



## Background Paper -Shoalhaven Council Planning

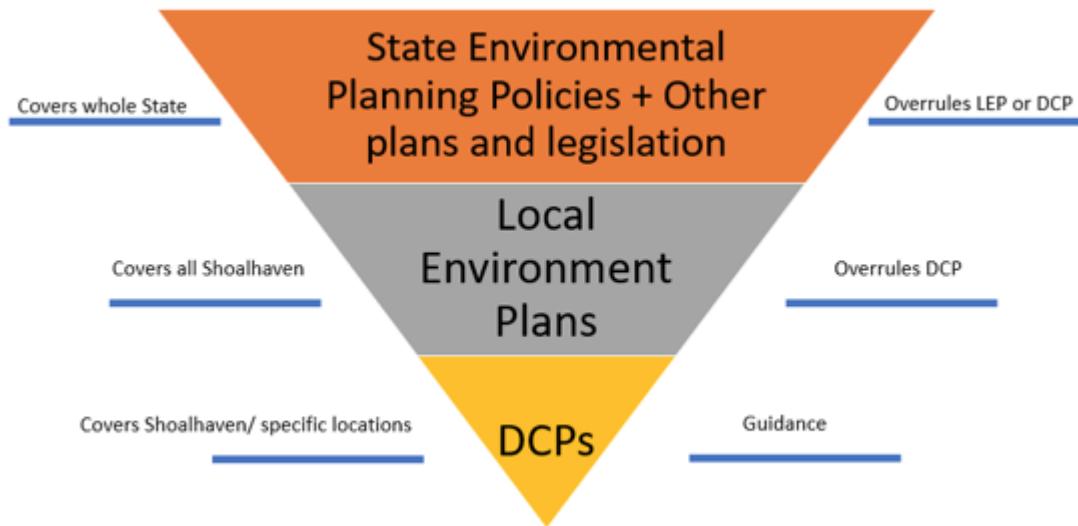
This paper discusses two aspects of Council's Planning that have been drawn to the attention of KJBU, these being **Development Approval Processes** and **Strategic Planning initiatives**.

### Development Approval Processes

Development Regulations are complex and span all levels of Government. Local Councils can only act within State and Commonwealth legal regulations.

The Shoalhaven Council states the goal of their Planning and Development is "to protect and enhance our natural and developed environment and to preserve our quality of life for future generations. Council does this by using appropriate development and planning processes and controls." [Planning & Development | Shoalhaven City Council \(nsw.gov.au\)](http://Planning & Development | Shoalhaven City Council (nsw.gov.au))

### Council's Planning and Regulatory Processes



### Legal Framework

#### State Environment Planning Policies

State Environmental Planning Policies (SEPPs) apply across the state and set the rules that control what development can occur on your land.

There are usually some SEPPs under review, for example see the following: [State Environmental Planning Policies \(SEPP\) review - \(nsw.gov.au\)](#)

**Shoalhaven Local Environmental Plan (SLEP) 2014** details the rules and guidelines for the management and control of development in our city and region through land zoning.

It specifies objectives, what development types are permissible in each zone, including their legal definitions, and sets out the key development standards and provisions to address local land constraints. <https://slep2014.shoalhaven.nsw.gov.au>

**Shoalhaven Development Control Plan (DCP) 2014** provides detailed guidance and provisions for the use of land including the criteria for the assessment of development applications.

Every development application needs to consider and respond to the DCP provisions that are applicable to the land use and/or land. [Shoalhaven DCP 2014 \(nsw.gov.au\)](#)

**Land and Environment Court** [Land and Environment Court of New South Wales \(nsw.gov.au\)](#)

The Land and Environment Court was the first specialist superior environment court in the world. The court hears environmental, development, building and planning disputes.

**Environmental Defence Office** <https://www.edo.org.au/>

The Environmental Defenders Office runs bold and ground breaking environmental cases to protect wildlife and the natural world. We give everyday people access to the justice system and empower communities to find legal remedies for their environmental problems. It is a non government agency and KJBU has used it's advisory services several times.

