

RED HEAD VILLAGES ASSOCIATION (Inc)



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A COMMUNITY CONSULTATIVE BODY (CCB) SUBMISSION TO THE DRAFT SLEP 2009

Dated
10 October 2011
Peter Hudson
President

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PART 1

INTRODUCTION

**A Submission by the RHVA
Dated 10 October 2011**

General

The RHVA would like to acknowledge the advice and support offered by the Strategic Planning Staff prior to and during the exhibition period. In particular our thanks to Gordon Clark, Cinnamon Dunsford , Elizabeth Dixon and Marie-Louise Foley.

The RHVA would also like to congratulate Council on its special website that was established to provide information; in particular the updates and various Fact Sheets that were initiated along with the various map overlays – all were readily accessible.

Administrative Changeover.

The initial LEP process was to be largely based on an “administrative” changeover concentrating on achieving a “best fit” intention of Council (Report to General Manager, Strategic Planning, 28 November 2006. However, as time elapsed after this directive to the current exhibition period it was inevitable that there was less likely to be a simple transfer. This was further complicated by ongoing changes being made to the Standard Instrument (SI). Consequently it was recognised by Strategic Planning staff that:

“in working through the process it has become apparent in preparing the Land Use Tables from the mandated uses in the Standard Instrument and from the directions received from Councillors in the briefings that the draft LEP **cannot be a straight administrative changeover**. While most of the existing zones have a comparable zone with similar objectives under the SI, the Land Use Tables are not necessarily the same. As a result the development potential of any given parcel within the City is likely to be changed under the new City-wide LEP”. (Report to the General Manager – Strategic Planning 22 July 2008).

It is therefore reasonable that this submission argue instances for zone changes, land use amendments and better environmental outcomes so that the new LEP provides the best long -term planning document for the whole of the City.

Submission Layout

The following submission follows a pattern where a **Recommendation** is made first followed by **Issues** - statements of clarification - that support the Recommendation.

Secondly each Part has been separated by a cover sheet that identifies the RHVA as the author of the submission. Should Council staff be assigned specific parts of the Draft SLEP to review then this should enable the whole document to be separated easily.

Ratification

This submission was ratified by RHVA members, residents and ratepayers at a Special Meeting held on 1 October 2011. The objective of the meeting was to present the draft

submission and receive amendments, endorsement or otherwise to the proposed recommendations. This submission reflects the members' ⁽¹⁾ unanimous support for this submission.

Note (1)

- 300 fliers – letterbox drop
- 100 “Local SLEP Issues” documents provided to members attending the Special meeting and follow up at next day’s Markets
- Above document emailed to 120 members.
- All documents made available on www.rhva.org.au

PART 2

AIMS (Para 1.2 (2))

**A Submission by the RHVA
Dated 10 October 2011**

Recommendations 2.1

That Aim (a) be deleted from the Aims and insert the following two paragraphs:

“to promote development that is consistent with the principles of ecologically sustainable development and the management of climate change”,

and

“to coordinate development with the provision of public infrastructure and services”

Issues 2.1

SLEP2009 is supposed to be an Environmental Plan not a Growth Management Strategy document. The desire to “encourage economic and business development to increase employment opportunities” may properly belong as part of a City-wide Growth Management Strategy or even the proposed City-wide DCP. The stated aim appears inconsistent with the SI intentions for an LEP.

An LEP should needs to reflect the urgency on seeking sustainable solutions bearing in mind the overriding concern of how to manage the impact of climate change. The draft SLEP appears singularly devoid of addressing this critical issue with perhaps the exception of the “Natural Resource Sensitivity Overlay” depicting coastal risk areas. Quite simply this appears to be a denial of the scientific data we now have about likely future scenarios, all of which will impact on development strategy.

The second proposed aim (above) addresses Council’s obligation to consider how it dovetails its focus for local development into a State schedule of needed infrastructure: This interrelationship does directly impact on employment and business growth. The critical issue for Council governance is how best it coordinates this infrastructure requirement whilst maintaining the integrity of the local environment; the keystone to its long-term survival.

PART 3

LAND USE TABLE AMENDMENTS

**A Submission by the RHVA
Dated 10 October 2011**

Recommendation 3.1

E2 Environment Conservation. “Environment Protection works” and “Environmental Facilities” are the only uses which should be permitted.

Issues 3.1

The E2 zone should be considered in the same way as E1 (National Parks). An E2 zone is assigned to land that has high biodiversity and sensitivity but which does not have NP status. E2 should include old growth forests, significant wildlife habitats and corridors, wetlands, riparian corridors, estuaries and coastal foreshores.

As such the E2 zoning should be used sparingly but have the integrity to genuinely conserve, connect, protect and rehabilitate the land to which it applies. Proposed uses such as “dwelling houses,” are not consistent with the objective of maintaining national park-equivalent values and not consistent with SCRS and ESD principles. Existing dwelling houses must be maintained but new development must not be permitted. This would be consistent with Bega, Eurobodalla and Kiama LEPs.

