

**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 Monday, 18 July, 2016  
Commencing at 4.00 pm.

13 July, 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 Monday, 18 July, 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. Notices of Motion**
- 8. Addendum Reports**

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, 7 JUNE 2016 IN THE COUNCIL CHAMBERS, CITY ADMINISTRATIVE CENTRE, BRIDGE ROAD, NOWRA COMMENCING AT 4.00 PM**

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The following members were present:

Clr White - Chairperson  
Clr Gash  
Clr Tribe  
Clr Robertson  
Clr Kearney  
Clr Baptist  
Clr Wells  
Clr Anstiss  
Clr Findley  
Clr Guile – arrived 4.02pm  
Clr Watson  
Clr Kitchener  
Russ Pigg – General Manager

1. Apologies/ Leave of Absence

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Clr McCrudden was an apology as he has requested a leave of absence for the month of June.

MOTION: Moved: Baptist / Second: Kearney

(MIN16.437) RESOLVED that the request from Clr McCrudden for a leave of absence for June 2016 be granted.

CARRIED

2. Confirmation of the Minutes of the Development Committee meeting held on Tuesday 3 May 2016

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MOTION: Moved: Baptist / Second: Wells

(MIN16.438) RESOLVED that the Minutes of the Development Committee meeting held on Tuesday 3 May 2016 be confirmed.

CARRIED

3. Declarations of Interest

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Conflict of Interest Declaration – Russ Pigg - pecuniary interest – Item 7 - Development Application 16/1444 - Proposed alterations and additions at Lot 1 DP748780, 62 Basin View Parade, Basin View – he is the land owner – will leave the room, will not take part in discussion or vote.

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Conflict of Interest Declaration - Clr Watson – less than significant non pecuniary interest – Item 7 – Development Application 16/1444 – Proposed alterations and additions at Lot 1 DP748780, 62 Basin View Parade, Basin View – in the position of Councillor and previously as Mayor, he has worked professionally with Mr Pigg - will remain in the room.

## REPORT OF GENERAL MANAGER

### PLANNING AND DEVELOPMENT

4. Development Application for proposed Men's Shed at Lot 2625 DP 235029 Clifton St, Sanctuary Point. Applicant: Sanctuary Point Men's Shed Incorporated. Owner: Shoalhaven City Council. File DA15/2646 (PDR)
- 

Note: Clr Guile arrived – 4.02pm

MOTION:

Moved: Tribe / Second: Robertson

RECOMMENDED that Council resolve to support the application for a proposed men's shed in accordance with the conditions detailed in Attachment "A".

CARRIED

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

AGAINST: Nil

5. Development Application - Proposed Strata Subdivision of Multi Dwelling Housing Development (3 units) at Lot 41 DP807870 (no.57) Argyle Street, Vincentia. Applicant: Rygate & West. Owner: Sandygate Pty Ltd. File SF10500 (PDR)
- 

MOTION:

Moved: Watson / Second: Wells

(MIN16.440) RESOLVED that 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: Tribe, Robertson, Kearney, Anstiss, Gash, Wells, Baptist, Findley, Guile, Watson, Kitchener, White and Russ Pigg

AGAINST: Nil

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6. Development Application - Proposed Community Title Subdivision of Multi Dwelling Housing Development (3 units) at Lot 8 DP2886 Sec 22 (no.15) Karowa Street, Bomaderry. Applicant: Allen Price & Scarratts. Owner: SE Milligan File SF10503 (PDR)

MOTION:

Moved: Guile / Second: Wells

(MIN16.441) RESOLVED that 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: Tribe, Robertson, Kearney, Anstiss, Gash, Wells, Baptist, Findley, Guile, Watson, Kitchener, White and Russ Pigg

AGAINST: Nil

7. Huskisson Town Centre - Service Lanes Review File 10132E (PDR)

MOTION:

Moved: Gash / Second: Baptist

(MIN16.442) RESOLVED in accordance with the Committee's delegated authority from Council, that this matter be deferred pending further investigation by staff on costing and funding options to facilitate the implementation of the service lanes.

CARRIED

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

AGAINST: Nil

8. Aboriginal Land Claim's No's 25422, 25858 and 26700 - Ulladulla File 2214E

MOTION:

Moved: Baptist / Second: Anstiss

(MIN16.443) RESOLVED that in accordance with the Committee's delegated authority from Council, that the Committee advise the NSW Department of Primary Industries – Lands that Council has no objection to Aboriginal Land Claims Nos. 25422, 25858 and 26700 at Ulladulla, subject to any agreements, easements or rights of way required by Council being excluded from the claims or being resolved as part of the resolution of the Claims.

CARRIED

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9. Shoalhaven DCP 2014 Chapter G4 Removal AND Amenity of Trees –  
Review File 51354E (PDR)

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MOTION:

Moved: Wells / Second: Anstiss

(MIN16.444) RESOLVED in accordance with the Committee's delegated authority from Council, that the Committee

- a) Adopt the draft revised Shoalhaven DCP 2014 Chapter G4 Removal and Amenity of Trees for public exhibition and exhibit for a minimum period of 28 days; and
- b) Commence the preparation of a Planning Proposal to amend Shoalhaven LEP 2014 Clauses Map to ensure the Clause 5.9 mapping is consistent with the DCP Chapter G4 maps and submit to State Government for initial Gateway determination.

CARRIED

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

AGAINST: Nil

### **REPORT OF DIRECTOR PLANNING AND DEVELOPMENT SERVICES**

10. Development Application 16/1444 - Proposed alterations and additions at Lot 1 DP748780, 62 Basin View Parade, Basin View. Applicant: Freelance Home Improvements (North Nowra). Owner: R and N Pigg File DA16/1444 (PDR)
- 

Conflict of Interest Declaration – Russ Pigg - pecuniary interest – Item 7 - Development Application 16/1444 - Proposed alterations and additions at Lot 1 DP748780, 62 Basin View Parade, Basin View – he is the land owner – left the room, did not take part in discussion or vote.

Conflict of Interest Declaration - Clr Watson – less than significant non pecuniary interest – Item 7 - Development Application 16/1444 - Proposed alterations and additions at Lot 1 DP748780, 62 Basin View Parade, Basin View – in the position of Councillor and previously as Mayor, he has worked professionally with Mr Pigg – remained in the room.

MOTION:

Moved: Robertson / Second: Kearney

(MIN16.445) RESOLVED that in accordance with the Committee's delegated authority from Council, that the Committee:

- a) Confirm support for the variation of the building line to Basin View Parade to 3.5m for the proposed garage, the side setback to 200mm for the proposed carport, and the variation of the side setback under section 5.2.3 of Chapter G6 of Shoalhaven DCP 2014; and
- b) The application be determined under delegated authority.



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CARRIED

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

AGAINST: Nil

**NOTICES OF MOTION**

11. Proposed Strategic Planning & Urban Design Overlay - Nowra-Bomaderry File 53422E

Note: Russ Pigg returned to the meeting.

MOTION: Moved: Baptist / Second: White

(MIN16.446) RESOLVED that the General Manager develop a report for Council's consideration on the creation of a resource document that is 'visual' in nature and shows the Future Vision of Nowra-Bomaderry Urban Area in the form of a Strategic Overlay that presents desired urban design, land use planning, heritage conservation and other outcomes for the various precincts that make up this key area.

CARRIED

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

AGAINST: Guile

**GENERAL BUSINESS**

12. Procedural Motion - Introduction of Item as a Matter of Urgency

MOTION: Moved: Watson / Second: Gash

RESOLVED that the matter of the Mollymook Golf Club Road Closure be introduced as a matter of urgency.

CARRIED

The Chairperson ruled the matter as one of urgency as it commenced two years ago and is not progressing and allowed its introduction.

MOTION:

Moved: Watson / Second: Gash

(MIN16.447) RESOLVED that the following wording be considered for the Mollymook Golf Club Road Consolidation and a report be provided back to Council to facilitate the resolution of this matter.

