014.**

-
- g) Advise the NSW Department of Planning and Environment and those who made submissions on the draft report of Council's resolution in this regard.
 - h) Report back to Council following the public exhibition of the resulting Nowra CBD Planning Proposal and Shoalhaven Development Control Plan 2014 chapter.

OPTIONS

1. Adopt the recommendation of this report - this is preferred as it enables this important project and its outcomes, including the Planning Proposal (PP) to progress, establishes a clear policy direction for the CBD and provides certainty to landowners/developers.
2. Consider additional changes to the Urban Design Development Controls - this option is not favoured as the proposed controls were developed through extensive testing and community consultation and are considered to be a good overall outcome for the CBD. Any changes to the proposed controls at this point may require a re-exhibition and will potentially delay the project.
3. Not adopt the Urban Design development controls. It is important to establish a clear set of development controls for the Nowra CBD to provide certainty and direction to any future development proposals. There is also an expectation that a set of controls will be implemented for the CBD area given its regional significance.

DETAILS

Background

At the Development Committee meeting of 3 November 2015 it was resolved (under delegation) in part that:

- a) *Adopt the Nowra CBD Draft Urban Design Development Controls for public exhibition for a minimum period of 28 days.*
- b) *Report back to Council following the exhibition of the draft Nowra CBD Urban Design Development Controls.*

The full resolution of 3 November 2015 is provided as **Attachment "A"**.

The exhibited Urban Design Development Controls Report contains a range of controls for building and floor heights, building setbacks, building bulk and scale, articulation, heritage conservation and solar access. The report also identifies opportunities to build on the existing character of the different precincts within the CBD, opportunities for active street frontages, improved vehicle and pedestrian linkages, and the protection of views and vistas.

A copy of the exhibited draft Urban Design Development Controls Report will be available in the **Councillors room** for review prior to the meeting. Councillors were also given a detailed briefing by the project consultant (Di Griffiths from Studio GL) on 24 September 2015.

Public Exhibition

The draft report was public exhibited from 25 November 2015 to 8 January 2016 (inclusive). Only one (1) formal submission was received, as well as internal comments from Council's Traffic and Transport Section. The major issues raised in the submissions and the corresponding staff comments are summarised below. A copy of the submission is provided in the **Councillor's Room** for today's meeting.

Submission Comments

The submission congratulates Council on the draft report and the efforts to improve the usability of the Nowra CBD. Strongly supports the preservation of views, the recognition and preservation of heritage items, solar principles and the focus on walkability in the CBD.

The submission also made a number of suggestions in relation to civic upgrades, healthy living, historical walks and new development proposals that are generally consistent with the Nowra CBD Master Plan and Revitalisation Strategy, but outside of the scope of the detailed Development Controls Report.

Traffic and Transport Comments

The adopted Nowra CBD Transport Strategy identifies numerous intersection improvements throughout Nowra CBD which may require additional corner setbacks in some locations. Council's Traffic and Transport Section suggest that every intersection in the CBD include additional setbacks to ensure future intersection upgrades can be accommodated.

Comments

It is considered unreasonable at this stage, and without detailed work, to include additional setback on every corner building in the CBD, however, it is recommended that an additional note be included in Section 3.2 of the report to ensure that planned intersection upgrades are considered as part of the merit based assessment of future development applications in the CBD, thus ensuring that the issue is not overlooked.

Planning Proposal (LEP Amendment) and DCP Chapter

The Urban Design Development Controls Report recommends setting building heights in the Nowra CBD, as shown in Figure 1 below. A PP has been prepared to incorporate the recommended heights into Shoalhaven Local Environmental Plan (LEP) 2014 and the other related urban design development controls will be included as a Chapter in Shoalhaven Development Control Plan (DCP) 2014. Council resolved on 5 November 2015 to prepare the required PP and DCP Chapter.



Figure 1 - Recommended Building Heights

Following the receipt of Gateway determination for the PP, the proposal and draft DCP chapter will be exhibited as a package.

SHOALHAVEN RIVERFRONT PRECINCT

As part of the 5 November 2015 resolution related to this project, Council also resolved to:

Proceed to prepare detailed urban design controls for the northern Riverfront/Gateway precinct and report back to Council on the steps required to enable redevelopment of this important precinct.

An update on the status of this sub-project was included in the confidential report on the Visitor Information Centre, Graham Lodge and Civic Centre Site that was considered by

Council on the 15 March 2015. Detailed reports will be provided to Council at appropriate points in this project.

FINANCIAL IMPLICATIONS:

The current work is being undertaken and managed within the Strategic Planning budget.

COMMUNITY ENGAGEMENT:

The draft urban design development controls were prepared in consultation with a project liaison group that was made up of local property/business owners, architects, planning consultants and community representatives. The consultants facilitated 3 workshops with the group during the development and testing of the controls.

The draft report was publicly exhibited from 25 November 2015 to 8 January 2016 (inclusive) and only one (1) formal submission was received.

5. Nebraska Estate Planning Proposal - Landowner Survey Outcomes File 1013E [Index](#)

SECTION MANAGER: Gordon Clark

PURPOSE:

Consider landowner feedback on the available options and obtain direction on the progression of the Planning Proposal (PP).

RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee

- a) Adopt revised version 2 of Option 1 – Lower Density Residential Development outlined in this report and provided in Attachment D, as the preferred option to move forward with, and the Planning Proposal be amended accordingly.**
- b) Prepare the required water cycle assessment.**
- c) On completion of a) and b) publicly exhibit the Planning Proposal.**

OPTIONS

- 1. Adopt the revised version of development Option 1 as recommended in this report.
- 2. Adopt Option 1 without any revision or modification.
- 3. Adopt an alternative variation and provide direction to staff in this regard.

DETAILS

Planning Proposal Overview

The draft PP was submitted to the NSW Department of Planning and Environment (DP&E) for consideration in late 2014. Key elements of the PP include the proposed zoning and lot size maps. Three discreet areas of land within the Estate have some limited development potential, the least constrained of which is in the north western sector (NW Sector). Please see Figure 1. The remaining land is highly constrained and is proposed to be zoned 'E2 – Environmental Conservation'.