The main crux of the problem is the extensive list of additional land uses over and above those mandated by NSW State Planning Authority and which act as significant threats to these conservation values.

Recommendation 3.2

E3 Environmental Management. “Dwelling Houses,” “Environmental Protection Works,” “Environmental Facilities” and “Home industries” are the only uses which should be permitted.

Issues 3.2

The problem for E3 is that Council has elected to not utilise the E4 zoning – Environmental Living. As such there are far too many land uses “permitted with consent”.

Recommendation 3.3

E4 Environmental Living. This zone should be **included** in the SLEP to allow for low impact residential development. Therefore rezone land currently classified as 7(d1) to E4

Issues 3.3

Some rural areas should be reconsidered for E4 zoning. This is especially so for those having:

- catchment implications
- habitat corridor status
- significant vegetation criteria.

Recommendation 3.4

Rural Zone RU2. Delete 'caravan parks' as a permissible use. Determine impact of revised SLEPP 21 and 36 to determine where best to locate this potential use

Issue 3.4

The particular case is well known to SCC. Briefly, an application for a 75 lot permanent site caravan park was lodged with council under SEPP21 - Caravan parks. For all intents and purposes the application was for a manufactured home estate containing (mobile) homes sited on lots of similar size to those existing in zoned residential areas. Although Council Staff and Council rejected the application, the L&EC upheld the applicant's claim and approved the development.

In order to control, in a strategic sense, the footprint of development for all areas throughout the City, this case clearly shows that such controls are easily overturned leading to unwanted urban sprawl.

Council has worked hard to support the RHVA in having this matter addressed and DoP has undertaken to review SEPP21 and 36 this year. Depending on the revised SEPPs Council will be in a far better position to place 'caravan parks' to selected zones understanding that there will be hopefully, a clear separation for short term holiday type parks versus the long term/permanent site parks which may include mobile homes.

Recommendation 3.5

Water Zone W1. Delete 'sewerage treatment plants'.

Issues 3.5

The zone has been specified for where the general intent is to protect ecological and scenic values and where low impact uses do not have an adverse effect on the natural value of waterways.

The inclusion of sewerage Treatment Plants into this zone is at odds with the zone objectives. They are of high impact and have the potential to damage waterways should accidental spills or breakdowns occur.

PART 4

ZONING CHANGES

**A Submission by the RHVA
Dated 10 October 2011**

Recommendation 4.1

Change Crown land zoned E2 to E1 for lots adjacent to Nth Bendalong and Bendalong

Issue 4.1

These Crown land tenures lots are located at Nth Bendalong and Bendalong and were the subject of a detailed study by The Sensitive Urban Lands Panel in 2006. The recommendations made were for these lots to be zoned E2 which appears on the draft SLEP maps.

The RHVA is seeking to have these lots zoned E1 and incorporated in to the Conjola NP for the following reasons:

- Existing boundary with Conjola National Park is awkward to manage with respect to APZ protection activities.
- Both Crown land lots are really contiguous; linked habitat corridors with all the biodiversity features and conservation values associated with the NP
- The proposed E2 draft land use table provides little real protection for these sensitive areas.

Recommendation 4.2

Change Crown land zoned RU2 to E2 for the following sites:

- Lot 488 DP1091918
- Por 429 DP 955923
- Lot 7051 DP 1101639

Issue 4.2

There are three parcels of Crown land involved here, all located on the southern side of Bendalong Road. All are zoned RU2 (Rural Landscape) and change is sought because:

- In all 3 cases there is a biodiversity overlay indicating the existence of significant vegetation and habitat corridors that contribute to healthy ecosystems.
- None of the lots has been subjected to a major fire regime and therefore remain an important part of the local biodiversity, providing critical habitat for many threatened species.

- There is no strategic plan that we are aware of to extend the village footprint to these areas which would be possible under an RU2 zone (see ‘caravan park’ issue above.)

The proposal ensures that contiguous lots are consistently supported by the proposed amendments and the use of a modified biodiversity clause (discussed in detail in Part 8) will ensure that the environmental protection of these sensitive areas reflects that of the Conjola NP, which is located and connected to the immediate north of these lots.

Recommendation 4.3

Amend zoning for Manyana Shops from B2 to B1

Issue 4.3

The objective for B1 is:

“to provide a range of small scale retail, business and community uses that serve the needs of people who live and work in the surrounding neighbourhood” and

“to ensure that the development is of a scale that is compatible with the character of the surrounding environment”.

Fact Sheet 9 indicates that the Table is a guide only and therefore zone 3(f) was made B2 under that guideline. However the Fact Sheet provides examples of Neighbourhood versus Local Centres and clearly the Manyana site reflects B1 characteristics rather than B2. Further, other examples such as Mollymook Shops and Bawley Point have been designated B1

It is Council that has added the second objective that defines the scale and type of shopping facility suited to this zoning.