*“Amend the Deed of Covenant in the contract for sale by:*

1. *Amending the definition of development in section 1.1 to the following:*

***Development*** *‘means the subdivision of the subject land (except by the dedication of land as public road or public reserve) so as to extract the land or any part of the land, or any construction, development or use of the land for a use other than a permitted use’.*

2. *Amending the definition of permitted use in section 1.1 to the following:*

***Permitted use*** *means the use of the subject land for one or more of the following purposes:*

a) *an asset protection zone; and*

b) *a fire management plan to avoid the escape of fire onto neighbouring land; and*

c) *dedication of the land or part of the land as public road or public reserve; and*

d) *rehabilitation of the land.*

3. *Amending section 2.1 by the addition of the following words ‘except for a permitted use and*

4. *Also amend the Deed of Option and pre-emption by amending clause 2.1 by the addition of the following words ‘except for a Permitted Use’”*

CARRIED

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14. Procedural Motion - Introduction of Item as a Matter of Urgency

MOTION:

Moved: Wells / Second: Anstiss

RESOLVED that the matter of Disaster Relief following the storm event from 3-6 June 2016 be introduced as a matter of urgency.

CARRIED

The Chairperson ruled the matter as one of urgency as it related to urgent Council business and allowed its introduction.

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15. Additional Item - Relief Funds Update and Congratulations to Staff File 53449E, 1829E

Note: Director Assets and Works provided an update on the storm event advising that relief funding had been made available. The Local Emergency Management Committee will be meeting this week. Mr Stewart noted the exceptional efforts by staff (Shoalhaven Water and Assets & Works) during and following the event.

MOTION: Moved: Gash / Second: White

(MIN16.448) RESOLVED that staff be thanked for their efforts in response to the storm event on 6-9 June 2016.

CARRIED

16. Procedural Motion - Introduction of Item as a Matter of Urgency

MOTION: Moved: Findley / Second: White

RESOLVED that the matter of the Milton Ulladulla Men's Shed Proposal for the Playing Field be introduced as a matter of urgency.

The Chairperson ruled the matter as one of urgency due to the public's interest and allowed its introduction.

17. Additional Item - Milton Ulladulla Men's Shed Proposal located on Playing Field – Frogs Holla File DA16/1371 (PDR)

MOTION: Moved: Findley / Second: White

(MIN16.449) RESOLVED that the Milton Ulladulla Men's Shed Proposal located on Playing Field be called in to the Development Committee for determination, for the reason that, it is a development subject of much public interest.

CARRIED

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

AGAINST: Nil

18. Procedural Motion - Introduction of Item as a Matter of Urgency

MOTION: Moved: Findley / Second: White

RESOLVED that the matter of a potential request for acquisition and boundary adjustment to a Right of Way located within Valley View CI, Milton be introduced as a matter of urgency.

The Chairperson ruled the matter as one of urgency due to the matter coming to the attention of Councillors arising from the impact on the property as a result of the storm event of 6-9 June 2016 and allowed its introduction.

19. Additional Item - Potential Request for Acquisition and Boundary Adjustment to a Right Of Way Located Within Valley View Cl, Milton File

MOTION:

Moved: Findley / Second: White

(MIN16.450) RESOLVED that a report be submitted back to the Development Committee related to consideration on how a request for an acquisition and boundary adjustment may be achieved, regarding the Right of Way at Valley View Close, Milton, as the neighbour would like to acquire land from Council to allow its better management. The neighbour be requested to put his request in writing.

CARRIED

**CONFIDENTIAL REPORT OF THE GENERAL MANAGER**

**PLANNING & DEVELOPMENT SERVICES**

Item	Reason
Regional Development Application for an eco-tourist facility, function centre and associated infrastructure - Lot 13 DP 707955 (No.801) Kangaroo Valley Road, Bellawongarah – Class 1 Appeal lodged with the Land and Environment Court of NSW. Applicant/Owner: Camberlee Investments Pty Limited	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 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: Baptist / Second: Kearney

That the Development Committee exclude the press and public from the Meeting pursuant to section 10A(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 10A(2)(g).

The public interest in preserving the confidentiality of information outweighs the public interest in maintaining openness and transparency in Council decision making, as it may impact on the ability of Council to conduct appropriate legal proceedings.

- Regional Development Application for an eco-tourist facility, function centre and associated infrastructure - Lot 13 DP 707955 (No.801) Kangaroo Valley Road, Bellawongarah – Class 1 Appeal lodged with the Land and Environment Court of NSW. Applicant/Owner: Camberlee Investments Pty Limited

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CARRIED

The meeting moved into confidential the time being 4.37 pm.

The meeting moved into open session, the time being 5.19 pm.

20. Regional Development Application for an eco-tourist facility, function centre and associated infrastructure - Lot 13 DP 707955 (No.801) Kangaroo Valley Road, Bellawongarah – Class 1 Appeal lodged with the Land and Environment Court of NSW. Applicant/Owner: Camberlee Investments Pty Limited File RA14/1004 (PDR)

The following resolution of the Development Committee was made public.

(MIN16.451) RESOLVED that in accordance with the Committee’s delegated authority from Council, that the Committee:

- a) Confirm support for Staff to instruct and partake in the Class 1 Appeal lodged with the Land and Environment Court of NSW with respect to Case number 10356 of 2016, Camberlee Investments Pty Limited v Shoalhaven City Council inclusive of participation in the section 34 conference and ensuing a full hearing should a hearing eventuate; and that
- b) The authority includes ability to make decisions based on legal advice and consultation with relevant experts.
- c) The staff in representing Council to the Court, reinforce the position of the Council by restating the reasons for the Council’s lack of support for the application.

There being no further business, the meeting concluded, the time being 5.20 pm.

Clr White  
CHAIRPERSON

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## **REPORT OF GENERAL MANAGER**

### **DEVELOPMENT COMMITTEE**

**MONDAY, 18 JULY 2016**

#### **PLANNING AND DEVELOPMENT**

- 1. Section 96 Application DS13/1445 - Sand and soil quarry and processing of soil materials and compost. Applicant: TCW Consulting Pty Ltd on behalf of Soilco Pty Ltd. Owner: AF and MA Emery File DA13/1445**
- 

**SECTION MANAGER: Cathy Bern.**

#### **PURPOSE**

This section 96 application, DS13/1445 modifying development consent BA95/3205 is reported to Council noting that two (2) previous modifications were reported. It is considered appropriate and consistent with good governance that this application is reported.

- # RECOMMENDED that the Development Committee, in accordance with authority delegated by Council, resolve to approve DS13/1445 for the modification of DA95/3205 in accordance with the attached draft Notice of Determination at Attachment A.**

#### **OPTIONS**

1. Resolve to approve the proposed modification. This would enable the modified development to proceed in accordance with the applicant's submitted plans, reports and other documents, as amended by any conditions of consent.
2. Resolve not to approve the proposed modification. This could result in the applicant needing to reconsider the proposal, or not proceeding with the modification and continuing the development under the current consent, or appealing Council's refusal to the Land and Environment Court.

#### **DETAILS**

##### **Proposal**

This application seeks to modify the existing consent by:

- amending the description of development to include "composting of materials";
  - deleting lot 1 DP 865095 from the property description;
  - amending condition 3 (b) reduce the maximum volume of material to be extracted from the site to 15,000 tonnes per annum (from 20,000 tonnes per annum);
  - amending condition 3 (c) to increase the maximum volume of material to be imported to the site to 35,000 tonnes per annum (from 16,500 tonnes per annum).
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The application seeks to align the existing consent with the current and proposed business activities. The applicant asserts that composting of materials has always been part of the activities conducted on site since the original approval under DA 95/3205. This is fully discussed in the Section 79C Assessment Report (**Attachment C**).

The changes in volumes of extracted and imported material also relate to current and proposed changes to the nature of the business, where composting of organic material is assuming a larger part of the operations.

### **Site details**

# The land subject to the development consent is lots 1 and 2 DP865094, however the development is located on lot 2 which is also known as 135 Wogamia Rd. The comments below therefore relate to lot 2, which is shown outlined in map attachment in colour and area delineated in orange - **Attachment B**.

The subject site is:

- zoned RU1 Primary Production under Shoalhaven Local Environmental Plan 2014 (SLEP2014);
- has a total area of 67.18 ha, of which approximately 15 ha is occupied by the quarrying and processing activities;
- 50 – 80 metres from the bank of the Shoalhaven River and is separated from that by a narrow strip of Crown Land;
- flood prone to some extent;
- surrounded by land used for dairy farming, rural residential and nature reserve purposes;
- subject to Environmental Protection Act (EPA) Licence No. 11542 and is monitored by the NSW EPA which is the Appropriate Regulatory Authority under the Protection of the Environment Operations (POEO) Act 1997.

