

Development Committee

Meeting Date: Monday, 05 June, 2017
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5:00pm

Membership (Quorum - 5)
Clr Patricia White - Chairperson
All Councillors
General Manager or nominee

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Agenda

1. **Apologies / Leave of Absence**
2. **Confirmation of Minutes**
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3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
7. **Reports**
 - DE17.38 Section 138 Approvals, Roads Act 1993 9
 - DE17.39 Development Application DA16/1759 - 2159 Moss Vale Road
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 - DE17.40 Planning Proposal (Rezoning) - St Vincent and Deering Streets,
Ulladulla (Your Urban Designer) 53
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8. Confidential Reports

Nil

Development Committee

Delegation:

Pursuant to s377 (1) of the Local Government Act 1993 the Committee is delegated the functions conferred on Council by the Environmental Planning & Assessment Act 1979 (EPA Act), Local Government Act 1993 (LG Act) or any other Act or delegated to Council, as are specified in the attached Schedule, subject to the following limitations:

- i. The Committee cannot make a decision to make a local environmental plan to classify or reclassify public land under Division 1 of Part 2 of Chapter 6 of the LG Act;
- ii. The Committee cannot review a s82A or s96AB EPA Act determination made by the Council or by the Committee itself;
- iii. The Committee cannot exercise any function delegated to the Council which by the terms of that delegation cannot be sub-delegated;
- iv. The Committee cannot exercise any function which s377(1) of the LG Act provides cannot be delegated by Council; and
- v. The Committee cannot exercise a function which is expressly required by the LG Act or any other Act to be exercised by resolution of the Council.

Schedule:

1. All functions relating to the preparation, making, and review of local environmental plans (LEPs) and development control plans (DCPs) under Part 3 of the EPA Act.
2. All functions relating to the preparation, making, and review of contributions plans and the preparation, entry into, and review of voluntary planning agreements under Part 4 of the EPA Act.
3. The preparation, adoption, and review of policies and strategies of the Council in respect of town planning and environmental matters and the variation of such policies.
4. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which breaches a development standard by more than 10% and the application is accompanied by a request to vary the development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 or an objection to the application of the development standard under State Environmental Planning Policy No. 1 – Development Standards.
5. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the General Manager requires to be determined by the Committee
6. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
7. Review of all determinations of development applications under sections 82A and 96AB of the EP&A Act.
8. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.

MINUTES OF THE DEVELOPMENT COMMITTEE

Meeting Date: Tuesday, 9 May 2017
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5:00pm

The following members were present:

Clr Patricia White - Chairperson
Clr Joanna Gash
Clr John Wells
Clr Amanda Findley
Clr John Levett – arrived at the meeting at 5.02 pm
Clr Nina Cheyne
Clr Annette Alldrick
Clr Kaye Gartner
Clr Andrew Guile
Clr Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Apologies / Leave of Absence

Nil

Confirmation of the Minutes

RESOLVED (Clr Wells / Clr Gartner) MIN17.373

That the Minutes of the Development Committee held on Tuesday 11 April 2017 be confirmed.
Wells/Gartner

CARRIED

Declarations of Interest

Clr Watson – DE17.30 – Planning Proposal and Development Control Plan - Falls Creek / Woollamia Deferred Areas – pecuniary interest declaration – as he owns a property at 23 Seangood Road, Woollamia and the decision of the Committee may impact on the value of his property – will leave the room and will not take part in discussion or vote.

DEPUTATIONS AND PRESENTATIONS

Mr Daniel Thompson addressed the Committee in relation to DE17.36 Moss Vale Road South Urban Release Area - Detailed Supporting Plans

Clr Levett joined the meeting at 5.02pm

REPORTS

Procedural Motion - Bring Item Forward

MOTION (Clr Gartner / Clr Guile)

That the matter of item DE17.36 Moss Vale Road South Urban Release Area - Detailed Supporting Plans be brought forward for consideration.