This particular objective reflects the aspirations of the local residents for the shopping zone in Manyana.

Recommendation 4.4

Berringer Village amend zoning from RU5 to R2

Issues 4.4

The proposed zoning does not accord with the transfer tables provided by Council; previous zoning was 2a1 and according to the transfer table it should be R2. In other instances in Manyana, Bendalong and Cunjurong Point the transfer zoning was to R2 which is consistent with the transfer guidelines.

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The lot size map indicates similar lot sizes to those shown for other village areas Cunjurong, Manyana, Bendalong as being 500m². The RU5 zone does not appear to

offer any other benefits for current or future residents and does not offer any real lifestyle choice. Essentially the residential footprint of the village has already been set leaving no available opportunity for other uses as designated by RU5. In short it fails to provide any real life style choice for the District.

An RU5 zoning differs significantly to R2 in land use in that it includes: Business premises, Office premises, Retail premises and Wholesale supplies. Local residents fail to see where these uses could apply and are inconsistent with the general amenity of that village and for the District as a whole.

The response offered by Council to an email on this matter (dated 26 August 2011 – Marie-Louise Foley) provides no substantive argument as to why Council elected an RU5 status.

Recommendation 4.5

Change (Part) Berringer Lake waterway zoning from W2 to W1.

Issues 4.5

The small village of Berringer is surrounded by Crown land zoned E2 to the east and essentially E1 land to its north and west. All Berringer Lake foreshores are either E1 or E2 land and fall squarely into the definition of a Natural Waterway that is “to be protected due to (its) ecological and scenic values and where a limited number of low impact uses do not have an adverse effect on the natural value of the waterway”.

Berringer is separated from Lake Conjola by a significant sand bar and as such is subject to only partial tidal ebbs and flows; when the entrance to Lake Conjola becomes blocked there is an immediate and direct impact on Berringer. Although the Village is now connected to the CRSS via grinder pumps it is difficult to understand how potential business and retail uses would not endanger the Lake from pollution.

The additional uses under W2 cannot be supported by such a fragile waterway. Furthermore, the delineation that has been made for the northern arm of Berringer being W1 whilst the southern arm being made W2 is not based on any geographical characteristic – just a hypothetical line. This is an integrated water body and as such must be zoned W1.

Recommendation 4.6

Green Island - change from E3 to E2 zoning.

Issues 4.6

Green Island is Crown land; it is a well-known surfing icon. The island, having no built structures on it, is accessible at low tides from the mainland adjacent to Lake Conjola

inlet. The Island's littoral zone contains the most delightful salt water pools and the littoral zone is a good example of volcanic rock erosion and columnar rock formations.

The status of other islands within Lake Conjola which have both built and uninhabited status have been classified variously as E1, E2 and E3. Green Island deserves the protection afforded by E2 because of its status, conservation values, and health of its biodiversity.

PART 5

ZONING OMISSIONS

**A Submission by the RHVA
Dated 10 October 2011**

Recommendation 5.1

Kylor Land Manyana; designate Lot 204 DP755923, part Lot 6 DP755923, and part Lot 1070 DP836591 as E3.

Issues 5.1

The RHVA understand that this was an oversight that could not be corrected prior to exhibition.

For the record it is listed formally here for Council's attention and in accordance with Schedule 1, 7 (1) of the Draft SLEP .

Recommendation 5.2

Manyana reserve Lot 129 DP 205240 - 71 Sunset Strip Manyana shown as R2 and should be zoned RE1

Issues 5.2

Lot 129 is owned by Shoalhaven City Council and is therefore public land. The Lot is classified as "Community Land" and categorised as "Natural Area - Foreshore" under the Local Government Act, 1993.

The land was resumed by Council in 1976 for the purpose of providing access to the waterfront reserve. It is also a natural corridor and habitat for a variety of native animals including wallabies, echidnas, possums, bandicoots and an abundance of bird life and should be kept in its natural state.

PART 6

LOCAL AREAS OF SPECIAL INTEREST

**A Submission by the RHVA
Dated 10 October 2011**

Kylor Land

Recommendations 6.1

That the height of buildings be reduced from 11m to 2 storey (8.5m) as per most other remaining part of the District (coastal building to 7.5m being the exception here).

and

That the biodiversity overlay for R5 land not permit any reduction in lot size through rezoning and that it be subject to the restrictions pertaining to development of land where a biodiversity overlay exists

Issues 6.1

Much of the R5 land has a biodiversity overlay applying to it and it is vital that any attempt to rezone or reduce lot sizes be refused because of the significant east-west habitat corridor that exists here. This matter is of particular concern since Council has indicated that it would seek to rezone R5 to R2 land should the State Government decide to apply the Native Vegetation Act (NVA) to R5 zones.

The RHVA believes this is a poor decision which will impact badly on high quality parcels of land which have no dwellings on them and where the land has a significant proportion of native vegetation, as is the case for Kylor land.