### **Background**

This site has a long history with the following milestones of relevance:

- a. Soil extraction from the site is understood to have commenced in 1974;
- b. DA 95/3205 for the existing quarry and related activities was lodged under SEPP 37 (Continuing Extractive Industries) in 1995 and approved on 26 July 1996;
- c. The consent was modified on 30 June 1997 (to increase operating hours);
- d. The consent was modified again on 26 September 2003 by DS01/1222 (to amend conditions 18 and 19 relating to roadworks);
- e. DA15/1259 for construction of a bund wall for flood protection purposes was approved by Council on 25 August 2015.

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## FINANCIAL IMPLICATIONS

Should the application be determined by way of refusal, the applicant would be entitled to appeal to the Land and Environment Court. Council would incur costs in defending its decision in this event.

There are no other financial implications.

## COMMUNITY ENGAGEMENT

In accordance with Council's "Community Consultation Policy", the proposal was notified on two occasions. Ten (10) adjoining and adjacent land owners were notified on the first occasion, from 4 to 19 December 2014. Six (6) submissions were received in response to this notification.

One (1) submission was from the owners of the neighbouring dairy farm expressing support of the application, and one (1) was from the directors of the applicant company, advising that they had received many unsolicited letters and emails of support. Two (2) of the submissions advised they were not objections but raised concern with the potential for increased heavy vehicle movements.

The remaining two (2) submissions were by way of objection and raised a number of issues of concern. Council also received representations from the Environmental Defender's Office (EDO) on behalf of one of the nearby owners, although this submission was received outside of the notification period.

The second notification period was from 21 September to 6 October 2015, following the receipt of additional information on traffic, noise, flooding and odour. No submissions were received by Council during the second notification period.

- # The issues raised during the first notification period are detailed in the attached S79C Assessment Report, along with the assessing officer's comments (**Attachment C**).

## CONSIDERATIONS

- # The application has been assessed under section 79C of the Environmental Planning and Assessment Act 1979 (refer to Planning Assessment Report at **Attachment C**).

The main issues associated with the application are summarised below.

### Legal

As the application seeks to modify an existing development consent, Council must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all). Council staff have given extensive consideration to this question and have taken into account in this consideration legal advice provided by Council's and the applicant's lawyers. The important issues to be addressed are:



- 
- whether composting was a part of the original development;
  - increase in the scale of the operation;
  - changes in the nature of imported materials;
  - increase in the overall environmental impact;
  - whether the application should be treated as designated development.

These issues are discussed in detail in the attached S79C Assessment Report (**Attachment C**). It concludes that Council can be satisfied that the development is substantially the same as the original approved development and should therefore proceed to assess and determine the application as a modification pursuant to section 96.

### **Leachate management and the prevention of water pollution**

This issue was raised by both objectors and the NSW EPA. The applicants have responded by submitting a detailed Leachate and Surface Water Management Plan (LSWMP) that incorporates the construction of a large leachate storage pond, separate from the existing stormwater storage in the quarry void. Existing water samples currently show no indication of contamination of the groundwater below the existing pond and the implementation of the extensive recommendations of the LSWMP should ensure that the risk of pollution of groundwater is extremely low.

### **Traffic volumes and impact**

In terms of traffic volumes, the Traffic Impact Study submitted with the application found that the proposal will result in a minor increase in traffic volumes over existing (ie an additional 1.8 vehicles per day over existing volumes) and that the road construction standard was capable of accommodating the volumes of heavy vehicles in terms of Equivalent Standard Axles (ESAs). The Traffic Impact Study also identified that the width of the narrower section of Wogamia Road was not suitable for two heavy vehicles to pass and recommended continuation of Soilco's current practice of limiting heavy vehicle movements to one heavy vehicle at a time in any direction. Condition 19 is recommended to be amended to limit heavy vehicle movements to the volumes proposed in the application and to enforce the current practice detailed above.

### **Wogamia Road/ Longreach Road intersection**

The Traffic Management Study, Council's Transport and Traffic Section and people making submissions all identified the need for minor repair to the pavement edge and upgrade of drainage at this intersection. A suitable condition of consent is included in the draft Notice of Determination (**Attachment A**) requiring this work to be done at the developer's cost.

### **Odour Management**

In the past there have been occasions where complaints have been made by nearby residents about offensive odours arising from the site and also from organic material being trucked to the site. The NSW EPA, which licences the development under the Protection of the Environment Operations Act 1997 (POEO), required the licensee to undertake an Odour Audit to identify potential sources of odour and means by which the risk of offensive odours might be minimised. This has been completed and provides clear guidance on how odour can be minimised. The recommendations are already being implemented and it is

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noted that there have been no recent odour complaints. The EPA licence prohibits the emission of offensive odour. A suitable condition of consent is recommended to back up the EPA licence condition and to make it clear that off-site transport also cannot result in offensive odour.

## **CONCLUSION**

In summary, the application to modify the existing consent is supported, based on the extensive additional studies and reports addressing areas of potential concern. The changes to the development have been brought about by responding to changing the regulatory framework and community expectations about the recycling and reuse of organic materials and conversion into growing media and soil improvers.

The changes are positive in terms of sustaining economic benefit and local employment and the beneficial reuse of materials that would otherwise end up in landfill. Adverse environmental impacts will be minimised by measures proposed as part of the application, by recommended conditions of consent, and by the ongoing licensing and supervision by NSW EPA. Consequently the application is recommended for approval.

## **2. Planning Proposal (Rezoning) - Lot 1, 29 & 30 DP 25114 Albatross Road & Kinghorne, Street Nowra (Lee Carmichael Town Planning) File 53177e (PDR)**

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**SECTION MANAGER: Gordon Clark.**

### **PURPOSE:**

To obtain direction on a Planning Proposal (PP) that has been received for Lot 1, 29 and 30 DP25114 Albatross Rd and Kinghorne St, Nowra.

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

- a) Give in principle support for the proposed rezoning and increase in building height for Lot 1, 29 and 30 DP25114 Albatross Road & Kinghorne Street, Nowra; and submit a Planning Proposal to the NSW Department of Planning and Environment for Gateway determination.**
- b) Request that a character assessment of the site and surrounds be required as a condition of the Gateway determination, with the possibility of stepping the building heights down towards the adjoining properties to be considered as part of the assessment.**
- c) Advise the proponent, adjacent land owners and relevant community groups of this decision, noting the opportunity for formal consultation later in the process.**
- d) If necessary, receive a further report following receipt of the Gateway determination.**

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## OPTIONS

1. Support the PP as per the recommendation - this will enable staff to prepare and submit the PP to the Department of Planning & Environment (DP&E) for the initial Gateway determination.
2. Support the proposed rezoning, but maintain an 11 metre maximum height of building control. While this option would reduce the impact of the proposed development on adjoining properties, it may impact on the development feasibility.
3. Not support the PP. This option is not preferred, as the proposed rezoning will potentially allow for a better development outcome that is more in keeping with the surrounding development.

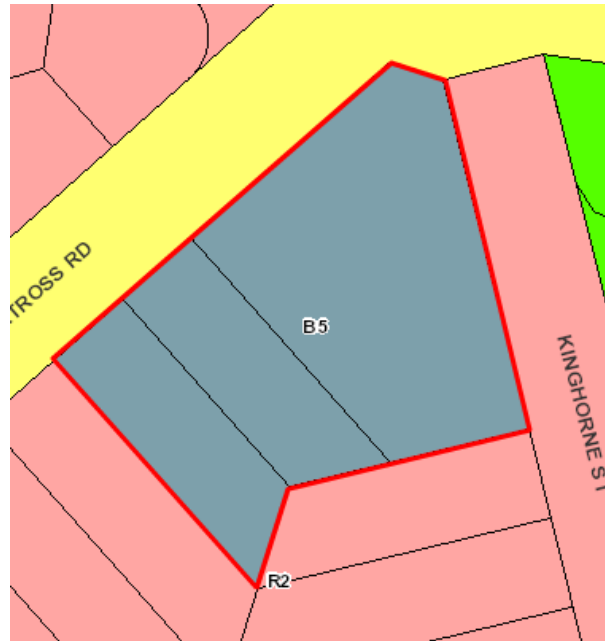
## DETAILS

### Background

Council has received a PP from Lee Carmichael Town Planning on behalf of the landowner (Mr B Zervos) to rezone Lots 1, 29 and 30 Albatross Road and Kinghorne Street, Nowra (as outlined in red in Figure 1) from B5 Business Development to B4 Mixed Use to enable a mixed use development including a residential flat building and commercial units on the ground level. The PP proposes to increase the maximum building height from 11 metres (current generic maximum) to 15 metres (proposed specific mapped height for this site) to facilitate the proposed development.