DE17.36 Moss Vale Road South Urban Release Area - Detailed Supporting Plans

**HPERM Ref:
D17/106420**

Note: A deputation on this matter was provided earlier in the meeting.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the proposed insertion of a clause in Shoalhaven Local Environmental Plan 2014 that allows for an exception to the minimum lot size in the Moss Vale Road South Urban Release Area and prepare a Planning Proposal to submit to the NSW Department of Planning and Environment for Gateway determination.
2. Give in principle support for the current Indicative Layout Plan for the Urban Release Area, which will be utilised in the proposed Development Control Plan Chapter.
3. Commence the preparation of a Development Control Plan Chapter and Contributions Plan for the Moss Vale South Urban Release Area as required by Part 6 of Shoalhaven LEP2014.
4. If necessary, receive a further report following receipt of the Gateway determination.

RESOLVED (Clr Gartner / Clr Watson)

MIN17.374

That Council:

1. Support the proposed insertion of a clause in Shoalhaven Local Environmental Plan 2014 that allows for an exception to the minimum lot size in the Moss Vale Road South Urban Release Area and prepare a Planning Proposal to submit to the NSW Department of Planning and Environment for Gateway determination.
2. Give in principle support for the current Indicative Layout Plan for the Urban Release Area, which will be utilised in the proposed Development Control Plan Chapter.
3. Commence the preparation of a Development Control Plan Chapter and Contributions Plan for the Moss Vale South Urban Release Area as required by Part 6 of Shoalhaven LEP2014.
4. If necessary, receive a further report following receipt of the Gateway determination.

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

**DE17.29 Draft Planning Agreement - Enterprise Avenue, South
Nowra - Proposed Public Exhibition**

**HPERM Ref:
D17/56925**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the requested changes to the draft Planning Agreement requested by Palmira Holdings Pty Ltd.
2. Publicly exhibit the draft Planning Agreement (Attachment 1) for a minimum period of 28 days as required by legislation.
3. Identify a budget to compensate for part of the design and construction of Enterprise Avenue.
4. Commence the process to acquire part of Lot 2 DP 1170503 to enable to construction of Enterprise Avenue.
5. Council staff report back to the Development Committee after the public exhibition period.

RESOLVED (Clr Wells / Clr Gash)

MIN17.375

That Council:

1. Support the requested changes to the draft Planning Agreement requested by Palmira Holdings Pty Ltd.
2. Publicly exhibit the draft Planning Agreement (Attachment 1) for a minimum period of 28 days as required by legislation.
3. Identify a budget to compensate for part of the design and construction of Enterprise Avenue.
4. Commence the process to acquire part of Lot 2 DP 1170503 to enable to construction of Enterprise Avenue.
5. Staff report back to the Development Committee after the public exhibition period.

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

**DE17.30 Planning Proposal and Development Control Plan - Falls
Creek / Woollamia Deferred Areas**

**HPERM Ref:
D17/85943**

Clr Watson – pecuniary interest declaration – left the room and did not take part in discussion or vote - owns a property at 23 Seasongood Road, Woollamia and the decision of the Committee may impact on the value of his property.

Recommendation (Item to be determined under delegated authority)

That:

1. Council endorse the updated Falls Creek / Woollamia Deferred Areas Planning Proposal and draft Development Control Plan Chapter N16 for public exhibition and proceed to

exhibit for a minimum period of 28 days.

2. Council staff be authorised to make any necessary minor changes to improve readability/usability of the draft Development Control Plan Chapter prior to exhibition.
3. Report the outcomes of the exhibition period back to the Development Committee for final consideration.

RESOLVED (Clr Gartner / Clr Guile)

MIN17.376

That:

1. Council endorse the updated Falls Creek / Woollamia Deferred Areas Planning Proposal and draft Development Control Plan Chapter N16 for public exhibition and proceed to exhibit for a minimum period of 28 days.
2. Council staff be authorised to make any necessary minor changes to improve readability/usability of the draft Development Control Plan Chapter prior to exhibition.
3. Report the outcomes of the exhibition period back to the Development Committee for final consideration.