Although there has been some verbal assurances from Council staff that the lot size overlay will remain as 2000m² should SCC pursue an R2 zoning, the legal status of the lot size overlay and how it is viewed by, say, the L&EC appears untested. From the Association's perspective it would be appropriate to have the NVA apply to land tenures such as the Kylor one because of its high biodiversity characteristics.

Kylor land comprises 3 zones these being R1, R5 and E3. In Council's Briefing Paper "Height of Buildings in the Draft Shoalhaven LEP2009" all of these zones are subject to an 11m building height overlay (4 storey flat roof).

In terms of good planning and design it makes little sense to have an enclave of buildings which could reach 4 storeys whilst the surrounding village building height is 2 storeys.

The 1985 LEP stated in paragraph 33 that a height greater than 2 storeys above natural ground level would require the consent of Council. Although the Illawarra Regional Plan (IRP) does permit a city wide 11m height Council has maintained its 2 storey limitation for all development throughout this District including the proposed Manyana shops.

The RHVA advocates as per part of this submission that the HOB statement of 11m be withdrawn (paragraph 4.3 Draft SLEP 2009) and that height maps for each area of the City be specified. In our CCB area we would seek to have the 2 storey limitation apply to all zones with the exception of the immediate coastal built environment which should not exceed 7.5m.

Part 9 of this submission deals with HOB in detail.

Recommendation 6.2

That the range of additional uses in Schedule 1 Clause 7 (2) be limited to:

- Advertising structures
- Helipads and heliports
- Recreation facilities (major)
- Recreation facilities (outdoor)

Issues 6.2

LEP 1985 contained a prohibition statement for caravan parks on Kylor property (Clause 54 (1)).

Council staff elected to include this land in to Schedule 1 “Additional Permitted Uses” because it elected to zone the land E3 (which prohibits caravan parks) but then permitted all the uses under RE2 which would have been in accordance with the transfer table for land zoned 6b under the previous LEP. This appears to be a very complicated means for maintaining the caravan park prohibition in the previous LEP.

The combined effect of permissible uses under E3 and RE2 over compensate the landholder since some of the proposed additional uses are already available under the other various zones that exist on this coastal property; these encompass zones R1, R5, B2 and E3.

Therefore the following uses should be deleted from Schedule 1:

- Amusement centres - available in B2 zone
- Community facilities - available in R5 zone
- Food & Drink premises - available under B2 zone
- Function centres - available under B2 zone
- Recreation facilities (indoor) - available under B2 zone
- Registered clubs - available under R1 and B2 zones

Recommendation 6.3

That the 30 metre Building Line along the boundary of Curvers Drive and Inyadda Drive, shown under LEP1985, be included in the Land Zoning Map LZN_034 and LZN_035 respectively for SLEP2009.

Issue 6.3

In response to an email in this regard we have been informed that “the building line has not been shown in the draft LEP on the direction of State Government. The Department of Planning and Infrastructure has advised that building lines can no longer be included in LEPs but instead be included in Development Control Plans , if Council wish to retain them. It is Council’s intention to include building lines in the City Wide DCP which is currently being prepared and will be exhibited at some stage after the completion of the draft LEP exhibition”

These Building Lines were negotiated at the time of the rezoning of Kylor land to its current zonings and is a long held minimum expectation of owners of land along Curvers Drive and the Manyana community in general. It is felt that under no circumstances should this building line not be included in the City Wide DCP review and to clarify the matter the intention to do so should be duly noted in the draft LEP.

Recommendation 6.4

That Council does not consider rezoning of any of the Kylor land, other than as proposed under the current LEP process, apart from as previously recommended in this submission, under recommendation 4.3 (B2 to B1). Any rezoning of this site must be treated as a separate draft LEP.

Issue 6.4

As Council is aware the landowner has a long history of seeking to maximise the potential development density of this site. The latest request was to have rezoning considered as part of the draft LEP process. Council at its meeting 25th March, 2008 resolved that:

“Council considers the proposal by Kylor Pty Ltd (rezoning) as a separate draft LEP process after final submission of draft LEP 2009 to the Department of Planning (Sec.68) and the Department be advised of Council’s intentions”.

Consideration would need to include such important implications as Sewerage/Infrastructure/Environment/Social etc, which are not available under the draft LEP process.

PART 7

EXCEPTIONS TO 'BEST FIT'

A Submission by the RHVA

Dated 10 October 2011

North Bendalong

Recommendation 7.1

That the proposed zoning of the village as R2 is supported

Issues 7.2

DoP has previously indicated that it would prefer to have this small village zoned R1. The Sensitive Urban Land Review (SULR) indicated that the village was able to accommodate a small amount of development and should be restricted in overall development due to its remote location. There is a narrow road leading to Nth Bendalong with a single lane bridge; a greater lot density is inappropriate unless infrastructure changes were made. Since the SULR provided its recommendations the remaining unbuilt area of Nth Bendalong has an approved subdivision plan for an additional 18 lots making an R1 zoning meaningless.