**Figure 1 - Aerial Map**



**Figure 2 – Current Zoning**

Prior to receiving the PP, a pre-lodgement meeting was held between the proponent and Council staff. Staff advised that the proposed rezoning and increase in maximum height could be considered subject to the lodgement of a formal PP and that consideration of the increase in the height of building control would need to be justified in the context of the site and surrounding area.

### **Planning Proposal**

The PP seeks to rezone the subject land from B5 Business Development to B4 Mixed Use under the Shoalhaven Local Environmental Plan (LEP) 2014 to enable a mixed use development including a residential flat building with a number of ground floor commercial units and basement car parking. While the current B5 zoning of the site permits mixed use developments as 'shop top housing', it would require the entire ground floor to be commercial uses, which is now not considered appropriate in this location. Development of the site in this way would result in an excessive quantity of commercial floor space that would potentially compete with Nowra CBD, and the proponent has argued that it would impact on the viability of the development itself. It is considered a more appropriate outcome for a mixed use development with only a limited amount of commercial floor space that complements the residential development in the area.

It is acknowledged that the existing B5 zone essentially reflects the previous zoning of the site under Shoalhaven LEP 1985 as Business 3 (b) (transitional) and its use as a car yard and showroom.

The PP also proposes to increase the maximum building height limit of 11 metres to 15 metres to enable the development to achieve a more desirable outcome for the proponent. A copy of the proponents PP document is provided in the Councillor's Information Folder for today's meeting.

The proponent has also supplied a Phase 2 Site Investigation (Contamination) Report, shadow diagrams and a photomontages of the street view elevation of the proposed

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building. The Contamination Report concludes that the site is acceptable for redevelopment in respect of potential site contamination issues. This issue will need to be considered further as part of the development application. The shadow diagrams and photomontages have been supplied to justify the increase in maximum height, which the proponent states, demonstrates that the impacts of the proposed development are acceptable.

Note: Council has also received a Development Application (DA16/1465) for the proposal. As such should the PP be supported then the two matters will need to be managed concurrently and the development application cannot be determined until the PP is resolved.

### **Relevant Strategies**

The following existing planning strategies are relevant to this location and the consistency of the PP with them is discussed below.

#### *Nowra Bomaderry Structure Plan (NBSP)*

This plan applies to the Nowra-Bomaderry area and establishes a set of principles to manage growth in the area. It identifies Nowra as the primary commercial and administrative centre and supports an increase in people living in higher densities in existing areas, in a range of dwelling types, which are in close proximity to the Nowra CBD.

In addition, the limiting of commercial floor space in the proposal will assist in maintaining and enhancing the commercial primacy and vibrancy of the Nowra CBD. The PP is thus considered to be broadly consistent with the NBSP.

#### *Illawarra-Shoalhaven Regional Plan (ISRP)*

This plan aims to encourage a variety of housing choices to meet the changing housing demands over the next 20 years. Direction 2.2 of the Plan seeks to 'support housing opportunities close to existing services, jobs and infrastructure in the region's centres' and the PP is consistent with this direction. The Plan also identifies the need to protect the Nowra CBD as the major regional centre and limiting commercial floor space in the proposal will assist in maintaining and enhancing the commercial primacy of the Nowra CBD. The PP is considered to be broadly consistent with the ISRP.

#### *Community Strategic Plan, Shoalhaven 2023 (CSP)*

This Plan identifies objectives and strategies for prosperity in Shoalhaven and creating opportunities for growth to existing services. The proponent's PP notes that the rezoning of the land will satisfy the following objectives and strategy:

*Objective 2.2 Population and urban settlement growth that is ecologically sustainable and carefully planned and managed*

*Objective 2.5 Major town centres that are attractive, vibrant and popular destinations*

*Strategy 2.4.2 Develop land use and related plans for the sustainable growth of the City which use the core principles of the Growth Management Strategy and ESD principles,*

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*also carefully considering community concerns and the character of unique historic townships. The PP is not inconsistent with the CSP.*

### **Key Issues**

The initial review of the PP has identified the following key issues related to amenity, traffic and economic impacts. These issues will need to be further addressed or outlined in detail in the Gateway submission should Council support the advancement of the PP.

#### *Amenity Impact*

The site is surrounded by low density residential development, which is interspersed with a variety of commercial developments such as a tyre service centre and a motel. These uses essentially relate to the previous historic alignment of the Highway that is now Kinghorne Street. It is acknowledged that the change in one business zone to another to enable a residential flat development with ground floor commercial space would be more complementary to the surrounding residential area than the current motor vehicle servicing business on the site. However, the increase in height is likely to impact on the streetscape and character of the surrounding residential area, and will potentially have a significant impact on adjoining low density residential properties that have a maximum building height of 8.5 metres.

The proponent has attempted to justify the increase in height with the provision of shadow diagrams and photomontages which demonstrate that the impacts would be acceptable, and states that the bulk and scale of the development will have minimal impacts as most of the building sits below the 15 metre height limit with only lift overruns and the like proposed to be 15 metres. In addition, they have stated that the increase building height will allow for a viable, well-designed 4 storey development that can proceed in a logical way and addresses the public domain without the need to excessively cut into the higher areas of the site.

The proponents PP provides photomontages but does not provide any discussion on the impact of the increase in height on the streetscape and character of the adjoining area. It is recommended that Council request that a character assessment of the site and surrounds be required as part of the Gateway determination (i.e. undertaken post the Gateway). This assessment should consider the impact of the increased building height in the context of the character of the site and the adjoining low density residential zone, with a view to looking at stepping the proposed building height down to improve the transition between the two zones.

#### *Traffic Impact*

Council staff have identified that the PP needs to consider parking impacts and the location of car park access. The proponent has submitted a traffic impact study for assessment with the development application that has also been lodged. As the site is already a business zone and therefore already has significant development potential, the rezoning to another business zone would have similar potential for traffic generation from the suite of uses available in other business zones; and therefore it would be more appropriate to consider these impacts as part of the detailed development application.

#### *Economic Impact*

The subject land is approximately 1 km south of Nowra CBD. The proposal to rezone the property from B5 Business Development to B4 Mixed Use will enable a proposed residential flat building with commercial ground floor space. The limited ground floor

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commercial space proposed should not negatively impact on the commercial viability of the Nowra CBD.

#### *Potential Site Contamination*

The site is identified as a potentially contaminated site due to its current use as a motor vehicle servicing centre which has a fuel bowser and underground fuel tank. The proponent has provided a Phase 2 Contamination Assessment for the proposed development of a residential complex with single level basement which concludes that the site is acceptable for redevelopment in respect of potential site contamination issues. This issue will need to be appropriately considered as part of the development application.

#### **CONCLUSION:**

The proponents PP seeks to rezone the subject land from B5 Business Development to B4 Mixed Use under Shoalhaven LEP 2014. The PP also seeks to increase the maximum height from the generic 11 metres to a specific mapped height of 15 metres.

The proposal is generally consistent with the relevant strategies and will enable the development of a residential flat building with ground floor commercial space. The change from one business zone to another is supported. Support for the increase in maximum building height from 11 metres to 15 metres needs to be considered in the context of the site and its surroundings and therefore it would be appropriate to provide a character assessment to support this change or tailor the mapped building height as the PP advances.

#### **FINANCIAL IMPLICATIONS:**

The proponent has paid the initial PP lodgement fee in accordance with Council's Fees and charges. The proponent is also required to fund or undertake any studies associated with the PP following the Gateway determination. Staff resources are also required to progress the proposal.

Fees for the remaining stages of the PP will be charged in accordance with Council's fees and charges.

#### **COMMUNITY ENGAGEMENT:**

The PP was posted on Council's pre-Gateway Planning Proposal website for information purposes and the surrounding neighbours were notified of this. No submissions were received at the time of writing this report.