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE17.31 Housekeeping Amendment 2016 Planning Proposal (PP022) - Minor Mapping & Instrument Changes

HPERM Ref: D17/91489

Clr Watson returned to meeting 5.24 pm

Recommendation (Item to be determined under delegated authority)

Council submit the Housekeeping Amendment 2016 Housekeeping Planning Proposal (PP022) to the NSW Department of Planning and Environment for initial Gateway determination.

RESOLVED (Clr Wells / Clr Levett)

MIN17.377

That Council submit the Housekeeping Amendment 2016 Housekeeping Planning Proposal (PP022) to the NSW Department of Planning and Environment for initial Gateway determination.

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE17.32 Strategic Planning Policies - Review

HPERM Ref: D17/15895

Recommendation (Item to be determined under delegated authority)

That Council:

1. Reaffirm the following policies;
 - a. POL 12/326 Contaminated Lands Policy
 - b. POL 15/54 Nowra CBD Banner Policy

2. Reaffirm the following policies and amend these policies through future reviews;
 - a. POL 12/217 Development - Coastal Areas - Planning & Development
 - b. POL 12/239 Rates - Small Lot Rural Subdivisions - Dealing with Unpaid Rates & Charges
 - c. POL 12/243 Voluntary Planning Agreements
 - d. POL 12/308 Payment of Development Contributions and Section 64 Headworks Charges by Deferment or Instalments (under special circumstances)
 - e. POL 16/258 Nowra CBD Contributions Discount Subsidy Policy
 - f. POL 14/48 Road Closure - Events - Junction Court

RESOLVED (Clr Findley / Clr Gartner)

MIN17.378

That Council:

1. Reaffirm the following policies;
 - a. POL 12/326 Contaminated Lands Policy
 - b. POL 15/54 Nowra CBD Banner Policy
2. Reaffirm the following policies and amend these policies through future reviews;
 - a. POL 12/217 Development - Coastal Areas - Planning & Development
 - b. POL 12/239 Rates - Small Lot Rural Subdivisions - Dealing with Unpaid Rates & Charges
 - c. POL 12/243 Voluntary Planning Agreements
 - d. POL 12/308 Payment of Development Contributions and Section 64 Headworks Charges by Deferment or Instalments (under special circumstances)
 - e. POL 16/258 Nowra CBD Contributions Discount Subsidy Policy
 - f. POL 14/48 Road Closure - Events - Junction Court

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE17.33 Development Application DS16/1079 – Proposed Building Envelope - Variation to Restrictions as to User - Lot 13 DP829169 Moss Vale Road Kangaroo Valley

HPERM Ref: D17/79579

Recommendation

That Council:

1. Support the request for a relocated building envelope, based on the information as submitted, subject to a restriction being negotiated with the applicant to limit the scale of any future dwelling in the envelope; and
2. Return the application for staff to determine under delegation.

RESOLVED (Clr Guile / Clr Gartner)

MIN17.379

That Council:

1. Support the request for a relocated building envelope, based on the information as submitted, subject to a restriction being negotiated with the applicant to limit the scale of any future

dwelling in the envelope; and

2. Return the application for staff to determine under delegation.

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE17.34 Planning Proposal (PP012) - Review of Flood Controls in Shoalhaven LEP 2014

HPERM Ref: D17/87727

Recommendation (Item to be determined under delegated authority)

That the Committee:

1. Endorse the Planning Proposal (PP012) – Review of Flood Controls to amend Shoalhaven Local Environmental Plan (LEP) 2014 for lodgement with the NSW Department of Planning & Environment (DP&E) to request Gateway determination.
2. Amend Chapter G9: Development on Flood Prone Land and Chapter G10: Caravan Parks in Flood Prone Areas in Shoalhaven Development Control Plan 2014 as part of a future review of these chapters to ensure consistency with any proposed changes to Shoalhaven LEP 2014.
3. Support the preparation of an online Flood Planning map to provide publicly accessible information and interactive display of adopted Flood Study mapping and historic flooding information.