Recommendation 7.2

The E3 zoning proposed for the Nth Bendalong headland (Lot 1 DP1015286) is supported.

Issues 7.2

The conversion table guideline suggests that a possible zoning of RE2 could apply. This zoning would provide insufficient protection for an iconic headland that is essentially made up of native vegetation with outstanding coastal eucalypt forest. An E3 overlay is warranted provided that the zone is amended to incorporate the safeguards as noted in this submission in Part 4.

Further it is to be noted that no building on this lot should exceed the coastal limitation of 7.5m

Recommendation 7.3

The 20m of Crown land to the west of Lot 1 DP 1015286 zoned R2 is not supported and should be zoned E2 or E1 if Part 4 recommendations are accepted.

Issues 7.3

The Draft SLEP contains a proposal to utilise a 20m wide strip of Crown land (Lot 7053 DP 1101641, Lot 468 DP 755923, Lot 255 and part Lot 271 DP 755923), to be zoned R2, consistent with the rest of the village, for the purposes of a perimeter road to protect the western flank of Nth Bendalong.

The landholder of Lot 1 DP 1015286 has been directed by DoP to create both southern and western access for the purposes of an APZ for the approved development SF 10125. This requirement was part of the recommendations made by the SULR in that it states:

“in the event that the existing cabin development south of Cypress Street moves one row of allotments south of Cypress Street, be allowed that enables roads to be constructed as a perimeter (acting as an APZ) for Nth Bendalong” and DoP has directed that these outcomes are to be included in the new LEP. In fact the development has now moved two rows south of Cypress Street and the developer is attempting to negate the direction of providing perimeter roads that act as an APZ.

Council now considers that these perimeter roads (acting as an APZ) are not adequate to protect one lot located on the western end of Cypress Street. This particular lot has an APZ immediately to its north (Cypress Street) and it would be the owner’s responsibility to maintain some form of APZ –on this property - to the west as is the standard situation throughout the City. To date there is a steel shed on this lot and presumably, under current bushfire protection requirements, there would be a necessity for any future development to provide for an APZ within the lot boundary.

The proposal to utilise a Crown land for the purposes of a perimeter road and acting as an APZ is duplicating what is already required on Lot 1 DP 1015286. Further this 20m wide strip is listed with a biodiversity overlay acting as a habitat corridor. This duplication in roads (APZs) is considered unnecessary in the physical sense and environmentally destructive for no useful purpose.

In view of the complex situation at this site, Strategic Planning Staff, along with Subdivisions and DoP need to coordinate an overall strategy; the present approach is piecemeal and has lead to the destruction of a most beautiful piece of coastal real estate.

Bendalong

Recommendation 7.4

‘Best Fit’ proposal for Bendalong (Part Lot 7050 DP 1101639) as R2 is supported

Issues 7.4

The SULR made the recommendation that the site was suitable for a small amount of additional development along Maple Street with site planning allowing for a perimeter road and sufficient separation between bush land and adjoining dwellings. An R2 zoning is consistent with the adjacent village zone.

Recommendation 7.5

'Best Fit' proposal for Bendalong (Part Lot 7050 DP 1101639) to E2 is not supported

Issues 7.5

Part of this land has a biodiversity overlay applying to it and it is connected to the Conjola NP zoned E1. The boundary changes around this area and the adjacent one at Nth Bendalong are administratively difficult especially with respect to APZ responsibilities.

Although the SULR did recommend an E2 zone it would be more effective to zone this part lot to E1 and have it form part of the Conjola NP. It is our understanding that the Lands Division supported environmental protection classification for sensitive lands.

Manyana/Berringer

Recommendation 7.6

'Best Fit' proposal of Crown land west of Berringer and south of the Bounty (Lot 482 DP823199) be zoned E2 is supported.

Issue 7.6

This proposal is consistent with the outcomes derived by the SULR.

Recommendation 7.7

Best Fit proposal for Lot 705 DP 613881 Manyana Drive, is supported

Issue 7.7

Proposed zoning is consistent with State Government Part 3A approval

PART 8

BIODIVERSITY AND WATER CLAUSES (Para 7.5 & 7.6)

**A Submission by the RHVA
Dated 10 October 2011**

Recommendation 8.1

The objective of the Biodiversity section of the plan be amended to reflect an intention to “protect, maintain and improve” terrestrial and aquatic biodiversity.

Issues 8.1

The objective of this clause is simply stated, “to maintain terrestrial and aquatic biodiversity.” The South Coast Regional Conservation Plan (RCP) “seeks an overall improvement or maintenance of biodiversity values across the South Coast.” RHVA believe that by simply working towards a ‘maintain’ objective in the Biodiversity clause that the intent of the RCP is not adequately addressed in the LEP.

As a comparison the proposed LEP for Kiama describes the objective of its Biodiversity clause to “protect, maintain and improve”. This is also reflected in other Regional LEPs that have been accepted by the Department of Planning such as Wagga Wagga.