If the PP receives Gateway determination, the determination will outline the statutory exhibition requirements in accordance with the relevant legislation. This will involve notifying all adjoining landowners, relevant community groups and other interested parties.

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3. **Planning Proposal (Rezoning) - 1310 Naval College Road, Worroving Heights (iArchitecture) File 53077e (PDR)**

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**SECTION MANAGER: Gordon Clark.**

**PURPOSE:**

Obtain direction on a Planning Proposal (PP) that has been received for 1310 Naval College Road, Worroving Heights.

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

- a) **Defer a decision on the Planning Proposal to rezone 1310 Naval College Road, Worroving Heights to SP3 Tourist; until a more detailed strategic planning exercise that considers the future zoning of the broader precinct as per the previous Council resolution has been investigated.**
- b) **Report the issue back to Council following the strategic review of the broader precinct.**
- c) **Advise the proponent, the NSW Rural Fire Service and Department of Planning and Environment of this resolution.**

**OPTIONS**

1. Adopt the recommendation of this report – this will ensure that an appropriate amount of consideration is given to the rezoning of the precinct. This option is consistent with Council's previous resolution that a plan be prepared for the precinct rather than an individual site rezoning.
2. Adopt an alternative resolution to support the PP as submitted in principle, with amendments to be made to the supplementary reports as detailed in this report. This option is not preferred, as the PP is not sufficiently justified without consideration of the broader precinct, and is inconsistent with Council's previous resolution.
3. Adopt an alternative resolution to not support the PP as submitted.

**DETAILS**

**Background**

Council has received a PP from iArchitecture on behalf of their client (Mr. G. Anastasopoulos, RMI Group Pty Ltd) to rezone 1310 Naval College Road, Worroving Heights (outlined in red in Figure 1) from RU2 Rural Landscape to SP3 Tourist under Shoalhaven Local Environmental Plan (LEP) 2014. The PP also proposes to increase the Height of Buildings development standard to 18 metres. The purpose of the PP is to permit the development of a six-storey hotel resort and six-storey serviced apartment building. The proposal also includes associated restaurant / bar, café, meeting / function rooms, spa and gaming facilities. It is intended that a DA be lodged soon after there is a Council resolution.



A copy of the proponents PP document will be available in the Councillor's room and on the Councillor's share point site prior to the meeting.



Figure 1 – Subject Site

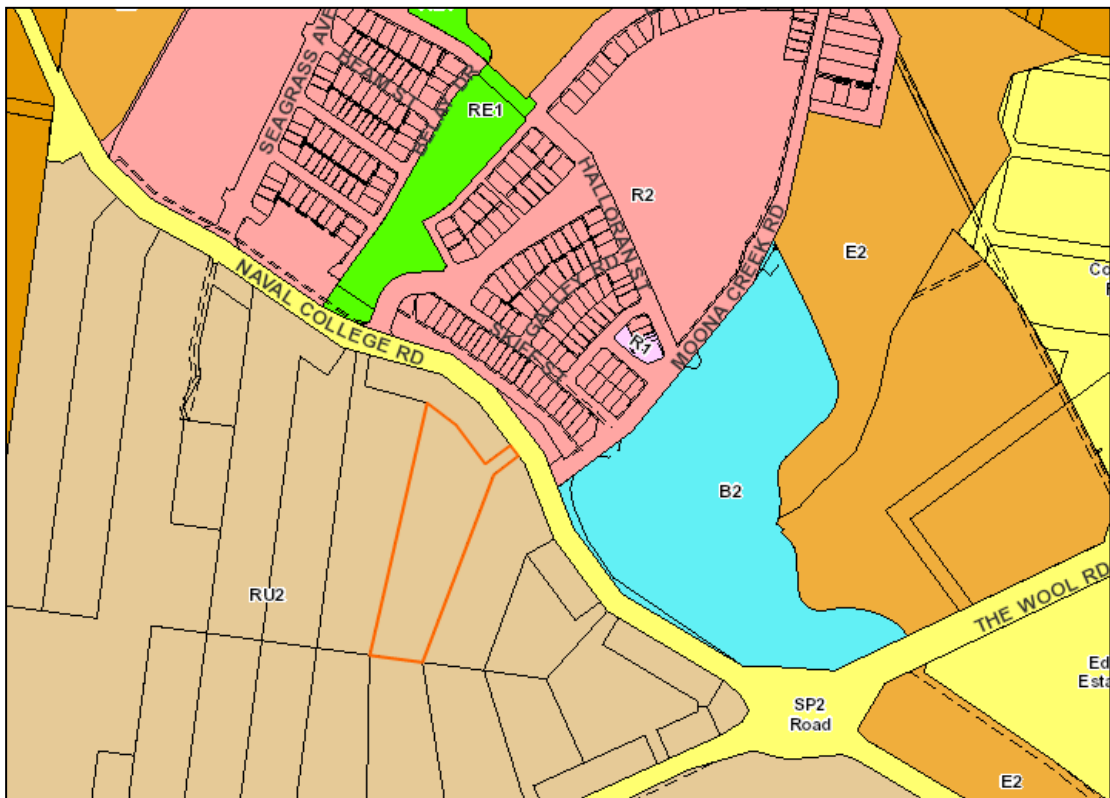


Figure 2 – Zoning Map

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Prior to receiving the PP, a pre-lodgement meeting was held with the proponent and it was advised that rezoning the subject land to allow for a future hotel and serviced apartment development has potential issues with respect to appropriateness of location, traffic and access, visual impact and economic impact. It was recommended that any PP would need to provide justification on why this was the most appropriate site for this particular use, as well as consider rezoning of the broader precinct.

The PP was subsequently formally received on 12 April 2016.

### **Existing Development Approval**

In May 2015, Council approved a development application (DA14/1391) over the site for the demolition of the existing dwelling, the construction and operation of a motel comprising of 80 rooms and associated facilities.

The motel development was approved under the transitional arrangements of Shoalhaven LEP 2014 as the use was permissible under the Shoalhaven LEP1985 that was in force when the application was lodged. Motels are now prohibited in the current RU2 zone. In determining the development application, Council also resolved (MIN15.290) in part that:

- b) Should the proposed development proceed, that Council investigate and consider the rezoning of the precinct.*

The intention of this part of the resolution was to minimise the impact of the approved development on the adjoining land owners, provide adjoining land owners similar redevelopment opportunities and address the changing nature of the precinct.

As the approved development has not yet proceeded, Council has not commenced an investigation of a potential precinct rezoning.

The purpose of the PP that has now been lodged, as opposed to carrying out the approved development, is described in the proponents report as, “the applicant is seeking to expand on the original motel proposal and now seeks to develop a larger, high quality hotel resort and serviced apartment buildings”.

### **Rezoning Proposal**

The PP seeks to rezone the subject land from RU2 Rural Landscape to SP3 Tourist under Shoalhaven LEP 2014 to permit ‘hotel or motel development’ and ‘serviced apartments’ on the subject site. The rezoning if dealt with in isolation would make the subject lot the only SP3 Tourist zone in the surrounding area (refer to Figure 2).

The PP also seeks to introduce and map an 18m Height of Buildings development standard to facilitate the construction of the intended future use. This is an increase of 7m from the current generic standard of 11m applicable under Clause 4.3(2A) of Shoalhaven LEP 2014.

### **Precinct Plan**

In accordance with the Council resolution of May 2015, when the original development application was dealt with, the proponents were advised at the pre-lodgement meeting and

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in the follow up advice letter that the **rezoning of the broader precinct should also be considered** as part of any PP.

The initial assessment of the lodged PP has revealed that consideration of the broader precinct had not been undertaken and why the subject site was chosen/suitable for the proposed use and in isolation, had not been adequately demonstrated. The proposal provided indicates that the PP only considers land within the proponent's ownership and outlines that the site size requirements to meet the specifications for the concept proposal (intended future development). On this basis the proponent has suggested that there was sufficient strategic merit to support the PP on the subject site alone and that the PP did not limit Council from considering a broader rezoning of the wider precinct.

A letter was sent to the proponent advising that the submitted PP was considered incomplete as it did not adequately address the broader precinct issues. An amended PP was requested which sufficiently addressed the above matters.