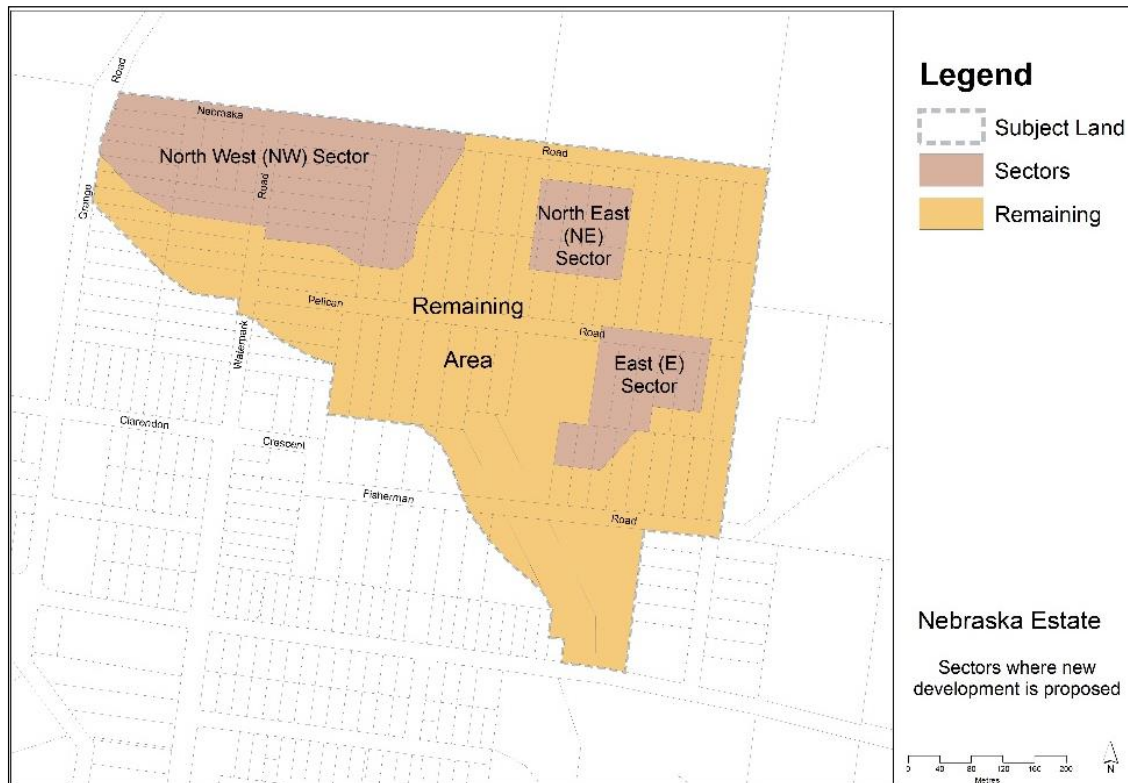


Figure 2 - Areas with development potential

Three residential options were included in the PP for the NW Sector: one lower density option and two higher density options. However Council was requested by DP&E to select the preferred option and then complete a water cycle assessment (to ensure stormwater can be managed and that the downstream environment is not adversely effected) before the PP can be formally publicly exhibited.

- # A brochure summarising each option for the Estate is provided as **Attachment "A"**. The brochure was prepared in collaboration with DP&E and the NSW Office of Environment and Heritage (OEH) and circulated to landowners in September 2015 to enable their feedback to be considered in determining which option to pursue. The features, positives and negatives of each option provided to landowners for feedback in 2015 are summarised below.

OPTION 1 – Lower Density Residential (Version 1)

Features

- 21 new dwellings on lots ranging from 2,500 m² to 1.5 ha (15,000 m²)
- Cost estimates include reticulated water and sewerage
- Perimeter fire trail proposed on eastern edge of NE Sector.

Positives

- Appears to be more cost effective than Options 2.1 or 2.2.
- Needs less landowner coordination than Options 2.1 and 2.2.
- Less infrastructure needed compared to Options 2.1 and 2.2.
- Proposed density/lot size is more consistent with those directly to the south of the subject land.

Negatives

- Lower yield - fewer lots to share infrastructure costs.
- Would require localised land pooling and re-subdivision.

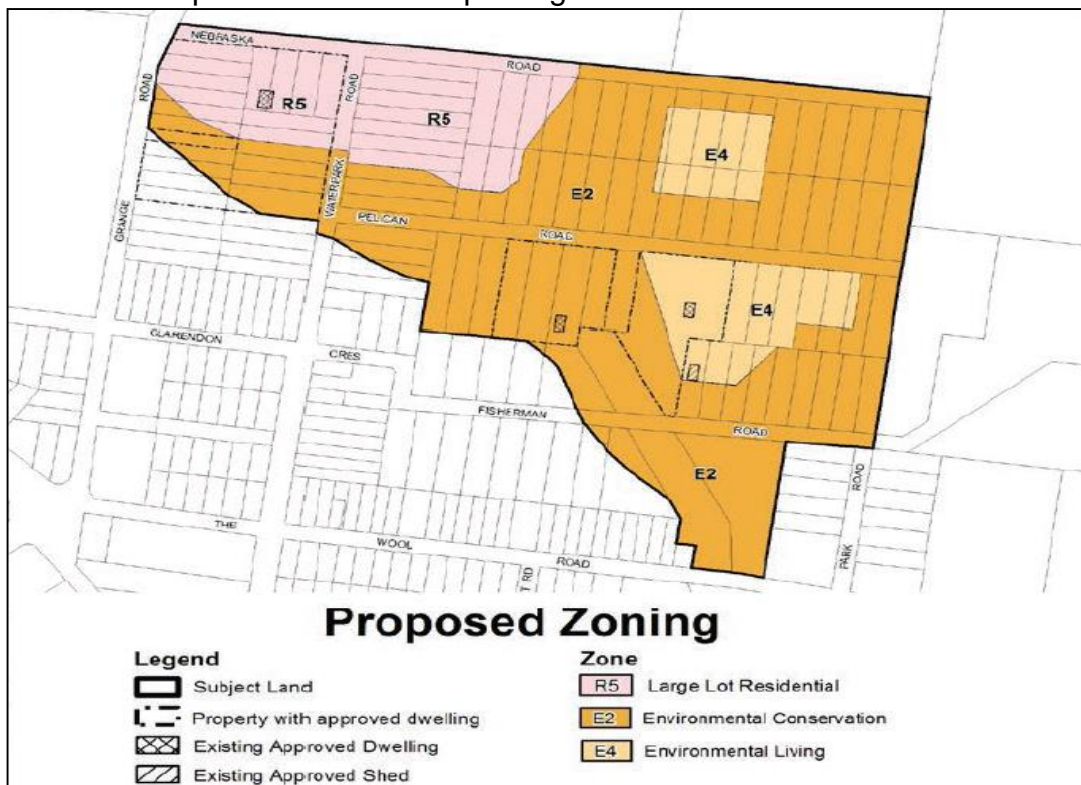


Figure 3 - Proposed zoning for Option 1

OPTION 2.1 Higher Density Residential

Features

- A total of 35 new dwellings on lots ranging from 1,000 m² to 1.5 ha (15,000 m²).
- Perimeter fire trail proposed on eastern edge of NE Sector.
- New perimeter road required on eastern edge of NW Sector (Options 2.1 and 2.2).
- New road required to service dwellings 26 – 31 (similar to Option 2.2).