Strengthening this clause would recognise that Council is a key player in the conservation and management of biodiversity and threatened species. It will also make it more consistent with the objectives of the E2 zoning which is another aspect of the LEPs biodiversity protection regime. The objective of E2 is “to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.”

Biodiversity is essential for the maintenance of healthy ecosystems and human communities. In an area that prides itself on its environmental assets, failing to put in place more stringent biodiversity protection would put at risk these very assets. Strengthening this clause will promote both the preservation and the enhancement of the City’s biodiversity through prioritised rehabilitation and conservation efforts.

Recommendation 8.2

Clause 7.5. Add clauses to strengthen mitigation requirements related to development on land subject to this section:

Delete 7.5 (4) (c) and replace 4(b) with the following:

- 4 (b) If a potential adverse impact cannot be avoided, the development:
 - (i) Is designed and sited so as to have minimum adverse impact, and
 - (ii) Incorporates effective measures so as to have minimal adverse impact, and
 - (iii) Mitigates any residual adverse impact through the restoration of any existing disturbed or modified area on the site

Issues 8.2

Based on the current objective of this section, the current requirements of 7.5 (4) would not be able to achieve a goal of maintaining biodiversity. Rather, there would still be a continual degradation, as cumulative biodiversity impacts are permitted to occur, even if minimised for each individual development.

In order to maintain biodiversity, there needs to be a requirement to restore or offset where possible the impacts of each development. Furthermore, a requirement to see mitigation measures incorporated into development planning will provide greater assurances that biodiversity impacts are being adequately managed. Given RHVA is recommending strengthening the objective to “protect, maintain and extend”, these additional provisions are even more relevant.

Recommendation 8.3

Apply (modified) Clause 7.5 to all E2 and RE1 zoned land.

Issues 8.3

While every effort appears to have been made to accurately map Natural Resource Sensitivity on the Biodiversity and Water Maps in the draft LEP, it is apparent that some areas with important biodiversity and protection needs have not been recognised. By extending the application of the proposed modified Clause (7.5) to all land zoned E2 and RE1 would ensure that these most important areas were better protected.

Habitat corridors both from north to south and from east to west are vital for the free movement and survival of species, facilitating their adaptation and migration in response to development, rising temperatures, sea level rises and increased storm events. Hence, it is imperative that all biodiversity corridors and the integrity of the remaining habitats in the City are maintained and re-established. The South Coast Regional Strategy and the South Coast Regional Conservation Plan identify habitat corridors and provide the framework for protection of these corridors through the SLEP. For this CCB area, the east west corridors are vital since they link through to the Conjola NP which in turn provides a significant protected corridor through to the Morton NP – a unique Park system for NSW.

Inclusion of RE1 and E2 zones as adjuncts to habitat corridors in the Plan is consistent with the ESD principles, especially conserving biodiversity and is consistent with the SCRS.

One of the main aims for inclusion of strong biodiversity clauses is to provide the requirements for assessment of development applications in areas mapped as ‘Significant Vegetation’ and ‘Habitat Corridors’. The Draft SLEP does not achieve this aim and would permit development that would fragment ecosystems, reduce biodiversity and inhibit the free movement and survival of species, defeating the purpose of habitat corridor conservation.

Strengthening Clause 7.5 as proposed above and having it apply to E2 and RE1 zoned land will permit both qualitative and quantitative indicators for Planners to use as the basis of their judgments regarding the capacity or otherwise of an application to “maintain biodiversity and ecosystem function.”

Recommendation 8.4

Clause 7.6. Add clauses to strengthen mitigation requirements related to development on land subject to this section:

Delete 7.6 (5) (c) and replace 5(b) with the following:

- 4 (b) If a potential adverse impact cannot be avoided, the development:
 - (i) Is designed and sited so as to have minimum adverse impact, and
 - (ii) Incorporates effective measures so as to have minimal adverse impact, and
 - (iii) Mitigates any residual adverse impact through the restoration of any existing disturbed or modified area on the site

Issues 8.4

Refer to those listed in 8.2 above.

PART 9

HEIGHT OF BUILDINGS (HOB)

(Para 4.3)

A Submission by the RHVA

Dated 10 October 2011

Recommendations 9.1

Map all zones (HOB and FSR) throughout the City of Shoalhaven to reflect existing maximum heights whether they are set by DCP or by convention / precedence.

and

Clause 4.3. Remove the statement “11 metres except where” and change “is” to “as”.

Issues 9.1

Council will consider mapping R2 (low density residential) and RU5 (village) zones at 8.5m according to its media release dated 1 August 2011 but this will only be addressed after the conclusion of the exhibition period. The media release also stated that site specific DCPs height limits that exist now would need to be reflected in the new LEP. This would include a 7.5m height limit on coastal development within the first building line back from a water body.

