3 May 2019

Dear Committee

The following is the outcome of the Council meeting of 30 April … the solution may not be easily achieved.

Looks like the gate has been left well and truly open for any and all sorts of convenient proposals

This might be a difficult case as the Tourism organisations may wish to protect their turf without considering the wider implications

Regards

Alan

**DE19.28     Proposed Review - Shoalhaven LEP 2014 - Clause 2.8 Temporary Use of Land**

**HPERM Ref:**D19/109574

**Group:**

**Section:**Strategic Planning

**Purpose / Summary**

Obtain direction from Council regarding a potential review of Clause 2.8 (Temporary use of land) in Shoalhaven Local Environmental Plan (LEP) 2014.

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| --- |
| **Recommendation (Item to be determined under delegated authority)**  That Council:  1.    Proceed to review the operation and effect of the current Clause 2.8 (Temporary use of land) in Shoalhaven Local Environmental Plan 2014.  2.    Advise relevant stakeholders (all CCBs, Development/Tourism Industry, Shoalhaven Tourism Advisory Group) of this decision and engage them during the Review.  3.    Receive a further report outlining the findings of the Review and options to revise the clause as appropriate. |

**Options**

1.    Adopt the recommendation.

Implications: This is the preferred option as it will provide Council with the necessary information to adequately respond to community concerns and make an informed decision on whether any amendments to Clause 2.8 are required.

2.    Adopt an alternative recommendation.

Implications: The implications will depend on the extent of any changes.  Depending on its nature, an alternative recommendation could either delay any proposed amendments to Clause 2.8 or result in amendments with unforeseen implications.

3.    Not adopt the recommendation.

Implications: This option is not preferred as the community continue to raise concerns regarding the approval of Development Applications made under Clause 2.8.  Without a wholistic review, Council will continue to potentially react individually to community submissions and complaints during the assessment and operation of these temporary uses.

**Background**

Clause 2.8 is an optional Clause within the NSW Government’s Standard Instrument LEP, which means that Councils can choose whether to include it within their LEP. Council opted to include the clause as part of the preparation of Shoalhaven LEP 2014.

Clause 2.8 allows development consent to be granted for any development in any zone for a maximum period of 52 days in any 12-month period. Under this Clause, consent may be granted regardless of land use permissibility and any other land use restrictions within the LEP. For example, a function centre may be able to obtain consent in the RU1 or RU2 zones under Clause 2.8 even though it is not expressly permissible via the relevant land use table.

The current wording of Clause 2.8 in the Shoalhaven LEP 2014 is as follows:

***“2.8   Temporary use of land***

*1)   The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*

*2)   Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.*

*3)   Development consent must not be granted unless the consent authority is satisfied that:*

*a)   the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*

*b)   the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*

*c)   the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*

*d)   at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*

*4)   Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.*

*5)   Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales**office mentioned in subclause (4).”*

Since the commencement of Shoalhaven LEP 2014, community concerns have been raised in relation to various development applications made under Clause 2.8. Most of these concerns are focused around applications for temporary function centres (e.g. wedding venues) in rural and environmental zones and/or relate to issues such as:

    Inappropriate location.

    Undesirable behaviour.

    Amenity (noise, dust, light spill).

    Flora and fauna impacts.

    Actual “Temporary” nature of the use/development.

    Lack of services.

    Waste collection.

Recent examples of community concerns in relation to function centre applications under Clause 2.8 include:

    2819A Moss Vale Road, Barrengarry - 25 submissions received – majority raised issues.

    179 Cedar Springs Road, Kangaroo Valley - 26 submissions received – majority raised issues.

    171B Strongs Road, Jaspers Brush - 105 submissions received (at date of writing) – majority raised issues. It is noted that this application has been ‘called-in” for determination by Council (MIN19.161).

Initial investigations have found that several Councils across NSW have amended Clause 2.8 over time by:

    Reducing the allowable timeframe from the standard 52 days.

    Limiting the application of Clause 2.8 so that it does not apply to certain zoned land (e.g. land zoned RU2 Rural Landscape).

    Creating specific land use exceptions to Clause 2.8. (i.e. defining uses that the clause does not apply to).

**Conclusion**

Given the current community concern regarding the ongoing application of Clause 2.8 it would be prudent for Council to investigate the merit of these concerns and consider possible adjustments to the current clause.

It is intended that the further report to Council would summarise the findings of the more detailed review and identify whether any amendments to Clause 2.8 would be beneficial, and if so, their nature.

**Community Engagement**

The review will include consultation with relevant stakeholders (all CCBs, Development/Tourism Industry representatives, Shoalhaven Tourism Advisory Group etc.) to ensure that any amendments are responsive to the broader interests of the wider community.

It is noted that the tourism sector utilises Clause 2.8 for events including weddings, functions and temporary markets. These events are primarily located in rural and environmental zones due to the amenity of the natural landscape and are a large driver for out-of-season visitors to Shoalhaven.

As such, the Shoalhaven Tourism Advisory Group and Tourism Industry will be directly consulted to ensure that the proposed amendments balance the concerns of both the businesses operating under the Clause and the residents/ratepayers impacted by the temporary developments.

Should the review recommend amendments to Clause 2.8, any resulting Planning Proposal would ultimately be exhibited for comment in accordance with Council’s Community Engagement Policy to ‘inform’ and ‘consult’ and relevant legislative requirements.

**Financial Implications**

Based on the recommended approach, there are no immediate financial implications for Council and the review will be resourced within the existing Strategic Planning budget.

**Risk Implications**

There is currently an increase in community objections to temporary use developments (predominantly function centres) being considered under Clause 2.8 of Shoalhaven LEP 2014.

Reviewing Clause 2.8 will allow Council to be proactive in considering community objections whilst balancing the interests of the tourism industry.