Background

A report on this matter was presented to Council in October 2004. The report provided information on a then Working Draft Discussion Paper – Standard Provisions for Local Environmental Plans in NSW. The purpose of the report was to formalise comment from Council. A submission was subsequently provided to the then Department of Infrastructure Planning and Natural Resources (DIPNR). A copy of the submission is within the Information Folder.

The NSW Department of Planning (DoP) in late September 2005 released a Draft Standard LEP. It was accompanied by Information Sheets providing an overview for the various stakeholders (e.g. “Home Owners”, “Communities”, “Business”). The Draft Standard LEP is on exhibition until 28 October 2005, and submissions will be accepted up to 4 November 2005. It is understood the State government intends to gazette an Order prescribing the form and content for local LEPs in mid-December 2005. From that time all Councils in NSW will be required to produce a new principal LEP for their area within 2 – 5 years dependant on a timetable for each local government area. Shoalhaven City Council will be required to produce its plan within 3 years as will other coastal councils.

This can be staged and it is anticipated Nowra Bomaderry will be the initial stage.

In producing the principal plan, indications from DoP officers are that councils will produce a “best fit” plan, in the absence of an appropriate endorsed strategy. Should a council not produce a principal plan within the timetable specified, it is understood the government has an option of producing the plan and charging the council for its reasonable costs in doing so and/or appointing a Planning Administrator.

The Draft Standard LEP

A copy of the Draft Standard LEP has been circulated to councillors and a briefing was held on 20 October 2005. This report will confirm issues to be submitted to the DoP.

It is appreciated the government wishes to expedite the matter without unnecessary delay. However, there is concern that insufficient time has been allocated for councils to provide fully informed comment nor for the draft plan to be amended in accordance with reasonable requests/submissions. To this end an extension of time to provide comment by at least one month is requested. The proposal has significant implications for local government and many matters will become “non-negotiable” once this standard is adopted. The project does have many positive aspects e.g. dictionary; standard clause numbering, however should the government not agree to the request, then the following amendments should be made to the draft standard LEP.
1. The range of zones does not address expected planning needs for the State and needs to be modified as follows:

   a. The introduction of a Village zone with the objectives of providing for a village lifestyle and a range of residential accommodation and support urban facilities;

   b. The introduction of a Tourist zone (or at least some provision in the Plan) that will have the objective of identifying and protecting sites for tourist infrastructure and facilities. Further, this zone (or these sites) should not be subject to proposed section 19 (3) of the Draft Standard LEP (which provides for “strata” and “community land” subdivision without consent). The concern relates to the permanent occupation of tourist sites, and thereby a loss to the local economy.

   c. Appropriate criteria be developed such that the use of the Rural (Investigation) zone cannot be taken up without an endorsed strategy supporting the land’s potential for future development. Note: This zone refers to potential urban expansion zones.

   d. The need for a Neighbourhood Business zone is questioned. It is understood this zone is intended for “corner shops” or the like in conjunction with a dwelling, and both must operate together. This is likely to cause problems in the event one of the uses ceases permanently or for some considerable time. A “general store” as a land use may be an alternative.

   e. The need for a Business/Technology zone is questioned. It is suggested the Light or General Industrial zones could be utilised if incorporating an appropriate clause or land use definition. For example the selective use of “identified land use” as defined and utilised in Shoalhaven Local Environmental Plan 1985 (SLEP).

   f. There needs to be an additional zone to differentiate between general rural lands, not suitable for agriculture, and rural lands suitable for agriculture – that is the “agriculture” and “intensive agriculture” zones. e.g. Council’s current Rural 1(d) zone.

   g. The need for both “agriculture” and “intensive agriculture” zones is questioned. “Intensive agriculture” is normally a permissible use (with consent) in an agriculture zone which identifies productive agriculture land.

2. Council supports the use of a land use table for planning control rather than the matrix form. Council also requests a modification to the proposed table such that there is consistency in interpretation. In this respect the tables should consistently state what the permissible uses (with consent) are, with all other uses prohibited, or consistently state what the prohibited uses are, with all other uses permissible (with consent). Preference is given to nomination of prohibited uses in the land use table.

3. Council supports the use of mapping to make clearer how the planning “rules” apply to certain pieces of land. However, this requires significant resources to implement and potentially a large number of maps for regional councils such as the Shoalhaven. In this respect Council requests there should be no need to produce maps unnecessarily. For example Council’s LEP defines a “perennial water course” by reference to the 1:25,000 scale topographic map produced by the NSW Land Information Centre. By this method Council does not have to produce a map. It is suggested this should also be the case when referring to the map in the proposed definition of “riparian land”.

