

**Minutes of the Ordinary Meeting
of Shellharbour City Council
held at the Council Chambers, Council Administration Centre
Shellharbour City Centre
on Tuesday 04 August 2015 commencing at 6.31 pm**

Present

Mayor	M Saliba
Deputy Mayor	P Rankin (arrived 6.32pm)
Councillor	K Marsh
Councillor	D Boyle
Councillor	H Stewart
Councillor	J Murray
Councillor	P Moran

In attendance

General Manager	M Willis
Director City Outcomes	C McIntyre
Director Corporate Policy	L Furness
Director Shellharbour Enterprises	M Youell
Executive Manager / Public Officer	F MastroDomenico
Group Manager City Strategy	G Hoynes
Group Manager Infrastructure Services	M Boenisch
Group Manager City Development	G Meredith
Chief Financial Officer	R Owens
Manager Property & Recreation	D Flanagan
Manager Assets & Projects	G Standen
Media Officer	C Lewis
Senior GIS Officer	L McFarlane
Senior Executive Assistant	L Davey
Council Liaison Officer (Minute Taker)	J Frasca

if and as required by the NSW Department of Planning & Environment's LEP Review Panel and gateway determination.

4. That Council as part of its gateway submission apply to the Department of Planning and Environment to use its plan making related delegations including to make or not make the plan under section 59 of the Environmental Planning and Assessment Act, after any consultation on the draft plan.
5. The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 17 be subject to consultation in accordance with the gateway determination.
6. If submission(s) objecting result from consultation on Planning Proposal 17 or there are substantial post consultation changes proposed for other reason(s), a report be submitted to Council detailing consultation outcomes for final consideration and with further recommendations regarding adoption.

If there are no submission(s) objecting received as a result of consultation on Planning Proposal 17, or no substantial post consultation changes proposed for other reason(s), Council delegate authority to the General Manager the authority to finalise Planning Proposal 17 and amend Local Environmental Plan 2013.

CARRIED UNANIMOUSLY

10.2.3 Local Environmental Plan 2013 - Planning Proposal - Introduction of clause to clarify minimum lots sizes for certain split zones (10565747)

223 RESOLVED: Marsh/Murray

1. Council prepare a Planning Proposal to amend Shellharbour Local Environmental Plan 2013 to incorporate the proposed clause as contained in this report.
2. The Council authorise the General Manager to submit the Planning Proposal to the NSW Department of Planning & Environment in accordance with section 56 of the Environmental Planning & Assessment Act 1979 for review and gateway determination.
3. The Council delegate to the General Manager authority to make minor mapping and Local Environmental Plan instrument changes as a result of the Planning Proposal if and as required by the NSW Department of Planning & Environment's LEP Review Panel and gateway determination.

4. That Council as part of its gateway submission apply to the Department of Planning and Environment to use its plan making related delegations including to make or not make the plan under section 59 of the Environmental Planning and Assessment Act, after any consultation on the draft plan.
5. The Planning Proposal be subject to consultation in accordance with the gateway determination.
6. If submission(s) objecting result from consultation on Planning Proposal or there are substantial post consultation changes proposed for other reason(s), a report be submitted to Council detailing consultation outcomes for final consideration and with further recommendations regarding adoption.

If there are no submission(s) objecting received as a result of consultation on Planning Proposal, or no substantial post consultation changes proposed for other reason(s), Council delegate authority to the General Manager the authority to finalise the Planning Proposal and amend Local Environmental Plan 2013.

CARRIED UNANIMOUSLY

10.3 Corporate Policy Directorate

10.3.1 Calderwood Valley Road Naming Theme (10564038)

224 RESOLVED: Marsh/Boyle

That Council adopt the proposed theme for road names in the Calderwood Valley Development at North Macquarie and Calderwood described as:

"Calderwood Valley is set within a rolling green rural landscape framed by the Illawarra Escarpment. This setting is bound by the rich history and European settlement and diverse agricultural and rural land uses. The proposed road names for Calderwood Valley will draw on the environmental and historical setting of this development through featuring characteristics such as landscape features, historical land owners and past land uses. Names that reflect on the traditional owners of the land from the region will be included."

CARRIED UNANIMOUSLY

**10.2.3 Local Environmental Plan 2013 - Planning Proposal -
Introduction of clause to clarify minimum lots sizes for certain
split zones (10565747)**

To the General Manager

Directorate: **City Outcomes**

Department: **City Strategy**

Manager: Geoff Hoynes – Group Manager City Strategy

Author: Geoff Hoynes – Group Manager City Strategy

Summary

Shellharbour Local Environmental Plan 2013 (SLEP 2013) came into force on 5 April 2013. Over the last two years the intended planning outcomes instrument has been tested through the assessment of various development applications that have been lodged with Council.