### Council Compliance Controls

Development approvals contain "Conditions of Consent". These have to be agreed to by the Owner/Planner and an approved Construction Certifier appointed. This person can be the Private Planner or a Council Certifier. It is then the responsibility of Certifier (private or Council) to ensure all conditions are upheld. Compliance is very much a self regulatory process. Council does have officers who investigate non-compliance but they often rely on complaints about a development's progress by neighbours or other community members to alert them to a problem. The standard procedures do not have a specific process however to adequately deal with out of business hour reports or complaints. Non-compliance concerning tree removal for example often occurs much earlier than 9am and damage can occur very quickly before an assessor can be informed. Such instances are not infrequent and only an out of hours service can remedy this problem.

### Development Application Approvals

All development applications are registered and placed on the Council DA Tracking webpage, allowing the applicant to follow approval progress, and enabling the public to scrutinise and comment for a defined period of time. Submissions sent to council are also listed and on view

with the name of the submitter. All submissions must be considered by the Council Development team before an application is determined. The Owner is able to see and respond to any submission. The Council does not have to give a written response or show evidence of their actual response to each submission. The person submitting can however make further enquiries. The Council handles over 7000 DA applications per annum ranging in size and complexity, and doesn't have the resources to respond to individual submissions. Some DA's have become extremely controversial and have taken years to determine. Currently there are many DA's being contested in the Jervis Bay region due to environmental and/or heritage concerns.

Zombie DA's refer to historical approvals which do not begin to be built for several years. Complaints about them no longer being fit for purpose are made but there is very little that can be done to stop them going ahead. Is a review of processes concerning historical DA's needed?

Rezoning of land by owners is a process involving the NSW Dept of Planning not Council. In Jervis Bay controversial attempts to rezone are not uncommon and the community may ask the Council to support their opposition to such contentious applications. A new approach to the Rezoning application process in NSW is underway, to make it faster and more efficient. This sounds like something to stay on top of.

### **SLEP and other planning maps**

Controversy is often over LEP zoning or interpretation of DCP guidelines. Since the wild summer bush fires of 2019/20 and the recent flooding there have been calls to have stricter controls put in place to compensate for the loss of habitat, fauna and flora. The SLEP contains numerous 'layers'. These include acid sulphate soils, biodiversity, riparian lands, urban release areas, maximum building height plus others. Council decisions also consider factors that are mapped on the Flood Maps, bushfire prone land maps, and coastal hazard maps.

The community has requested to re-examine flood mapping and revised protection of the vulnerable coastal margins and estuaries riparian zones.

The Shoalhaven LEP was last reviewed in 2014, is this the time for a review?

### **KJBU sought Expert Opinion on Council Development Regulations**

KJBU asked an experienced Planner with a long relationship with Jervis Bay, Stephen Bargwanna, to offer professional advice on this subject.

Stephen Bargwanna describes the local government planning process as being difficult and beset with bureaucracy and legal complexity. It also changes regularly at every level. He describes Planning as being basically about determining highest and best land use according to the characteristics of the land and the community goals. Through the land use zoning process it deals with establishing future strategic land uses (e.g. industrial, residential, conservation, recreation) and control of development for current zoned land use (e.g. density, height, design, access, impacts).

Stephen offers his opinion: "***to keep Jervis Bay in its current relatively pristine condition then a proposal could be put forward to have a strategic plan adopted by Council. This would limit development in the bay (e.g. moorings, dredging), around the bay perimeter (e.g. structures in***

*its visual catchment), and on the catchment waterways to preserve its ecological and aesthetic integrity".*

You can read Stephen Bargwanna's full account [here](#).

### Council Strategic Planning Initiatives

Council is required to produce formal planning reports, many of these require consultation with various expert bodies and the community itself. Here is an outline of some strategic plans which are relevant to the KJBU workshop. It is by no means an exhaustive list of current council planning documents.

**Shoalhaven Community Strategic Plan 2032** [Microsoft Word - Adopted CSP 2032 - based on 2027 version - new explanatory page \(nsw.gov.au\)](#)

The 2032 Community Strategic Plan has not been approved by council as yet. The report's environmental strategies and measurable outcomes require further examination. However the draft CSP is in place as an interim Plan tells us:

- What Council is striving to achieve
- Strategies being implemented
- Outcomes that will indicate Council has reached their goals

Council takes a lead role in the implementation of this Plan, however, responsibility for achieving long-term goals rests with all levels of government, businesses, industry groups, community organisations and individuals.

The process required consideration of more 40 National, State, Regional, Local other Strategies or Plans. As well as a community consultation process involving 6 workshops, 2000 pop-up surveys and 1200 online surveys over the course of 2 years, Over 300 submissions on the CSP were received by Council. .