Council needs to declare where its “strategic centres” are and their intended plans for the future. If these ‘centres’ are Huskisson, Ulladulla CBD, and the Civic Precinct in Nowra then it will be aware that all of these have attracted considerable community concern and have legal complications. The Draft proposal, if left unchanged will cause a loss of community scrutiny over development in the Shoalhaven because:

- Increasing the max height from 2 Storeys to 11m, absorbs the existing right of Council to approve construction up to 11 m through removing the right of the community to scrutiny and comment
- The L&E Court will uphold the new height irrespective of what is included in the New City Wide DCP which will be based on “performance criteria” and “Acceptable solutions” and not strict unequivocal guidelines
- Flexibility for Councillors has replaced scrutiny and the option to object from the community
- A DA could be handled by a private certifier and the default height of 11m would be considered as “complying” thus eliminating community or council input.

Council should be required to declare its “strategic centres” and include HOB and FSR Maps for all zones within the City following consultation with the community; the first task under the Community Engagement Strategy.

PART 10

SLEP FORMAT AND USE OF GROUP TERMS

A Submission by the RHVA

Dated 10 October 2011

Recommendation 10.1

Business Zone: That the sentence reading “Any development not specified in item 2 or 4” within the “Permitted with consent” paragraph be deleted and replaced with a clause to be included in the “Prohibited” paragraph to read “ Any other development listed in the land use table not specified in item 2 or 3”

Issue 10.1

The placement and meaning of the draft clause is unclear. What does “Any development” mean? Inclusion of the clause in the “Permitted with consent” paragraph leaves its interpretation open rather than making it clear to landowners/developers exactly what is allowed as a development in a business zone.

The format for the Business Zone is inconsistent with that used for other zones in the land Use Section of the Draft. Throughout the remainder of this Section “Any other development not specified....” is included as part of the “Prohibited” paragraph; a logical placement.

Recommendation 10.2

Where a Group term (definition) which has sub elements is not used in its entirety then only the element(s) appear in either the “with consent” or “prohibited clause”

Issues 10.2

The Land Use Matrix provided by Council during the exhibition period was a very valuable resource but it understood that it will not form part of the final LEP document. The Matrix is far more definitive in specifying what is and what is not permissible within the various zones.

Some Group terms contain elements to them. For example:

Tourist and Visitor Accommodation includes:

- Hotel and motel accommodation
- Serviced apartments
- Bed and breakfast accommodation
- Backpackers’ accommodation and
- Farm stay accommodation.

The Current draft states in many places that “Tourist and Visitor Accommodation” is permitted and then states that some of the elements are not allowed under the “Prohibited” clause. For example using the RU2 Land Use table:

“With Consent” paragraph – Tourist and Visitor accommodation

“Prohibited” paragraph - Hotel and Motel Accommodation and Serviced Apartments

By deduction that leaves B&B, Farm stays and Backpackers’ accommodation as being “Permitted with consent”.

The matrix verifies this but the draft document is not so precise and can therefore lead to confusion and may result in the LEP being open to interpretation. To avoid this problem with the L&EC, developers, and landholders it would be better to clearly specify what is IN and what is OUT.

In our example the Group Term of “Tourist and Visitor Accommodation” would be deleted from the “With Consent” clause and replaced with:

“Backpackers’ accommodation”, “Bed and breakfast accommodation” and “Farm stay accommodation”.

PART 11

RURAL LAND REZONED RESIDENTIAL

1C TO R5

A Submission by the RHVA

Dated 10 October 2011

Recommendation 11.1

That the proposed draft does not 'spot rezone' rural land for residential use

Issues 11.1

The intent of the Draft SLEP was to provide a "best fit" approach to the previous LEP. Clearly this position has moved on considerably over the time that has elapsed between intention and delivery of the Draft for exhibition.

The rezoning of land from rural use to a residential zone cannot be accepted as part of a legitimate "administrative" transfer of the old to the new; in short this represents a major and serious attempt to provide future development opportunities without the necessity to seek spot rezoning.

Council staff have been at pains to indicate the difficulty they have had in transferring the many zonings that existed under LEP1985 into the fewer categories that are listed under the SI. However, in this particular instance Council has elected not to utilise the RU4 zone – Rural Small Holdings - preferring instead to propose that R5, large lot residential, is appropriate.

LEP1985 stated that 1(c) zones existed to:

"Integrate new and existing development and lifestyles so that conflicts between land uses and lifestyles are minimised and a high level of landscape quality is sustained",

and

"Foster use of agricultural land of prime crop and pasture land and provide for other small scale uses compatible with sustaining a rural lifestyle and an adequate level of amenity in the zone"

How do such objectives align with that stated as one of the R5 objectives?

- "to ensure that large lot residential allotments do not hinder the proper and orderly development of urban areas in the future"?

This stated aim (as per the SI) clearly indicates how the State Government intends to grow residential areas in the future and in this instance Council is allowing it to do so at the cost of losing precious agricultural land.