It has recently become apparent that provisions contained SLEP 2013 are not delivering their intended outcomes in relation to ensuring that the subdivision of split zoned lands occur in a manner that promotes suitable land uses, environmental outcomes and subdivision design. This is particularly evident when dealing with land that is primarily zoned residential with small areas of environmental. Currently SLEP 2013 does not always allow these small areas of environmental to be incorporated into residential lots. The result is that residential subdivision may not be allowed to occur on these lands or the environmental lands may become orphaned with no custodial ownership by a land owner who can reside upon the land. Neither of these outcomes were intended or envisaged in the drafting of SLEP 2013

This report recommends that a planning proposal be prepared which inserts an additional clause into SLEP 2013 to address this issue.

This report recommends that the planning proposal be submitted to the NSW Department of Planning and Environment for their gateway determination and that Council apply to the Department of Planning and Environment to use its plan making related delegations, after any consultation on the draft plan.

The planning proposal is not proposed to undergo formal public exhibition with newspaper notices and letters to land owners/adjoining land owners. This is due to the fact that the clause does not change the objectives or desired planning outcomes of LEP 2013. No state government authority consultation is proposed.

The report also recommends that Council delegate authority to the General Manager the authority to finalise this planning proposal and amend Local Environmental Plan 2013.

Background

About planning proposals

A planning proposal is a document that explains the intended effect of a proposed amendment(s) to a Local Environmental Plan (LEP), in this case to Shellharbour LEP 2013, and sets out the justification for making the amendment.

This planning proposal will have the following four key steps:

1. *planning proposal* - Council is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan.
2. *Gateway* - The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Council is recommending that no community consultation is required. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.
3. *Assessment* - Council assesses and makes any post gateway changes as required. Parliamentary Counsel then prepares a draft local environmental plan — the legal instrument.
4. *Decision* - with the Minister's (or delegate's) approval the plan becomes law and is published on the NSW legislation website.

Council is at step 1.

About this planning proposal

SLEP 2013 mandates minimum subdivision lot sizes for the majority of land in the Shellharbour local government area through clauses and a lot size map. This is particularly the case for land zoned residential, rural and environmental. It was expected that the clauses and the map would provide for all intended planning outcomes.

Recently, situations have arisen where the appropriate subdivision of land that is primarily residential has been hampered through the existence of environmental zones on the land. The intended planning outcome for these lands is for the land to be subdivided and the environmental lands be incorporated into a larger lot that would permit a dwelling house. In this way the environmental lands can be suitably managed and have an onsite custodian.

This situation will occur in land primarily zoned residential, but the same issue could apply to lands primarily zoned business or industrial.

Proposed clause

The following clause has been suggested by the NSW Department of Planning and Environment following discussion on the issue.

Minimum lots sizes for certain split zones

- (1) The objectives of this clause are as follows:
 - (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,
 - (b) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.
- (2) This clause applies to each lot (an **original lot**) that contains:
 - (a) land in a residential, business or industrial zone or in Zone E4 Environmental Living, and
 - (b) land in a rural zone or Zone E2 Environmental Conservation or Zone E3 Environmental Management.
- (3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if:
 - (a) one of the resulting lots will contain:
 - (i) land in a residential, business, industrial or E4 Environmental Living, zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and
 - (ii) all of the land in a rural zone, Zone E2 Environmental Conservation or Zone E3 Environmental Management that was in the original lot, and
 - (b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land

It is recommended that Council adopt this clause and incorporate it into SLEP 2013. Minor changes to the wording of this clause may occur as the planning proposal progresses.

Financial Implications

Preparation of Planning Proposal will utilise staff time and resources. However, the objectives of the clause and its intended outcomes will not change.

Legal and Policy Implications

Local planning directions for planning proposals are issued by the Minister under *Section 117(2) of the Environmental Planning & Assessment Act*.

The planning proposal is required to be assessed in accordance with the requirements of the *Environmental Planning & Assessment Act and Regulations*, the Guide to Preparing Planning Proposals and the Guide to Preparing Local Environmental Plans prepared by the former NSW Department of Planning & Infrastructure.

The relevant *Environmental Planning & Assessment Act* issues are outlined in the following sections of this report.

Draft State Environmental Planning Policies, State Environmental Planning Policies, Deemed State Environmental Planning Policies

Council officers' assessment is that these are not applicable to the planning proposal. The Department of Planning and Environment will review Council's assessment as part of its gateway determination.