Positives

- New perimeter road would delineate boundary between development area and conservation land to the east.

Negatives

- Least cost effective option.
- Land would need to be pooled and re-subdivided before it could be developed.
- Higher infrastructure demands than Option 1.
- Density of development in NW Sector higher than nearby residential areas.

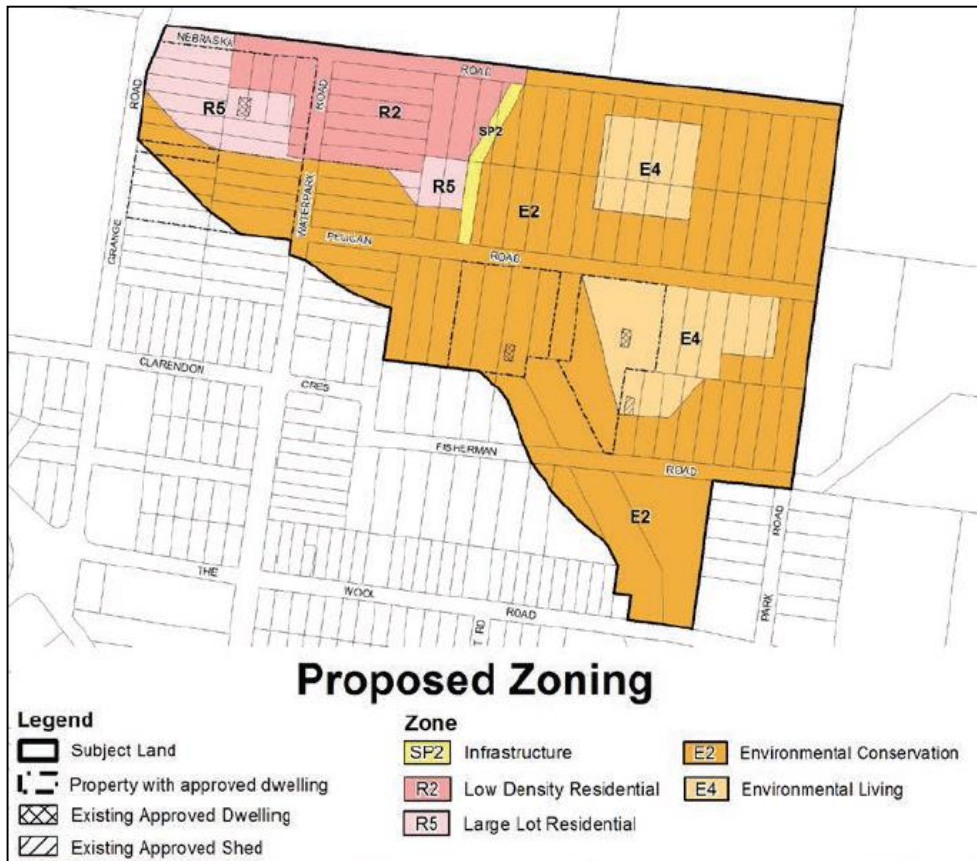


Figure 4 - Proposed zoning for Options 2.1 and 2.2

OPTION 2.2 Higher Density Residential

Features

- A total of 44 new dwellings on lots ranging from 750 m² to 1.5 ha (15,000 m²).
- Perimeter fire trail proposed on eastern edge of NE Sector (all options).
- New perimeter road required on eastern edge of NW Sector (Options 2.1 and 2.2).
- New road required to service dwellings 32 – 39 (similar to Option 2.2).

Positives

- More cost effective than Option 2.1.

Negatives

- Land would need to be pooled and re-subdivided before it could be developed.
- Higher infrastructure demands than Option 1.
- Density of development in NW Sector higher than nearby residential areas.

Landowner consultation on preferred option

A landowner survey was conducted from 28 August to 23 October 2015 to obtain feedback on the preferred option for the NW Sector, and on the PP in general. The survey was sent to landowners with a reply paid envelope. A copy of the survey is provided as **Attachment “B”**. Landowners were also able to complete the survey online.

An information day was held on 19 September 2015, at the St Georges Basin Community Centre and attended by staff from Council, DP&E and OEH. Approximately 10-15 landowners attended. Landowners unable to attend the information day were also invited to make an appointment to discuss the PP with Council staff.

Survey results

A total of 23 survey responses were received, representing 50% of landowners. A sector by sector breakdown of the number of responses and response rate is provided in Table 1 below. Another three (3) landowners advised Council in writing that they were not willing to complete the survey.

| Sector | # Responses | # landowners (excl. Council) | Response rate (%) |
|-------------------------------|-------------|------------------------------|-------------------|
| NW Sector | 10 | 14 | 71 |
| NE Sector | 4 | 6 | 67 |
| E Sector | 2 | 6 | 33 |
| Remainder (To be zoned E2) | 7 | 20 | 35 |
| TOTAL | 23 | 46 | 50 |

Table 3 - Breakdown of survey numbers and response rates

Two thirds of landowners in the NW and NE Sectors completed the survey, compared to around one third of owners in the E Sector and the proposed E2 land.

Landowners' preferences for the options differed by sector, as shown in Figure 4 below.



Figure 5 - Breakdown of landowner support/opposition by sector. Note: The totals do not necessarily add up because some respondents did not indicate their preference for all options.

The key findings in relation to landowners' preferences for Options 1, 2.1 and 2.2 are:

- Across all sectors there was marginally more support for Option 1.

-
- There was a higher level of opposition to Options 2.1 and 2.2, specifically from owners in the NW Sector and of the land proposed to be zoned E2.
 - Option 1 was the only option not to be opposed by any landowners in the NW Sector.