An amended PP was received on 6 May 2016. A review of the amended PP report has found that consideration of the broader precinct and justification of the subject site for the proposed zone remained largely unresolved.

As such, the recommendation proposes to defer a decision on the subject to a precinct plan. This could be achieved in two ways:

- The first would require the proponent to do a further analysis of the broader precinct, or
- The second would be to add the precinct plan to the Works Program. The work required for the precinct plan is considered to take between 3-6 months to complete and could cost approximately \$50,000 to complete if managed by an external consultant.

### **Surrounding Neighbour Consultation**

Surrounding neighbours were informed of the receipt of PP and its intentions. In addition, the information submitted was made publicly available on Council's website for viewing.

One submission was received from an adjoining owner raising concerns with the PP and the future intended use of the site, specifically:

- Proposal will *introduce a new built form to the area*. There will be a *significant visual catchment* for the proposal that *will result in a highly visible, bulky development when viewed from surrounding properties and Naval College Road*.
- *Unacceptable impact on traffic movement, car parking, noise and anti-social behaviour*.
- *Does not address the adverse impact on existing local accommodation facilities*.
- *Rezoning of the broader precinct needs to be considered as part of any PP*.

A copy of the submission is available in the **Councillor's Information Folder**.

### **Relevant Strategies, Policies and Ministerial Directions**

The PP has been reviewed against the following relevant strategic planning documents:

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### *Illawarra-Shoalhaven Regional Plan (ISRP)*

This is a high level strategic planning document which currently applies to Shoalhaven. The Plan addresses the provision of suitable land for employment and housing needs. While the Plan applies to Shoalhaven, it does not contain any specific provisions related to the subject land. As such the PP is not inconsistent with the broad intentions of the ISRP.

### *Jervis Bay Settlement Strategy (JBSS)*

This strategy applies to the Jervis Bay Region and establishes a set of principles to manage growth in the Region. The Strategy **does not identify** the subject site for future urban expansion or potential tourist development, however two other sites at Comberton Grange (application approved) and Jervis Bay Road, Huskisson (former Pine Forest) are identified for potential new tourist facilities. While the PP is not inconsistent with the broad principles of the strategy, the subject land is not one of the two sites identified for this type of development nor is the broader precinct.

### *State Environmental Planning Policies (SEPPs)*

The SEPP 55 – Remediation of land applies to this PP. In the pre-lodgement advice, it was acknowledged that SEPP 71 – Coastal Protection was also relevant. The PP is not inconsistent with SEPP 55 and SEPP 71.

### *Section 117 Directions*

The PP is potentially inconsistent with the following 117 directions:

Direction 1.2 Rural Zones – the rezoning is inconsistent as it proposes to rezone land from rural to tourist zone outside an endorsed strategy.

Direction 1.5 Rural Lands – the rezoning is inconsistent with the rural planning principles of the SEPP (Rural Lands) 2008 and as a result is potentially inconsistent with this Direction as it is outside an endorsed strategy.

Direction 2.2 Coastal Protection - Whilst the site is located just outside the coastal zone it was considered that due to the context of the site it was reasonable to address this Direction. The proposal is potentially inconsistent with this Direction as it could be considered to be at odds with the principles in the Coastal Design Guidelines 2003.

## **Key Issues**

A preliminary review of the PP has identified key issues with respect to traffic and access, flora and fauna, bushfire and visual impact. The key issues associated with this PP are not limited to those discussed below.

### *Context and relationship with adjoining land uses*

The rezoning and subsequent development of the site for the future intended use has the potential have an impact on the adjoining land uses including but not limited to traffic and access, and visual impact. The potential development associated with the rezoning of the site to SP3 Tourist and increasing the height of buildings to 18m would be out of character with its locational context.

This impact could be potentially addressed and minimised by considering the broader precinct. This is consistent with the resolution of Council from May 2015.

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### *Traffic and Access*

A review of the submitted Traffic Impact Assessment by Council's Traffic and Transport Unit Manager highlighted concerns with the adequacy of the report with respect to assessing the full impacts of the proposal, particularly regarding anticipated traffic flows and direction split.

As a result of the potential underestimate of the anticipated traffic flows and directional split, the proposed site access is considered to be inadequate and a higher order treatment than the proposed channelized right turn treatment and auxiliary left turn treatment is likely to be required. However a higher order treatment at the proposed access point could not comply with the relevant standard due to the distance between the existing roundabout at Moona Creek Road. Restricting ingress and egress to left-in and left-out only through the construction of a median would still result in any auxiliary left turn treatment not meeting the relevant standards.

The issues should be considered in detail as part of any future development application for the future intended use or also possibly as the PP advances after a Gateway determination.

### *Flora and Fauna*

Threatened species (including an endangered orchid) and hollow bearing trees have been identified on the site and within the likely proposed Asset Protection Zone (APZ). The Flora and Fauna Assessment concludes that the proposal is unlikely to result in any significant impact on threatened species, populations or communities.

However further justification of the orchid and fauna surveys completed will be required as they are currently inadequate to support the impact assessment of 'no significance'. The surveys of the Leafless Tongue Orchid and Bauer's Midge Orchid will need to demonstrate that they were completed throughout the study area and during flowering season. Targeted surveys of hollow bearing trees will also be required to support the assessment of no significant impacts to threatened hollow dependant fauna given that 17 large habitat trees are going to be removed and a total of 41 hollow bearing trees exist within the proposed APZ areas.

### *Bushfire*

The PP has been submitted with a bushfire assessment which identifies a proposed APZ for the future intended use of the land. The proposed APZs are considerably larger than those required for the previously approved motel due to the proposed intensification of development on the site. The bushfire assessment identifies that the future development of the site would not comply with the derived radiant heat exposure to an emergency worker. In addition, Council's Bushfire Management Officer has advised that the proposed height of 18m would be classed as 'high rise construction' and therefore compliance with NSW RFS Practice Note 2/12 would need to be demonstrated. The practice note requires that an engineering analysis would be required to demonstrate that location, existing infrastructure, external façades and potential for entrapment issues do not pose an unacceptable risk.

At this stage a referral to the NSW Rural Fire Service has not been completed, this is generally undertaken after a Gateway determination has been received in accordance with Section 117 Direction 4.4 Planning for Bushfire Protection. However it is likely that further detail will be required in regard to this aspect of the PP.

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### *Economic*

The PP proposes to rezone the subject land to SP3 Tourist which would create an additional 3.08ha of land for tourist purposes. In addition it seeks to increase the building height to 18m to allow for multi-storey development of the site. The Economic Impact Study submitted with the PP states that the proposal will seek to fill a gap in the accommodation market rather than compete with existing small-scale accommodation facilities in the area.

The Shoalhaven Tourism Master Plan sets desired outcomes and directions forward for the Bay and Basin precinct however not specifically for the site or for Worroving Heights. The master plan identifies Huskisson as the primary tourism hub and Vincentia as having potential for tourism development at the Vincentia shopping centre site only.

### *Visual Amenity*

The PP proposes to increase the height limit on the subject site to 18m, 7m higher than the current national maximum building height of 11m permitted under Clause 4.3(2A) of the LEP. Existing development in this area is characterised as relatively low density with maximum two-storey developments. The maximum building heights currently allowed under the LEP range from 3m on neighbouring E2 and RE1 zones; 9m on neighbouring R1, R2 and B2 zones; and 11m on neighbouring RU2 zones under Clause 4.3(2A).

A Landscape Character and Visual Impact Assessment was submitted which concluded that future development of the site has a 'relatively limited visual catchment and overall moderate visual impact'.

An incremental rezoning and redevelopment of this location (rural landscape character) as a spot rezoning has the potential to impact on the visual character and pattern of development and this could be considered to be inconsistent with the principles of the Coastal Design Guidelines 2003. The preparation of a precinct plan based on sound planning principles could provide a more suitable planning outcome for this area. It is also acknowledged that the site is adjacent to a new urban area consisting of a large residential subdivision and shopping centre.

## **CONCLUSION**

The PP seeks to rezone 1310 Naval College Road to SP3 Tourist to permit 'hotel or motel accommodation' and 'serviced apartments'; and increase the Height of Building development standard to 18 metres.

The rezoning has the potential to result in a number of impacts including but not limited to traffic and access, bushfire, flora and fauna, economic and visual amenity. The proposal is also potentially inconsistent with existing Section 117 Directions.