RESOLVED (Clr Findley / Clr Gartner)

MIN17.380

That Council:

1. Endorse the Planning Proposal (PP012) – Review of Flood Controls to amend Shoalhaven Local Environmental Plan (LEP) 2014 for lodgement with the NSW Department of Planning & Environment (DP&E) to request Gateway determination.
2. Amend Chapter G9: Development on Flood Prone Land and Chapter G10: Caravan Parks in Flood Prone Areas in Shoalhaven Development Control Plan 2014 as part of a future review of these chapters to ensure consistency with any proposed changes to Shoalhaven LEP 2014.
3. Support the preparation of an online Flood Planning map to provide publicly accessible information and interactive display of adopted Flood Study mapping and historic flooding information.

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

Against: Nil

CARRIED

DE17.35 Shoalhaven Development Control Plan 2014 - Endorsement

HPERM Ref: D17/116953

Recommendation (Item to be determined under delegated authority)

That Council;

1. Continue with the current method for amendments to Shoalhaven Development Control Plan 2014 in line with the Strategic Planning Work Program and obligations under the *Environmental Planning and Assessment Act 1979*.

2. Exclude Shoalhaven Development Control Plan 2014 from the four year policy review cycle.

RESOLVED (Clr Guile / Clr Aldrick)

MIN17.381

That Council;

1. Continue with the current method for amendments to Shoalhaven Development Control Plan 2014 in line with the Strategic Planning Work Program and obligations under the *Environmental Planning and Assessment Act 1979*.
2. Exclude Shoalhaven Development Control Plan 2014 from the four year policy review.

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Aldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

**DE17.36 MOSS VALE ROAD SOUTH URBAN RELEASE AREA -
DETAILED SUPPORTING PLANS**

**HPERM REF:
D17/106420**

Item dealt with earlier/later in the meeting see MIN17.374

**DE17.37 Outcomes - Shoalhaven Local Heritage Assistance Fund
2016/2017**

**HPERM Ref:
D17/113965**

Recommendation (Item to be determined under delegated authority)

1. Receive the Summary Project Report (Attachment 1), which details the outcomes of the Shoalhaven Local Heritage Assistance Fund Program 2016-2017, for information.
2. Reaffirm, in the interim, the Shoalhaven Heritage Strategy 2014-2017 and extend it with minor wording adjustments and updates (as per Attachment 3) to cover 2017-2020.
3. Proceed with a broader review of the extended Shoalhaven Heritage Strategy 2017-2020 and separately report this to Council for endorsement when compete.

RESOLVED (Clr Wells / Clr Findley)

MIN17.382

That Council

1. Receive the Summary Project Report (Attachment 1), which details the outcomes of the Shoalhaven Local Heritage Assistance Fund Program 2016-2017, for information.
2. Reaffirm, in the interim, the Shoalhaven Heritage Strategy 2014-2017 and extend it with minor wording adjustments and updates (as per Attachment 3) to cover 2017-2020.
3. Proceed with a broader review of the extended Shoalhaven Heritage Strategy 2017-2020 and separately report this to Council for endorsement when compete.

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Aldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 5.43 pm.

Clr White
CHAIRPERSON

DE17.38 Section 138 Approvals, Roads Act 1993

HPERM Ref: D16/374324

Group: Planning Environment & Development Group

Section: Development Services

Purpose / Summary

Works within the road reserve require a formal approval under the Roads Act 1993. This includes the construction of driveways and this includes all new dwelling applications, Council has inconsistently applied the need for these approvals. For example, it has required approvals for multi dwelling, commercial and industrial development but has not always pursued applications for works in the road reserve for single dwellings or dual occupancies. This has caused some difficulty with respect to the standard of works in the road reserve (detailed later in this report). Section 138 of the Roads Act 1993 does not distinguish between types of development.

The historic reason for this inconsistency is based on both resource implications for Council and concern with respect to potential costs for home owners. Accordingly, a 'relaxed' approach has been taken with respect to this requirement under the Roads Act 1993.

Over the passage of time, noting also the making of a State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP), home owners have been seeking or been made aware of their obligations under the Roads Act 1993. The Codes SEPP in effect, reinforces the provisions of the Roads Act 1993.