Other findings/trends of relevance are:

- 50% of respondents do not accept that the proposed E2 land is highly constrained and unsuitable for development. **Comment:** The lack of acceptance of the constraints is likely to be a significant barrier to finalising and implementing this PP.
- 52% of respondents believe lots within the Estate should be able to be developed regardless of statutory planning requirements. **Comment:** See above comment.
- 20% of respondents disagree with the principle that the benefitting landowners will be required to pay for essential subdivision infrastructure. **Comment:** While the majority of respondents accepted this principle, the cost of providing the infrastructure to the required level is likely to be problematic, whichever option is chosen.
- 50% of respondents agree that changes to the lot layout will be necessary.
- Of the owners whose land will potentially be rezoned to E2, 67% of respondents indicated that they are interested in Council exploring options to establish a formal conservation arrangement over the land including possible financial incentives. 25% indicated they are not interested and the remainder were unsure. **Comment:** Unless there is wide landowner interest among the 'E2 owners', future options such as biobanking are likely to be out of reach due to the fragmented land ownership. Given that only 33% of the 'E2 owners' completed the survey, further resources should not be allocated to this issue unless supported by a critical mass of landowners.

A number of opportunities were provided in the landowner survey for comments to be provided. The comments received are detailed in **Attachment "C"** in consolidated form and include a range of comments/concerns/questions. Key matters raised in relation to progression of the PP include:

- Criticisms of the broad nature of the preliminary feasibility analysis and that detailed costs were not presented for individual properties. **Comment:** The financial information was provided as a rough indication of the average cost/benefit per dwelling in respect of infrastructure costs, potential land value, and the residual land value/profit. To present more detailed information would require a much more in-depth financial assessment, the cost of which would be considerable.
- Essential infrastructure should be paid for by Council/government. Over time costs would be recouped through rates. **Comment:** Council's decision to initiate the rezoning investigation process in 1992 was founded on the principle that the costs would be borne by the benefitting landowners. If the costs were to be recouped via a special rate as previously envisaged, landowners would be able to repay over time.

- Suggestion that if sewerage is provided, buffers to the protected vegetation could be reduced. **Comment:** The revised version of Option 1 (discussed below) is premised on reticulated sewerage being provided. The buffers to protected vegetation have been reduced in places where necessary to achieve a balanced and implementable planning outcome.
- Questions in relation to how land pooling would work, e.g. ‘*how to reconfigure the land and how to share ownership after reconfiguration?*’ **Comment:** Option 1 has been revised (based on reticulated sewerage being provided) to minimise the need for land pooling/reconfiguration. Advisory information on [consolidation options](#) which may assist is provided in Chapter N20 (Jerberra Estate) of Shoalhaven DCP 2014.
- Criticisms and concerns about planning history and that not all lots can be developed. **Comment:** The PP is based on the overall development footprint adopted by Council in 2010 after considering detailed environmental and land capability assessments.
- The owner of the largest holding in the Estate which is located between Grange Road and Waterpark Road (NW Sector) provided a map of suggested changes to the conceptual subdivision and development map in relation to their property. **Comment:** These suggested changes have been incorporated into the revised version of Option 1 (see below).

Option 1 – Revised Version

In response to the landowner feedback, a revised version of the conceptual subdivision and development map for Option 1 has been prepared for Council’s consideration. A copy is provided in **Attachment “D”** and the changes are summarised in Table 2 below.

Table 4 - Summary of changes made to Option 1

| Sector | # New dwellings | | Comments |
|--------------------------------------|-----------------|-----------|--|
| | Version 1 | Version 2 | |
| NW Sector (west of Grange Rd) | 4 | 2 | This land is currently in one ownership. The changes to this area of land are in response to the landowner’s request. |
| NW Sector (east of Grange Rd) | 9 | 11 | The extent of land pooling and re-subdivision has been reduced, limiting the owners involved in any particular development to three, and except for two of the dwellings on the bushland fringe, delivering an outcome equivalent to one dwelling per lot. |
| NE Sector | 4 | 4 | The overall footprint has been increased southwards to make land pooling and re-subdivision more achievable, in response to a landowner submission. The land would need to be carefully managed to ensure the adjacent threatened orchid populations are protected and monitored (similar to parts of Jerberra and Verons Estates). The orchids located directly downslope from the development would be at greatest risk, hence the importance of providing reticulated sewerage. |

| | | | |
|-----------------|----|----|--|
| E Sector | 4 | 6 | The provision of reticulated sewerage to this location would enable two additional dwellings. Changes have been made to the proposed building lines to provide greater separation from the orchids to the north. |
| Total | 21 | 23 | The buffers to threatened vegetation have been reduced slightly in consultation with OEH (OEH feedback is discussed below). |

The proposed changes (version 2) to Option 1 have OEH in-principle support, as stated in their letter dated 17 February 2016 (see **Attachment “E”**).

If this version (No. 2) is adopted as recommended, the zoning and lot size maps will be revised accordingly.

Challenges and difficulties

Due to the extent and nature of the land’s constraints, it is simply not possible to provide an outcome which is more favourable to landowners. Any rezoning proposal to allow development in the NW, E and NE Sectors needs to be consistent with legislative requirements and its progression will depend on landowner involvement and support.

Even though the changes (version 2) to Option 1 should generally be supported by the benefitting landowners, experience suggests that finalising and implementing this PP will be difficult.

If the PP is ultimately finalised, Council would need to follow a similar process to that for Jerberra Estate:

- Prepare a site-specific development control plan (DCP). This would be progressed concurrently with the PP as far as possible.
- As has been the case with Jerberra Estate, it is likely that Council would need to coordinate the provision of essential infrastructure, subject to cost recoupment arrangements being put in place. This would involve:
 - preparing detailed designs for roads and road drainage, water, sewerage, electricity and telecommunications;
 - preparing cost estimates; applying to the Independent Pricing and Regulatory Tribunal (IPART) for a special rate variation; and
 - if approved, managing the tendering and construction processes.

Although Option 1 appears to be the most financially viable option, the subdivision infrastructure costs would be significant and may be beyond the financial means of some owners. Furthermore a proportion of landowners believe that they should not be required to pay for subdivision infrastructure, despite this being Council’s position since 1992. As such, putting in place any proposed cost recoupment arrangements is likely to prove very challenging (as was the case for Jerberra Estate).