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4. With regard to the proposed provisions:

   a. Section 28 should be amended such that telecommunication facilities be located on the one site rather than each provider placing a facility in a different location
b. Sections 37, 38 and 47, relating to Height of Buildings, Floor Space Ratio and Building Site Coverage must not apply to those councils that do not have existing controls in their LEPs.

c. The inflexibility of the draft s. 43 (3) (b) is objected to. It is understood this has been inserted from SEPP No. 71 – Coastal Protection. There should not be such widespread restriction on the use of a flexible clause, as exists with clause 48 of SLEP, except for sensitive coastal locations.

d. There is objection to s.19(3), allowing “strata” and “community land” subdivisions without consent, subject to criteria. This is likely to contradict many planning controls in the State ensuring conditions of development consent are met, or inappropriate subdivision does not occur.

e. There is objection to the compulsory application of s.46. It has always been an option to each council to implement a Tree Preservation Order or not, and indeed how to manage trees in the respective local government area. The compulsory inclusion of this section will raise adverse issues of liability and resources for councils. Further, there needs to be clarification of what constitutes a “tree” and “permit”.

f. A standard Clause exists in LEPs relating to the suspension of covenants, agreements and instruments to enable development to be carried out in accordance with a plan. There is a need for such a clause to be included.

g. Section 43 needs criteria on how it is to be implemented, otherwise there is likely to be varied interpretation across the State.

h. There is no provision that adequately covers water catchment areas – e.g. for Sydney’s water supply.

i. Sections 14 and 15 (relating to Exempt and Complying Development) are inadequate in that they do not address all the matters raised in attached Tables 1,2,3 and 4 – which are extracts from Shoalhaven Council’s Development Control Plan NO. 89 – Exempt and Complying Development.

j. Section 44 (4) (relating to excavation or filling of land) requires quantification of what is “minor”, otherwise there is likely to be varied interpretation across the State.

k. Section 18 appears to be superfluous and its intent is questioned.

5. Mapping:

a. Each zone should be numbered to facilitate identification on a black and white zoning map. There will be an ongoing need for black and white hard-copy copies of mapping, and in the absence of numbering production of such mapping will be difficult.

b. It is understood there will be a requirement for maps to show street (or house) numbering. Shoalhaven Council’s experience is that street numbering can be used when accessing graphic information electronically, but not in hard-copy form. This is due to the flexibility in varying the scale of mapping electronically (for example by “zooming in” and the layers of information shown), as against the less flexible scale options of hard-copy mapping.

c. There needs to be clarification of rating issues if Rural Residential is identified as a “residential” use, rather than a “rural” use.

d. Councils need to amend mapping (such as flood mapping) without reference to the State government via an amendment to the LEP.

6. Definitions:
a. There is a concern with the inclusion of an “animal boarding” or “training establishment” as uses within the definition of “agriculture”. Whilst there is no objection to “agriculture” being a permissible use without consent in certain cases, an “animal boarding” or “training establishment” should require development consent in all cases.

b. The definition of “crematorium” should include domestic pets.

c. There should be a greater distinction between “granny flat” and “dual occupancy”.

d. A “home occupation” should include the employment of persons (limited number) other than permanent residents.

e. There is a need for definitions of “short term holiday rental” and “professional consulting room”.

7. Others:

a. Concessional lots can be regarded as an ad hoc approach to rural settlement, and should be replaced with a rural settlement strategy. Concessional lots can result in an inefficient demand for services, adverse impacts on surrounding rural land uses and the environment, and risk to life and property – e.g. bushfire services.

b. The extensive change in zones and their provisions is likely to create an equally extensive risk of non-conforming uses – that is “existing use rights”. There needs to be some legislative response to this situation.

c. There is concern about how the Native Vegetation Act will relate to clearing under the draft instrument and proposed section 46.

d. There are no provisions relating to the erection of dwelling-houses in the rural areas. It would be appropriate to include a clause making provision restricting dwelling-houses to a minimum lot size, an existing holding or lot created under a previous instrument which would have permitted a dwelling-house.

e. It appears the ability to vary any development standard will require concurrence of the Director-General. There should be some criteria where councils may exercise delegation.

f. Bulky goods retailing may warrant a separate zoning identification for the benefit of proponents of such developments and to protect viability of other centres.

g. There does not appear to be a clause allowing council works.

**Shoalhaven LEP Review**

As indicated earlier in the report Council has been advised that it has three (3) years to deliver a new principal LEP in the revised (template) format. It has been indicated that the three year timeframe will commence on the date that the Order prescribing the LEP Template form and content is gazetted. Indications are that this could occur before the end of this year.

Council needs to act proactively to ensure that we are able to formally commence the required process as soon as the Order is gazetted. As such Council needs to formally resolve to prepare a new Shoalhaven LEP in the required format, resolving to prepare the LEP will also show the Department of Planning that Council is committed to delivering the LEP review within the nominated timeframe.

The Department has, and is indicating that, financial assistance will be made available to assist in meeting timeframes. These avenues are currently being explored.
Council will be kept advised of the progress of the proposed LEP review through future Councillor Briefings and Council reports.

Conclusion

The above should comprise the issues to be submitted to the DoP, together with any other matters Council may wish to raise.

RECOMMENDED that Council

a) Make a submission on the Draft Standard Local Environmental Plan as set out in the report, together with any other matters it may wish to include.

b) Formally resolve to prepare a Citywide Draft Local Environmental Plan with the objective of making Shoalhaven Local Environmental Plan 1985 consistent with the NSW Government’s Standard Local Environmental Plan provisions.

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GENERAL MANAGER