While it is noted that the precinct is an area in transition, with a range of non-rural uses, and more intensive tourist accommodation uses were previously permissible in the area, the PP has not been sufficiently justified when considered in isolation. Thus it is recommended that a decision on whether or not to support the PP be deferred until a broader precinct plan/rezoning has been investigated and considered.

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## **FINANCIAL IMPLICATIONS:**

The proponent has paid the initial PP lodgement fee in accordance with Council's Fees and Charges. Should the PP proceed further into the process additional fees will be payable.

## **COMMUNITY ENGAGEMENT:**

Council notified surrounding landowners of receipt of the PP and made the information submitted available on Council's website for viewing. One submission was received raising concerns with the PP and the future intended use of the site.

If the PP proceeds to a Gateway determination, it will be publicly exhibited later in the process in accordance with the requirements of the Gateway.

4. **Installation of a 26.5 metre telecommunications tower and associated equipment shelter at Lot 12 DP700116, 9 Geary Place North Nowra. Applicant: CPS Global. Owner: Hailbay Pty Ltd. File DA16/1213**
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**SECTION MANAGER: Cathy Bern.**

## **PURPOSE:**

To recommend that Council support the request to vary the 11 metre height of buildings standard in clause 4.3 of Shoalhaven Local Environmental Plan 2014 (SLEP2014) and that Council approve the application subject to conditions.

**# RECOMMENDED, in accordance with the authority delegated by Council to the Committee, that:**

- a) **Council support, pursuant to clause 4.6 (Variation to development standards) of SLEP 2014, the applicant's request to vary the height limit of 11 metres to 26.5 metres;**
- b) **Council approve the application subject to the conditions set out in the draft Notice of Determination at Attachment A.**

## **OPTIONS**

1. Resolve to approve the application. This would enable the modified development to proceed in accordance with the applicant's submitted plans, reports and other documents, as amended by any conditions of consent.
2. Resolve to refuse the application. This may result in the applicant appealing Council's refusal in the Land and Environment Court.
3. Defer the application and request that the applicant consider relocating the proposed tower away from the boundary with residential development. This may result in the applicant acting in accordance with Council's request, or it may withdraw the application, or appeal Council's deemed refusal in the Land and Environment Court.

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4. Adopt an alternative recommendation and provide direction to staff.

## DETAILS

### Proposal

This application is for the erection of a telecommunications facility made up of the following elements:

- a 26.5 metre high concrete monopole;
- two sets of three panel antennas, one below the other, to be flush mounted to the proposed monopole;
- the installation of 36 remote radio units (RRUs);
- an equipment shelter 3.15 metres in length, 2.38 metres in width and 2.94 metres in height;
- a compound area measuring 10 metres by 5.1 metres, enclosed by a 2.4 metre high chain link fence;
- ancillary equipment such as equipment housing, cable trays and cable ladders, cabling, earthing, electrical works and air conditioning equipment.

The facility is proposed to be located in the unoccupied south western corner of the site.

### Site details

# The land subject to the development application is lot 12 DP 700116, 9 Geary Place, North Nowra. It contains a 5 unit industrial building with associated parking and driveway areas. It is a lot of narrow frontage located at the end of the Geary Place cul-de-sac. The site and its surrounds are shown on the aerial photo at **Attachment B**.

The subject site:

- is zoned IN2 Light Industrial under SLEP2014;
- has an area of 2,642 sq m;
- directly adjoins land fronting McMahons Rd to the south that is used and zoned for residential purposes;
- is separated from other land zoned and used for residential purposes fronting Coniston Close by a Council-owned public reserve;
- is partly within Bush Fire Prone land (buffer);
- lies approximately 400 m from the banks of the Shoalhaven River and is therefore within the Coastal Zone as referenced in State Environmental Planning Policy No 71 (SEPP71) Coastal Protection.

In the vicinity of the site is another telecommunications tower at 3 Geary Place and a radio transmission tower at 119 McMahons Road.

## Background



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The site is developed with an existing five (5) unit industrial building with a floor area of approximately 1150 m<sup>2</sup> that was approved in 1989. As noted above, the site is in the vicinity of an existing telecommunications tower at 3 Geary Place.

# Prior to lodging the application, the applicant was asked to consider and explore alternatives. Investigations were made, however the sites were eliminated for various reasons as detailed in the attached Section 79 report – **Attachment C**

## **FINANCIAL IMPLICATION**

Should the application be determined by way of refusal, the applicant would be entitled to appeal to the Land and Environment Court. The applicant may also be entitled to appeal against Council's deemed refusal should the application remain undetermined. Council would incur costs in defending these actions in either case.

There are no other financial implications.

## **COMMUNITY ENGAGEMENT**

In accordance with Council's "Community Consultation Policy", the proposal was notified on two (2) occasions and was advertised in the South Coast Register on 23 March 2016. The first notification period was from 23 March to 8 April. One (1) submission was received during that period. The notification was sent to 55 landowners within 120 metres of the site.

Following the submission of an amended Electromagnetic Emissions (EME) report requested by Council, which addressed the cumulative EME arising from the existing facility at 3 Geary Place as well as that from the proposed new tower, the application was notified for a second period (2 to 17 May 2016). The notification was sent to the same 55 landowners and also to 14 occupants of residential units at 111, 113 and 115 McMahons Rd. This was done to ensure occupants would also be informed about the proposal that closely adjoined their homes.

No further submissions were received as a result of the second notification. The submission is reproduced in full as it is the only submission received:

*"I am writing a submission, as I am concerned with the current application for 9 Geary Place, North Nowra to have a 26-metre Telecommunications Tower and Associated Equipment shelter installed.*

*This proposed tower will have a significant visual impact on my property especially the western side of my property, which is my outdoor living area. I believe this tower will detract from future re-sale of my property and depreciate my investment potential. Most photographs in the Visual Assessment Report were taken from eye level perspective rather than from a distance not creating a clear picture of the impact on surrounding houses. The proposed vegetation buffer is 5-10 meters, however, the tower is 26 meters a difference of 21-16 meters. Thus, creating an eyesore for surrounding houses and businesses.*

*I feel this tower is to be situated too close to residential and recreational facilities where all over the world there are reported cases of cancer clusters relating to this sort of telecommunications tower. In the area is Drexel Park, Illaroo Soccer Club, Pitt Street Kindy, Archery NSW, North Nowra Public School, Havenlee School and Illaroo Road Public School*

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*all these places could be affected by the occurrence of a greater than expected number of cancer cases among people in this defined geographic area.”*

Comment on submission:

1. *Visual impact:* it is acknowledged that the tower will have a visual impact on the adjoining area. Visual impact has been addressed in the Visual Assessment Report submitted with the application and is further considered under the heading “Visual Impact” overleaf.
2. *Impact on resale:* there is no evidence to suggest that a new tower 140 metres distant from the property will have a negative impact on property values. The reason for the tower is to improve the mobile phone and mobile internet reception in the North Nowra area for customers of Vodafone and Optus and this connectivity could potentially be considered beneficial by purchasers of residential property.
3. *Increased cancer risk:* This aspect of the development is also discussed under Electromagnetic Emissions (EME) below. It is noted that, even when combined with the EME from the existing tower at No. 3 Geary Place, the maximum EME is limited to 2.98% of the maximum allowable under the ARPANSA standard. Council has no expert role in relation to EME and its health effects and in the absence of evidence to the contrary should accept the standard set by the relevant expert authority (ARPANSA – the Australian Radiation Protection and Nuclear Safety Agency). The ARPANSA Fact Sheet “Mobile Phone Base Stations and Health” states that “based on current research there are no established health effects that can be attributed to the low RF EME exposure from mobile phone base station antennas”.

## **CONSIDERATIONS**

- # The application has been assessed under section 79C of the Environmental Planning and Assessment Act 1979 (refer to Planning Assessment Report at **Attachment C**).

The main issues associated with the application are summarised below.

### **Height**

A maximum height of 11 metres applies under clause 4.3 of SLEP2014. The tower is 26.5 metres in height so considerably exceeds this height limit. The applicant has sought a variation to this development standard as required by clause 4.6 of the SLEP.

### **Variation to development standard**

- # The request to vary the 11 metre height of buildings development standard is addressed in detail in the Planning Assessment Report at **Attachment C**.