Furthermore, more than one third of the Estate’s landowners own land that is heavily constrained and not able to be rezoned for development. Any options to resolve the tenure and management of this land appear very limited. Some form of formal conservation arrangement could potentially provide a solution, but only if landowners are supportive and

have realistic expectations about any potential financial return. Feedback from the 'E2' landowners is not particularly promising.

FINANCIAL IMPLICATIONS:

In 2006, Council borrowed \$200,000 to fund the rezoning investigations. This is being repaid by the landowners via a special rate over 10 years (ceases on 30 June 2016), except for the properties entirely within the proposed E2 zone – the rezoning special rates have not applied to these since 1 July 2010. Their component has been spread across the broader residential rate base. As at 31 December 2016, \$88,194 remained unspent. It is anticipated that this will be sufficient to complete the required water cycle assessment and preparation of a site-specific DCP chapter.

COMMUNITY ENGAGEMENT:

The PP has evolved over several years in consultation with landowners and the relevant Government agencies. Council reports documenting this process can be accessed from Council's website at:

<http://shoalhaven.nsw.gov.au/Planning-and-Building/Strategic-planning/Paper-subdivisions>

The changes proposed to the PP are in response to landowner feedback provided as part of a non-statutory consultation process in 2015. If the recommendations of this report are adopted, the PP would be formally publicly exhibited upon completion of an integrated Water Cycle Assessment.

CONCLUSIONS

Of the options presented in the PP, Option 1 had marginally more landowner support. This report recommends that a revised version (No. 2) of Option 1 be progressed which is premised on provision of reticulated sewerage. The changes to Option 1 respond to landowner feedback to minimise the need for land pooling and re-subdivision, while balancing the need to protect environmentally sensitive areas, manage bushfire risk and protect water quality. The next step will be to complete an integrated water cycle assessment, update and then publicly exhibit the PP.

Tim Fletcher

DIRECTOR PLANNING AND DEVELOPMENT SERVICES

R.D Pigg

GENERAL MANAGER

REPORT OF GROUP DIRECTOR

DEVELOPMENT COMMITTEE

TUESDAY, 5 APRIL 2015

PLANNING AND DEVELOPMENT

ITEM TO BE DEALT WITH UNDER DELEGATED AUTHORITY

6. **Stage 3 Housekeeping Amendment Planning Proposal – Shoalhaven Local Environmental Plan 2014 Consideration of submissions** File 50828E [Index](#)
-

SECTION MANAGER: Gordon Clark.

The General Manager has declared a pecuniary interest in this matter being a landowner in Woorin Close, Bomaderry. The General Manager has taken no part in consideration of this report and the Mayor has referred this matter to the Director for Planning and Development to deal with.

PURPOSE:

- Consider submissions received during the exhibition of the Stage 3 Housekeeping Amendment Planning Proposal (PP)– Shoalhaven Local Environmental Plan (SLEP) 2014 and;
- Progress the finalisation of the PP and resulting amendment to Shoalhaven LEP 2014.

RECOMMENDED, in accordance with the Committee’s delegated authority from Council, that the Committee:

- a) **Adopt the Planning Proposal with the amendments outlined in this report;**
- b) **Forward the Planning Proposal to the Parliamentary Counsel to draft the required amendment to Shoalhaven Local Environmental Plan 2014; and**
- c) **Make the resulting amendment to the Local Environmental Plan using the delegations issued under Section 23 of the NSW Environmental Planning & Assessment Act 1979 related to plan making**

OPTIONS

1. Consider the submissions made during the exhibition period and adopt the PP (with the changes outlined in this report) for finalisation and progress the resulting amendment to Shoalhaven LEP 2014. This is the preferred option as it will ensure that Council considers and responds to submissions made on the PP and that the relevant matters in Shoalhaven LEP 2014 are corrected to enable the LEP to operate as intended.
2. Adopt an alternative recommendation – depending on its nature, this could delay the finalisation of the PP and resulting amendment of Shoalhaven LEP 2014.

DETAILS

Shoalhaven LEP 2014 commenced on 22 April 2014, and was based on the State Government's Standard Instrument LEP, and was largely a 'best fit' transfer from Shoalhaven Local Environmental Plan (LEP) 1985. As with other newly adopted Standard Instrument LEPs in NSW, a number of matters need to be adjusted in the notified LEP through a series of housekeeping amendments to address/rectify unintended consequences which have been identified. This report relates to Stage 3 Housekeeping Amendment PP. The exhibited PP contained the following 29 adjustment/changes:

Instrument changes

1. Insert 'industrial retail outlets', 'multi dwelling housing', and 'storage premises' as permitted with consent in the RU5 Village zone;
2. Battle-axe blocks – set a minimum lot size of 650m² in certain residential zones and exclude the access handle from the calculation for lot size for battle axe lots;
3. Remove reference to the R3 Medium Density Residential zone in *Clause 4.1A Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing* and *Clause 4.1C Exceptions to minimum subdivision lot sizes for certain residential development*;
4. Include an additional clause similar to *Clause 11C Subdivision – boundary adjustments* in the former Shoalhaven LEP 1985 in Shoalhaven LEP 2014. This will allow for boundary adjustments of properties which are both less than the minimum lot size and/or the change in lot size is greater than a 10% increase/decrease on the original size of the property;
5. Insert a provision to restrict the subdivision of tourist and visitor accommodation to only strata or community title subdivision;
6. Amend *Clause 4.1B Dual Occupancy Development in Zone R3* to reflect the intention of the clause to only permit 'dual occupancies' on R3 Medium Density Residential zoned lots that are less than 800m². The current clause only allows them when the lot is larger than 800m² and this is not the intention;
7. Amend the wording of subclause (3)(f) of *Clause 4.2B Subdivision of certain land in Zone RU1, Zone RU2, Zone RU4, Zone R5 and Zone E4* which sets a density control for a specific area at Termeil to clarify the intent of the clause. The current wording has created some confusion around the operation of lot averaging;
8. Include zone RU4 Primary Production Small Lots and zone E4 Environmental Living in *Clause 4.2C Subdivision of land fronting a watercourse* given that these zones front watercourses;
9. Amend the wording in *Clause 4.2E exceptions to minimum subdivision lot sizes for certain rural and environmental protection zones* from 'existing development consent' to 'existing lawful use' as some forms of agriculture do not require consent which then excludes certain land from the operation of the clause;
10. Amend *Clause 6.3 Development control plan* to make it clear that subdivision is not considered of a minor nature for the purpose of subclause (4) (d). This is to prevent pre-emptive subdivisions in urban release areas;
11. Include a note under *Clause 7.13 short-term rental accommodation* to indicate that function centres are not permitted in residential zones;
12. Insert a provision in *Schedule 1 Additional permitted uses* to allow 'residential accommodation' and 'tourist and visitor accommodation' on land to which Clause 7.14 applies as part of a 'mixed use development'. This is to rectify drafting changes made to Clause 7.14 prior to finalisation.