**Shoalhaven 2040 Our Strategic Land-use Planning Statement-September 2020 (Local Strategic Planning Statement LSPS)** [displaydoc.aspx \(nsw.gov.au\)](#)

This document outlines various land-use aspirations and outlines how we will plan and deliver for our community now and into the future. This is an extract from the report "*The LSPS focuses on what the community has told us is important, including new homes and transport infrastructure, great communal places, jobs close to home, protecting and adapting to the environment and celebrating culture and heritage. By 2041, the Shoalhaven is projected to have a population of over 126,000. To manage this expected growth and to continue to meet current and future community needs, we require a clear vision that is supported by directions, priorities and actions. The LSPS framework, alongside Council's Community Strategic Plan (CSP) and Delivery Plan and Operational Program*

*(DPOP), will allow Council to plan, coordinate and implement the community's vision for the next 20 years. The Plan aims to recognise the Shoalhaven's unique character, natural and built environment, lifestyle, values and strengths".*

The document is 80 pages - rather than give a summary KJBU highly recommends that you look at the content page and sections of most interest to you. [displaydoc.aspx \(nsw.gov.au\)](#)

Over 250 submissions on the LSPS were received by Council.

### **Additional information**

- Council is in the process of forming a new advisory group – **Shoalhaven Economic Growth and Advocacy Group (SEGA) (an expansion of the Shoalhaven Tourism Advisor Group)** – you can find out about this group [via this link](#). It is intended to have business representation but no community representatives on SEGA. Should this be questioned?
- The Tourism Team have engaged a research specialist to consult with industry and deliver a **Tourism Recovery Action Plan**, details can be found on P24 of the agenda document - [Agenda of Shoalhaven Tourism Advisory Group - 22 February 2022 \(infocouncil.biz\)](#). This sits alongside the Destination Management Plan for the next 18- 24 months. [DisplayDoc.aspx \(nsw.gov.au\)](#)
- The **Coastal Management Plan** has a steering committee made up of council staff, experts and community representatives. Jervis Bay's plan is currently at Stage 3 and due to be finalised in 2023. This is separate from Currambene and Moona Moona Creek estuarine plan which has yet to commence.
- The **Shoalhaven Coastal Zone Management Plan (CZMP)** 2018 is operational until 2023. Worthwhile having a look at this doc [DisplayDoc.aspx \(nsw.gov.au\)](#). To find out progress on the new plans as they evolve it is worth signing up "Get Involved" (see below).
- **Council Annual Report Section 1**- Delivery Program Operational Plan Performance, [displaydoc.aspx \(nsw.gov.au\)](#). This section of the report covers performance indicators of Resilient, Safe & Inclusive Communities, Sustainable Liveable Environments, Prosperous Communities (includes Tourism), Responsible Governance and more.
- **Get Involved Website** [Get Involved Shoalhaven \(nsw.gov.au\)](#). The Council has developed a very comprehensive communication strategy to keep people informed of current projects allowing questions and feedback from the community. Anyone can sign up to be sent updates by email, the website also allows you browse through all projects anytime. KJBU has found it a great baseline of information and can recommend it.
- **Shoalhaven Council website** <https://www.shoalhaven.nsw.gov.au> The Council Website is the major source of information on Council activities, it has an efficient chat line. However Council does have to

consider those in the community who do not have access to the web for whatever reason. KJBU found access to hard copies of the reports we have needed to review for this paper very difficult. Although digital copies are certainly appreciated by many, the ability to also get hard copies on request is important. Glossy Copies seem to be going extinct, rather like the Glossy Black Cockatoo!

- **Community Consultative Bodies** (CCB's) [Community Consultative Bodies | Shoalhaven City Council \(nsw.gov.au\)](#) Community Consultative Bodies (CCBs) are resident representative groups that are endorsed by Council as the representative group for residents and ratepayers in a given area and have geographic boundaries covering an area with a common interest.

Whilst it may be time for review, CCB's have the general support and confidence of the local community to:

- Disperse information
- Promote and facilitate discussion
- Communicate shared and collective views of the community to Council. The process of ensuring fair representation on these bodies can be difficult. The role CCB's play is important and staying informed of the business meetings by being on an email list for minutes is beneficial. Anyone can attend meetings and nominate to stand on the committee.

This paper was compiled by Penny Davidson and Sue Tolley July 2022