The applicant needs to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify convening the development standard.

In summary, it is considered that the applicant has adequately addressed the above matters and that the proposal will be in the public interest because it is consistent with the

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objectives of both the development standard and the zone in which the development is proposed.

## **Visual impact**

The applicant has submitted a detailed Visual Assessment Report with the application. This uses a complex and multi-faceted assessment methodology to assess the visual impact of the proposal. It includes a number of before and after photographs showing the proposed view of the tower from a select number of locations. The conclusion of the report is reproduced below:

*The potential visual catchment of the proposed development is relatively small whereby the monopole may be noticeable over a limited distance to the north, east and south. However, those most affected will be the closest residential dwellings located along the north side of McMahons Road adjacent to the proposed facility.*

*We acknowledge that the efficiency of such a facility is determined by technical requirements and that some visibility of the proposed development is unavoidable. In this regard we consider that the overall height of the facility and its slim strap mounted arrangement of an antennae is a reasonable outcome within a visual catchment which includes light industrial uses and residential development with closer range views.*

*We suggest that in order to help mitigate visual impacts in views from the closest residences adjacent south of the site, that a 2.5m wide vegetative buffer be established between the wire fence of the proposed development and the existing subject site boundary ie. the proposed development including its security fence, be setback to the north by an additional 2.5m.*

*The buffer zone would therefore be approximately 10m x 2.5m and should include deep soil to facilitate the establishment of appropriate fast growing native species. In our opinion a vegetative screen which reaches a mature height between 5m and 10m would be sufficient to provide beneficial screening effects views from inside residential units and from outside the units in shared service and driveway areas.*

*In our opinion the monopole is best in a neutral light grey tones such as Surf Mist, as it would be most often viewed against the sky and not against a dark background of vegetation, unless moved to an alternative location with the site such as the north east corner, in which case colour choice would need to be reconsidered.*

*The visual impacts of the subject monopole on its overall visual catchment were considered to be low to moderate and acceptable regarding potential visual impacts. In our opinion the development application is worthy of approval on visual grounds.*

It is agreed that the visual catchment of the tower is relatively small and that the most affected properties and residents will be those that directly adjoin the site.

While the assessed impact is relatively minor, the sensitivity of viewers will be heightened by the existing 35 m tower nearby at 3 Geary Place, although it must be noted that the current proposal is 8.5 metres lower and on a site that is about 3m lower in elevation, so will be visible over a smaller area than the existing tower.

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Sensitivity of viewers is also likely to be greater in the short term when the tower is newly erected, and will diminish over time as it becomes an accepted part of the landscape.

The report's consequent recommendation for the facility to be relocated to the north by 2.5 metres and a vegetated buffer be established were reviewed with the applicant. It appears that a relocation of this extent is not feasible due to a Council sewer main being located about 5 m from the boundary. The applicant has proposed relocation by 800 mm and planting within that space, with additional planting in the adjoining property. This latter suggestion cannot however be done without the agreement of the owner of that property, so Council cannot rely on this as a solution.

A combination of masonry fencing and plantings is outlined in the discussion under "Impact on adjoining residential properties" below. If the proposal is to be approved in its current form this is likely to be the most effective landscape treatment that can be achieved in the limited space available.

### **Electromagnetic emissions (EME)**

The applicant submitted with the application a report assessing the level of RF EME (radio frequency electromagnetic radiation). A second report was provided at Council's request which assessed the combined levels of EME of this proposal and the existing Telstra tower at 3 Geary Place. Both reports used the procedure prescribed in the Technical Report "Radio Frequency EME Exposure Levels – Prediction Methodologies" published by ARPANSA (Australian Radiation Protection and Nuclear Safety Authority).

When combined with the EME from the existing tower at No. 3 Geary Place, the maximum EME is limited to 2.98% of the maximum allowable under the ARPANSA standard. On its own the EME level is 2.044% of the public exposure limit. Council has no expert role in relation to EME and its health effects and in the absence of evidence to the contrary must accept the standard set by the relevant expert authority. The ARPANSA Fact Sheet "Mobile Phone Base Stations and Health" states that "based on current research there are no established health effects that can be attributed to the low RF EME exposure from mobile phone base station antennas".

### **Impact on adjoining residential properties**

The development is located virtually on the boundary between 9 Geary Place and the residential properties fronting McMahan Rd. In response to this issue being raised by Council staff, the applicant has proposed a slight relocation (0.8 metre) of the facility compound away from the rear boundary fence to accommodate some landscape screening. There are opportunities to use a combination of fencing, low walls and plantings to screen the base of the tower and the equipment shelter which has a finished height of about 3 metres above existing ground level. While the equipment shelter is of materials suitable to an industrial site it is less compatible with the character of a residential area. The tower cannot be relocated significantly further away from the rear fence as there is a Council sewer main about 5 metres from the rear fence. Relocation to the northern side of the sewer main would result in some intrusion into the parking area for the industrial units on site.

It is recommended that a condition be imposed to provide effective screening from the residential properties at the rear, notably Nos. 111 and 113 McMahan Rd. This could be

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achieved by requiring the erection of a 900mm high masonry retaining wall on the boundary with No 111 McMahons Rd, with a 2400mm masonry fence on the boundary of the facility compound approximately 800mm inside the boundary. The resulting raised bed can be planted with large shrubs that will have a height at maturity of approximately 2400mm. The retaining wall is to extend for the full length of the boundary with No. 111 McMahons Rd. The 2400mm high fence is to extend for the full length of that boundary, with a 3 metre return along the boundary with No. 8 Geary Place. The fence and retaining wall are to be constructed of masonry that is sympathetic to the colours of the walls of the adjoining residential buildings. The masonry fence would also reduce the noise from the air conditioning units mounted on the equipment shelter. A condition of consent in these terms is recommended.

## **CONCLUSION**

The intent behind this proposal is to provide improved coverage for mobile phone and internet services in the North Nowra area for two carriers, Vodafone and Optus. This is an outcome that is broadly positive and would be supported widely in the community.

However, the proposal is potentially highly controversial, because of its potential visual impact and because of community sensitivities to EME produced by mobile phone towers. Despite being notified twice, being advertised in the local press, and being the subject of a small news story in the newspaper, only one submission was received.

The main issues with this application are the structure's height, which significantly exceeds the 11 metre height limit; its visual impact, which is arguably restricted to a limited area of North Nowra; the abovementioned community sensitivity to EME; and the particular impact it will have in terms of visual impact and its possibly overbearing physical presence on a small number of adjoining residential properties.

On balance, the application is supported, subject to conditions that are recommended to limit its more significant impacts.

Tim Fletcher

**DIRECTOR PLANNING AND DEVELOPMENT SERVICES**

R.D Pigg

**GENERAL MANAGER**

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**NOTICES OF MOTION**  
**DEVELOPMENT COMMITTEE**  
**MONDAY, 18 JULY, 2016**

**5. SLEP Amendment – Landscaping Material Supplies – IN1 & IN2 General Industrial Zones** **File 33363E**

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The following Notice of Motion of which due notice has been given, is submitted for Council's consideration:

- 1. That the Shoalhaven Local Environmental Plan 2014 be amended to include the use "Landscaping Material Supplies" as a permissible land use within the IN1 & IN2 General Industrial zones; and**
- 2. That such amendment be included as part of the next Housekeeping Amendment to the LEP that Council undertakes.**

Signed  
Clr Watson

Note by General Manager:

Council staff have done some initial research in this regard following an approach from a local planning consultant and it was advised that the request would be added to the list of matters to be further considered as part of the ongoing future housekeeping amendments to the Local Environmental Plan (LEP). However no timeframe for this was given. It is noted that should this be triggered by a specific proposal that needs to be advanced outside the timing of the housekeeping process then a Planning Proposal can always be lodged and the relevant fees paid.

One issue that will need to be considered as part of the relevant housekeeping amendment to the LEP that proposes to insert this use ('landscaping material supplies') into the IN1 and IN2 zones as permissible, is whether it is an appropriate use of industrial zoned land noting that it is part of the 'retail premises' grouping of uses.

However, it is noted that this land use is permissible with consent in these zones in other Council's including Lismore, Coffs Harbour (IN1 only), Wagga Wagga and Eurobadalla (IN1 only).