-
13. Insert a clause to set out when bonus heights may be considered for Huskisson Town Centre (with associated mapping – See Map Change 4) to be consistent with the Development Control Plan (DCP); and
 14. Include ‘Community Events’ as exempt development in *Schedule 2 – Exempt Development*.

Map changes

1. Amend the Lot Size map for numbers 1-21 Woorin Close and numbers 91, 93, 95, 97, 99 and 101 Lyndhurst Drive, Bomaderry to prevent subdivision;
2. Rezone the part of 54 Osborne Street, Nowra zoned SP2 Infrastructure Facilities (Housing and Group Homes) and the adjacent road reserve to B4 Mixed Use, consistent with adjoining land;
3. Rezone a small area of 210 Penguins Head Road, Culburra Beach that is privately owned from RE1 Public Recreation to R3 Medium Density;
4. Map the bonus heights of 13 and 16 metres in Huskisson Town Centre as per the existing DCP on a Incentives Height of Buildings map (with associated clause – See Instrument Change 13);
5. Amend the Height of Buildings map for 15 Field Street, Huskisson to map a maximum height of buildings at 8m across the whole of the property;
6. Rezone part of Grange Road, St Georges Basin from RU2 Rural Landscape to SP2 Infrastructure;
7. Amend the Lot Size Map to include the properties at numbers 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, & 32 The Wool Road, numbers 4, 6, 8, 10, 10A and 12 St George Avenue, and numbers 36, 38, 42, 44, 46, 48, & 50 Excellent Street within Area 1 for the purposes of Clause 4.1A to allow subdivision of dual occupancies;
8. Amend the Land Reservation Acquisition Map to remove properties that have been acquired by State Government at Vincentia;
9. Rezone part of the Crown Land at Cypress Street and North Bendalong Road, Bendalong from R2 Low Density Residential to E2 Environmental Conservation;
10. Rezone part of a closed road adjacent to the Mollymook Golf Course from E2 Environmental Conservation to B4 Mixed Use consistent with the adjoining land;
11. Amend the Natural Resource Sensitivity - Land Map overlay to show all properties in Surfers Avenue, Tallwood Avenue and Bannister Head Road, Narrawallee to which the Coastal Risk Planning Map overlay currently applies;
12. Zone all of the bio-banking site at Leo Drive and Garrads Lane, Narrawallee as E2 Environmental Conservation consistent with the Council resolution of 3 September 2013.
13. Amend the zone boundaries in the vicinity of 418 Princes Highway, Ulladulla to align with the cadastre and zone the sewerage pumping station SP2 Infrastructure (Sewerage System);
14. Amend the Lot Size Map for 132 Forster Drive, Bawley Point to show 80ha as the minimum lot size to prevent further subdivision; and
15. Amend the Terrestrial Biodiversity Map to include the eleven properties which have a voluntary conservation or bio-banking agreement over them as ‘Biodiversity – habitat corridor’ and ‘Excluded land’.

Gateway determination

The PP was granted Gateway approval from the NSW Department of Planning & Environment (DP&E) on 7 December 2015, subject to several conditions relating to public consultation and the timeframe for completion of the PP (12 months). It was also subject

to a specific condition to clarify instrument changes 9, 12 and 13. The Gateway determination can be viewed on the internet if required at:

<http://leptracking.planning.nsw.gov.au/ShowDocument.aspx?DocumentId=22772>

Exhibition

The revised PP was exhibited for a period of 31 days from 20 January to 19 February, 2016. Local development industry representatives and effected landowners were directly advised of the exhibition arrangements.

Submissions

- # Twenty two (22) submissions were received during the exhibition period and these are summarised in **Attachment "A"**. Copies of the actual submissions will be available in the **Councillors' Room** prior to the meeting for review. The issues raised in the submissions are outlined in the table below.

| Proposed Instrument Or Map Change | Issue | Comment |
|--|---|---|
| Instrument Change 2 - Battle axe blocks | Two (2) submissions raised concern with the proposed change to include the minimum lot size for battle-axe blocks of 650m ² . The submitters believe that 650m ² is inappropriate as part of a housekeeping amendment without more extensive consultation. Would like the current approach to be maintained which is consistent with surrounding councils and other coastal councils. If such a clause is to be included in the LEP, battle-axe lot needs to be defined in the LEP. | <p>This minimum lot size standard already exists in the DCP, the inclusion of the standard in the LEP to ensure it is applied consistently. A 650m² lot size for battle-axe blocks is appropriate to maintain amenity for these blocks which do not benefit from the public open space (such as the nature strip) that houses fronting onto a road benefit from. The larger lot size also ensures that there is adequate space for off street parking and for vehicle turning areas so vehicles are not required to back down long driveways straight onto the street. If there are exceptions where amenity etc. can be achieved with a smaller block e.g. where the lot backs onto a reserve, then Clause 4.6 can be used to consider the variation on its merit.</p> <p>In regards to a definition of "battle-axe block", given that there is no definition in the LEP or the DCP, as per planning convention Council relies on the dictionary definition. Council can request that a definition be included in the LEP dictionary.</p> |

| Proposed Instrument Or Map Change | Issue | Comment |
|--|--|--|
| | | <p>For consistency, the definition from the State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008 should be used.</p> <p><i>It is recommended that the PP be revised to include the following definition in the LEP Dictionary:</i></p> <p><i>Battle-axe lot means a lot that has access to a road by an access laneway.</i></p> |
| <p>Instrument Change 4 - Boundary adjustment clause</p> | <p>Eight (8) of the submissions received were supportive of a boundary adjustment clause but most raised concerns with the lack of flexibility of a clause based on the former Clause 11C which would severely restrict the number of circumstances where a boundary adjustment could occur. Of particular concern is the requirements relating to watercourses given the prevalence of them throughout the rural areas of the City. Several submissions suggested a clause (or similar to it) used by a number of North Coast councils as an alternative.</p> | <p>The support for a boundary adjustment clause is noted. The clauses suggested in the submissions provide a level of flexibility that is possibly not appropriate for our area given the unique character of the South Coast. However, the Port Macquarie-Hastings LEP clause including some elements of the former clause 11C from Shoalhaven LEP 1985 included would be appropriate.</p> <p>Thus some changes are recommended to the exhibited PP to request a clause similar to that of Clause 4.2C in the Port Macquarie-Hastings LEP 2011 with the clarifications or additions following.</p> <ul style="list-style-type: none"> • any original lot must have been legally created; • the subdivision does not create or remove any dwelling entitlements; • the subdivision does not affect connectivity of riparian and vegetation corridors. <p><i>Thus it is recommended that the PP be revised to replace</i></p> |