Both R5 and RU4 include as one of the aims:

"To minimise conflict between land uses within the zone and land uses within the adjoining zones".

However recent experience in this area has shown that people in residential zones have little tolerance for activities associated with genuine agricultural pursuits; bee keeping, piggeries, dairy and beef cattle in particular.

It is vital for Council staff to recognise the need to ensure that “buffer zones” between large primary production areas and adjacent small holdings have landholders that at least share common ideology with respect to agricultural activity. The very purpose of the small lot rural lifestyle holdings was to do just that. Further, if agricultural pursuits are prohibited under the new SLEP for R5 then the division between conflicting interests can only widen.

These possible future conflicts can be best overcome by utilising an RU4 zone for land zoned 1c under the old LEP.

Recommendations 11.2

That Rural lifestyle lots located on Little Forest Road Milton be zoned RU4

and

That lot size maps reflect the recommendations made in LP321 - Commissioner Cleland’s report (2001)

Issues 11.2

In 2000 Council undertook a study to ascertain whether lot densities could be increased for Rural Lifestyle 1 (c) zoned land.

We have been advised by Council staff (Ms Dunsford) that the resulting LP321 was captured in Amendment No 185 of LEP1985. However the wording of this amendment makes no mention of LP321. Specifically the Commissioner’s report detailed that lot densities were to be maintained at their current level:

- 3 lots per 40ha on the southern side of Little Forest Rd and
- 1 lot per 40ha on the northern side of Little Forest Road.

Any lot density increase would impact adversely on the catchments of Narrawallee Creek and Croobyar Creek which then flow into Narrawallee Creek. The whole catchment area does not have a reticulated sewerage scheme and high nutrient runoff is therefore inevitable.

Finally, the proposed R5 zoning accompanied by a lot size overlay of 1ha per lot would result in unsustainable development. A thirteen fold lot increase on the southern side coupled with a forty fold increase to the northern side of Little Forest Road could not possibly be considered as a reasonable and sustainable outcome. Such a position would be at odds with the stated aim of both R5 and RU4 in that: “development does not unreasonably increase the demand for public services or public facilities”.

PART 12

ENVIRONMENTAL HERITAGE

(Schedule 5)

**A Submission by the RHVA
Dated 10 October 2011**

Recommendation 12.1

Include the Goodsell grave sites, Manyana, onto Schedule 5 of the SLEP2009

Issues 12.1

The Goodsell graves sites are located on private property (Kylor Pty Ltd) on Lot 2 DP1161638.

A very brief background reveals that the Goodsell's were pioneers in the District and owned much of the land around Red Head. The area was generally referred to as Goodsell's Farm before being renamed Manyana. Although Jesse Goodsell (1841 -1924) and his wife Mary nee Gallaway (1849 -1927) were not the first settlers here they were the most famous.

When Jesse Goodsell died in 1924, it was his wish that he be buried on his land, (Por 107) now Lot 2 DP1161638, by a lilli pilli tree which he loved. This was not far from the original homestead which was called "*Wakefield*" and the property known as "*Red Hill*". Mary Goodsell was also buried there two years later.

In 1983 Bob Goodsell, Reuben Johnson and Allan Faulks, grandsons of those early pioneers, substantially renovated the graves and fixed an appropriate plaque there in the hope that "this historic spot be preserved amidst the land subdivision which was bound to take place". (See photograph next page)

It is reported by Allan Faulks, that:

"the Shoalhaven Council had given a commitment that the graves will be protected under the Heritage Environment policy". (*Congenial Conjola, Alex McAndrew, 1991*)

It would seem that since 1991 there has been no follow through on this undertaking and with the advent of a new LEP it would be appropriate to amend this oversight.

There are further details available about the Goodsell family that can be made available should further documentary evidence be needed for inclusion into SLEP Schedule 5. The Milton Ulladulla Historical Society (Inc) has kindly offered its support for the Goodsell graves to be noted in the new LEP.

It is requested that this site be subject to Clause 5.10 of the draft SLEP



PART 13

FURTHER CONSULTATION

**A Submission by the RHVA
Dated 10 October 2011**

Essentially this submission has highlight some critical factors for which have implication for what Council's next steps might be:

- The Draft SLEP2009 is not a straight administrative transfer
- There have been many zone changes which are obviously not based on the proposed transfer table
- The standard instrument itself has changed over the time that this Draft SLEP has come to public exhibition.

Both the City-wide DCP and the City Wide Growth Management Strategy will attempt to address those matters which are not able to be accommodated by the new LEP. The community needs to be provided with an outcome that is transparent so that a clear picture of what this new LEP will embrace and those matters that will need follow-up in the City-wide DCP.

It is therefore recommended that the draft, once processed through Council staff, councillors, and followed by DoP input, will require re-exhibition so that a firm base plate is established on which to seek community input to the DCP.

It is not envisaged that a re-exhibition period would be as extensive as the one provided for the initial exhibition phase

Peter Hudson

President
RHVA

10 October 2011