Local Planning Directions (*S117(2) Environmental Planning & Assessment Act*)

Council officers have made an assessment of the planning proposal against the directions in consultation with the Department of Planning and Environment. Under the Gateway system these assessments can occur at different stages in the process. Based on Council's assessment there is an inconsistency with the following direction:

A number of directions have been identified as applying to this planning proposal, and it is either consistent with the direction or the inconsistency is very minor significance.

It will be the Department of Planning and Environment that decides as part of its gateway determination, firstly whether the planning proposal is inconsistent with any direction and if so whether an inconsistency can be justified or is of minor significance.

Illawarra Regional Strategy (IRS)

Council officers' assessment is that the provisions of the IRS are either consistent with or not applicable to the planning proposal.

The Department of Planning and Environment will review Council's assessment as part of its gateway determination.

Public/Social Impacts

This planning proposal will have positive public and social impacts as it will give effect to the planning outcomes already embedded in SLEP 2013, especially the orderly, economic and environmental development and management of land within the local government area.

Given the matters in this planning proposal are considered to be of local significance, it is intended that as part of its gateway submission, Council apply to the Department of Planning and Environment to use its plan making delegations, including to make or not make the plan under Section 59 of the *Environmental Planning and Assessment Act*, after any consultation on the draft plan.

Link to Community Strategic Plan

This planning proposal supports the following objectives and strategies of the Community Strategic Plan:

Objective: 2.3 A liveable City that is connected through places and spaces.

Strategy: 2.3.2 Undertake all land use planning addressing social, economic and environmental principles whilst reflecting the current and future community's needs.

Strategy: 2.3.4 Facilitate the provision of development that meets the changing needs and expectations of the community.

Consultations

Internal

Development Services

External

The Department of Planning and Environment

If Council resolves to endorse the preparation of this planning proposal it will be referred to the NSW Department of Planning and Environment for review and gateway determination. If endorsed, the planning proposal is not proposed to undergo formal public exhibition with newspaper notices and letters to land owners/adjoining land owners.

The gateway process will formally identify consultation that will need to be undertaken. Following this, any submissions objecting will be reviewed and reported back to Council.

Political Donations Disclosure

Under Section 147(4) of the *Environmental Planning and Assessment Act 1979* (the Act) a person who makes a relevant planning application to Council is required to disclose any reportable political donations and gifts made by any person with a financial interest in the application within the period commencing two years before the application is made and ending when the application is determined, including:

- a) all reportable political donations made to any Councillor of this Council;
- b) all gifts made to any Councillor or employee of this Council.

Under Section 147(5) of the Act, these disclosure requirements also apply to a person, or any associate of a person, who makes a relevant public submission to Council in relation to a relevant planning application.

Note: Section 147(1) of the Act states: 'political donations or gifts are not relevant to the determination of any such planning application, and the making of political donations or gifts does not provide grounds for challenging the determination on any such planning application'.

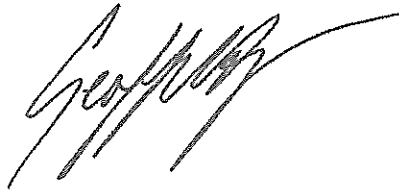
This Planning Proposal report has been instigated by Council. As such, no reporting applies at this stage of the planning proposal.

Recommendation

- 1. Council prepare a Planning Proposal to amend Shellharbour Local Environmental Plan 2013 to incorporate the proposed clause as contained in this report.**
- 2. The Council authorise the General Manager to submit the Planning Proposal to the NSW Department of Planning & Environment in accordance with section 56 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.**
- 3. The Council delegate to the General Manager authority to make minor mapping and Local Environmental Plan instrument changes as a result of the Planning Proposal if and as required by the NSW Department of Planning & Environment's LEP Review Panel and gateway determination.**
- 4. That Council as part of its gateway submission apply to the Department of Planning and Environment to use its plan making related delegations including to make or not make the plan under section 59 of the *Environmental Planning and Assessment Act*, after any consultation on the draft plan.**
- 5. The Planning Proposal be subject to consultation in accordance with the gateway determination.**
- 6. If submission(s) objecting result from consultation on Planning Proposal or there are substantial post consultation changes proposed for other reason(s), a report be submitted to Council detailing consultation outcomes for final consideration and with further recommendations regarding adoption.**

If there are no submission(s) objecting received as a result of consultation on Planning Proposal, or no substantial post consultation changes proposed for other reason(s), Council delegate authority to the General Manager the authority to finalise the Planning Proposal and amend Local Environmental Plan 2013.

- 7. Council and Council staff use the plan-making delegations (if granted) from the Minister for Planning on this Planning Proposal**

A handwritten signature in black ink, appearing to be 'Geoffrey', written over a horizontal line.

Approved for Council's consideration: _____

Date of Meeting: 4 August 2015

Attachments

Nil