| Proposed Instrument Or Map Change | Issue | Comment |
|---|--|--|
| | | <p><i>the wording under Proposed Amendment with the following:</i></p> <p><i>Inclusion of a boundary adjustment clause similar to that of Clause 4.2C of the Port Macquarie-Hastings LEP 2011 that:</i></p> <ul style="list-style-type: none"> • <i>Applies to land in zones:</i> <ul style="list-style-type: none"> ○ <i>RU1 Primary Production</i> ○ <i>RU2 Rural Landscape</i> ○ <i>E2 Environmental Conservation</i> ○ <i>E3 Environmental Management</i> • <i>each original lot has been lawfully created;</i> • <i>each original lot complies with Clause 4.2D;</i> • <i>the subdivision does not create additional lots;</i> • <i>the subdivision does not create or remove any dwelling entitlements; and</i> • <i>the subdivision does not affect connectivity of riparian and vegetation corridors.</i> |
| <p>Instrument Change 6 – Dual Occupancies in the R3 zone</p> | <p>The NSW Rural Fire Service (RFS) raised concern that dual occupancies on lots that are less than 800m² may have difficulty achieving bush fire requirements in bushfire prone areas.</p> | <p>This amendment corrects an error in the original LEP so that it is a like for like transfer of the relevant clause in Shoalhaven LEP 1985. The clause applies to land in the R3 Medium Density Residential zone which is generally located in centres which are likely to not be bushfire prone given their more developed urban nature. Any proposed development that is however bushfire prone will be assessed as such as part of the development application process.</p> <p><i>No change recommended.</i></p> |

| Proposed Instrument Or Map Change | Issue | Comment |
|--|---|--|
| <p>Instrument Change 7 – Lot averaging clause - Termeil</p> | <p>One (1) submitter would like the total allotment size reduced to 15ha, allowing subdivided lot sizes of 5 or 7ha rather than 10ha. Allows people to downsize their property and creates a more manageable rural lifestyle.</p> <p>It was also identified during the exhibition period that subdivided lots created under this subclause do not have a clear link to clause 4.2D Erection of dwelling houses on land in certain rural, residential and environment protection zones and this needs to be rectified.</p> | <p>This amendment is intended to clarify the density requirements for subdivision in this area rather than revisit the actual density standards. Detailed assessment of the potential implications of a change in density across the area would be required before a proposed change of this nature, which is outside the scope of this housekeeping amendment, could be considered.</p> <p><i>It is recommended that the PP be revised to insert additional wording as follows:</i></p> <p><i>Insert the following subclause under 4.2D (3) to reference lots created under clause 4.2B.</i></p> <p><i>(cb) is a lot created under clause 4.2B, or</i></p> |
| <p>Instrument Change 10 – Minor development in Urban Release Areas (URAs)</p> | <p>One (1) submitter expressed concern that the amendment will severely limit the possibility of minor subdivisions which do not fit into the criteria outlined in 6.3 (4) (a)-(c).</p> <p>Proposes that Council adopts their revised version of the clause:</p> <p><i>6.3 (4) “development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the development would be consistent with the objectives of the zone in which the land is situated and will not constrain the development of the URA”</i></p> | <p>While the concerns are appreciated, it would be very difficult to determine if a subdivision of land in a URA will constrain the ultimate future development of the URA or not without the DCP to inform the assessment. This is why it is the preference to make it clear that only the subdivisions outlined in clause 6.3(4) (a) – (c) are permissible prior to the preparation of the DCP to guide the future development of the URA.</p> <p><i>No change recommended.</i></p> |

| Proposed Instrument Or Map Change | Issue | Comment |
|--|---|--|
| Instrument Change 11 – Short-term rental accommodation | The RFS recognises that Council does not require consent for short-term holiday rental accommodation but wants Council to consider the RFS position that it constitutes a ‘special fire protection purpose’ and requires the issue of a Bush Fire Safety Authority. | The RFS position on this matter is noted. It is also noted that this clause maintains a longstanding position that this form of use does not generally require development consent. There is currently a State Government Inquiry into the matter of short-term rental accommodation which will consider this issue among others. It is prudent to await the outcome of this Inquiry before considering making any significant changes to how short-term rental accommodation is handled in Shoalhaven. No change recommended. |
| Instrument Change 12 - Permanent occupation in mixed use developments | The RFS raised a similar concern as above for Instrument Change 6 that dual and multiple occupancies and secondary dwellings may have difficulty achieving bush fire requirements in bushfire prone areas. | Concern noted. Any proposed development that is bushfire prone will be assessed as such as part of the development application process. No change recommended. |
| Instrument change 14 – Community events | The RFS is unclear whether community events include overnight accommodation such as camping. This may constitute a ‘special fire protection purpose’ and require the issue of a Bush Fire Safety Authority. RFS requests that Council vary this component of the PP to provide that where ‘community events’ are located on bushfire prone land, they are not considered as exempt development under schedule 2 of Shoalhaven LEP 2014, ensuring adequate provision is provided | This concern is valid. To ensure that there is appropriate consideration of bushfire risk where a community event involves camping on bushfire prone land, the proposed inclusion of ‘community events’ in Schedule 2 - Exempt Development should be clarified to exclude those types of events. It is recommended that the PP be revised to insert the following in Schedule 2 Exempt development: Community events Must not include provision of overnight accommodation on bushfire prone land. |

| Proposed Instrument Or Map Change | Issue | Comment |
|--|---|--|
| Map Change 1 – Woorin Close, Bomaderry | One (1) submitter fully supports amendments to zoning and caveats proposed. | Support noted. No change recommended. |
| Map Change 4 – bonus heights in Huskisson | Two (2) submitters object to the proposed change and four storey development in Huskisson as it will impact on the low rise character and heritage feel. Will cause overshadowing on adjoining properties, limiting future opportunities for solar power. | This amendment is intended to ensure that the adopted policy for heights in Huskisson contained in the DCP chapter can be realised. It is outside the scope of this housekeeping amendment to revisit Council’s general policy position in relation to building heights in Huskisson. It is noted that the bonus heights provision will only potentially apply to certain sites that contain an appropriate area. No change recommended. |
| Map Change 9 - Cypress Street and North Bendalong Road, Bendalong | <p>One (1) submitter objected to the change to rezone the 20m strip of R2 zoned land running across the western end of Belah Glen. Believes that it should be sold as R2 so that it can connect to the fire trail along the southern side of the Belah Glen subdivision and then west to Cypress Street. The fire trail should be zoned R2 and sold as an asset protection zone so the residence can clear the area of rubbish and weeds and consider with the RFS putting in a fire trail to Pine Street.</p> <p>One (1) submitter supported the zoning of the whole of Lot 468 as E2 to ensure that there is no future residential development on the lot and would further support the creation of a fire trail or APZ on the lot.</p> <p>The submission from NSW Department of Primary Industries – Lands (landowner) stated that they have no objection to this amendment.</p> | <p>A change in zone from R2 Low Density Residential to E2 Environmental Conservation does not preclude the use of the land for a fire trail but ensures that there is no potential for additional residential development and the uncertainty re the future of this strip is removed. The NSW Department of Primary Industries – Lands as the landowner has no objection to the land being rezoned.</p> <p>No change recommended.</p> |

| Proposed Instrument Or Map Change | Issue | Comment |
|---|--|--|
| Map Change 11 - Surfers Avenue, Tallwood Avenue and Bannister Head Road, Narrawallee | Two (2) submitters raised concerns with the additional mapping. One believes that the reduction of this complex issue to a single map overlay will result in an inability to identify variation in effect within the area which will have a negative impact. On this basis they object to the change and request that any future PP allows for variation in the level of risk for the different properties in this area. The other submitter has concern that a geotech report will be required for simple DA. | Cliff instability is a complex issue. The map overlay is intended as a trigger that there is an issue in that location. The associated Clause 7.7 (landslide risk and other land degradation) then requires Council to consider any potential adverse impact and that the development is designed, sited and will be managed to avoided, minimised and mitigated. Each development is considered in terms of the potential risk for that site and for that development. The current mapping is considered sufficient without mapping variations in the level of risk, which may be subject to change over time. No change recommended. |
| Map Change 13 – Princes Highway, Ulladulla | The submission from the NSW Department of Primary Industries – Lands (landowner) stated that they have no objection to the amendment. | The position on this matter is noted. No change recommended. |
| Map Change 15 – Private conservation agreements | Two (2) submitters support the amendment. One provided more detailed information about the conservation agreement over their property (Lot 1 DP 706564) at Flannery Lane Tapitallee showing that part of the property is excluded and requested that the mapping be amended accordingly. The other requested confirmation that it would not impact on current approval for the house that is being construction on the site (this has been confirmed with the landowner). | In regards to Lot 1 DP 706564, the majority of the property is currently mapped on the Terrestrial Biodiversity Map as ‘Biodiversity – habitat corridor’ so this should be retained as the intention of this amendment was not to reduce environmental protection for the land. The mapping should be adjusted to remove the ‘Excluded Land’ designation for that part of the site that is excluded from the conservation agreement. It is recommended that the PP be revised to adjust the exhibited map for Lot 1 DP 706564 to remove the ‘Excluded Land’ designation for that part of the site that is |

| Proposed Instrument Or Map Change | Issue | Comment |
|-----------------------------------|---|--|
| | | <p>excluded from the private conservation agreement.</p> <p>Also a note should be included to clarify that any area of 'significant vegetation' currently shown on Shoalhaven LEP 2014 Terrestrial Biodiversity Map will be retained even if not shown on the maps that form part of this particular PP.</p> |
| Overall PP | NSW Road & Maritime Services (RMS) advised that they have no objection to the PP. | <p>The referral response is noted.</p> <p>No change recommended.</p> |

Conclusion

As outlined in the table above, the exhibited PP should be amended and finally adopted with the following adjustments:

Instrument Change 2: Add the following wording: *“Request that the definition for a battle-axe lot from the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 be included in the LEP Dictionary.”*

Instrument Change 4: Replace the wording under Proposed Amendment with the following:

Inclusion of a boundary adjustment clause similar to that of Clause 4.2C of the Port Macquarie-Hastings LEP 2011 that:

- *Applies to land in zones:*
 - *RU1 Primary Production*
 - *RU2 Rural Landscape*
 - *E2 Environmental Conservation*
 - *E3 Environmental Management*

And also includes the following provisions:

- *each original lot has been lawfully created;*
- *each original lot complies with Clause 4.2D;*
- *the subdivision does not create additional lots;*
- *the subdivision does not create or remove any dwelling entitlements; and*
- *the subdivision does not affect connectivity of riparian and vegetation corridors.*

Instrument Change 7: Add the following wording: *“Insert a subclause under 4.2D (3) to reference lots created under clause 4.2B.*

(cb) is a lot created under clause 4.2B, or”

Instrument Change 14: Replace the existing wording under Proposed Amendment with *“Insert the following in Schedule 2 Exempt development:*

Community events

Must not include overnight accommodation on bushfire prone land.”

Map Change 15: Adjust the exhibited map for Lot 1 DP 706564 to remove the ‘Excluded Land’ designation for that part of the site that is excluded from the private conservation agreement.

Also a note will be included to clarify that any area of ‘significant vegetation’ currently shown on the Shoalhaven LEP 2014 Terrestrial Biodiversity Map will be retained even if not shown on the maps in the PP.

The amended version of the PP, which includes the amendments above, is included as **Attachment “B”**.

FINANCIAL IMPLICATIONS:

The PP is being resourced within the existing Strategic Planning budget.

COMMUNITY ENGAGEMENT:

The exhibition of this PP was conducted in accordance with Council’s Community Engagement Policy to ‘inform’ and ‘consult’, and also the relevant legislative requirements.

Tim Fletcher

DIRECTOR, PLANNING AND DEVELOPMENT SERVICES

CONFIDENTIAL BUSINESS PAPER AGENDA

PLANNING AND DEVELOPMENT

1. Legal Advice - Draft Planning Proposal (PP010) - Council Land Reclassification (Housekeeping)

Reason

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

It is not in the public interest to disclose this information as it may impact on the ability of Council to conduct appropriate legal proceedings.

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