Further, the inconsistent approach with respect to approvals for works in the road reserve is a source of frustration to some developers who are seeking a consistent application of 'rules' and fees for the work. Developers have expressed some frustration that people building houses do not always seek approval whereas approvals are required, sought and typically obtained for other types of development such as dual occupancies and multi dwelling housing developments. Developers of subdivisions are also voicing concerns regarding the difficulty they are having with respect to integrating footpaths with non-compliant residential driveways. Refer to Photo 1.

The absence of approvals for future assets in the road reserve may also be an issue regarding liability for Council. This report highlights Council's statutory obligations and recommends to Council that staff apply section 138 of the Roads Act 1993 for works in the road reserve consistently for all development types, where approval is required under the Act.

Recommendation (Item to be determined under delegated authority)

That;

1. Section 138 of the Roads Act 1993 be applied consistently to all development where approval is required in the road reserve.
2. A clear modern driveway profile/gradients and associated fact sheet be produced to assist home builders to ascertain suitable garage floor levels and driveway gradients to facilitate integration with Council's road reserve.

Options

1. Continue with the current situation (not recommended).

Implications: This would result in the following:

- Difficulty integrating public footpaths with non-compliant driveways. This results in a 'patchwork' of finishes and undulating footpaths.

Photo 1 – Twin Waters Estate

*Integrating pedestrian footpaths with driveways can be problematic.
Note the undulating footpath.*



- Driveways being constructed at gradients which are too steep for vehicles to negotiate. This could result in vehicles scraping the driveway as well as stormwater drainage issues as identified in landslips following the August 2015 East Coast Low;
- Driveways which have footpath crossings with liability issues – e.g. trip hazards.
- Unsatisfactory standards of construction with concrete cracking, inappropriate and slippery finishes;
- Work being done by 'anyone' - lack of regulation and therefore quality control and compliance issues;
- Inconsistency - other forms of development (such as dual occupancy, commercial and industrial) require approval;
- Inconsistency - private certifiers are required to obtain approval under the provisions of the exempt and complying developments codes [State Environmental Planning Policy Exempt and Complying Development Codes (2008)] – complying development certificates (CDCs) for dwellings by way of example;
- Lack of legislative compliance and inability to pursue enforcement where driveways are problematic.

2. Require works within Council's road reserve to obtain an approval under section 138 of the Roads Act 1993 (recommended).

Implications:

- This would help to ensure all driveway/footpath works are completed in a safe, consistent and standardised manner to minimise public liability issues and promote better asset longevity;
- Regulating the process and applying a set of standards consistently, would bring Council's practice into line with other Councils;
- Whilst there may be an additional process and cost involved, the advantage is that Council's assets would be better protected and managed with construction in the road reserve appropriately supervised;
- A more formalised approach has resource implications with respect to inspections and approvals regime particularly due to the geographical size of the Shoalhaven. Accordingly, a process needs to be designed and managed having regard to these factors;
- Whilst people building new homes would be the subject of an additional fee, the cost is comparatively insignificant to the overall investment by the home owner/developer;
- Many homes are being built by project home builders who operate across local government boundaries, many builders should be familiar with requirements under the Roads Act 1993.

Background

What is section 138 of the Roads Act 1993?

Section 138 requires:

138 Works and structures

(1) *A person must not:*

- (a) *erect a structure or carry out a work in, on or over a public road, or*
- (b) *dig up or disturb the surface of a public road, or*
- (c) *remove or interfere with a structure, work or tree on a public road, or*
- (d) *pump water into a public road from any land adjoining the road, or*
- (e) *connect a road (whether public or private) to a classified road,*
otherwise than with the consent of the appropriate roads authority.

Maximum penalty: 10 penalty units.

(2) *A consent may not be given with respect to a classified road except with the concurrence of RMS.*

(3) *If the applicant is a public authority, the roads authority and, in the case of a classified road, RMS must consult with the applicant before deciding whether or not to grant consent or concurrence.*

(4) *This section applies to a roads authority and to any employee of a roads authority in the same way as it applies to any other person.*

(5) *This section applies despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the [Pipelines Act 1967](#) or under any other provision of an Act that expressly excludes the operation of this section.*

Under section 138 of the Roads Act 1993, Council is the nominated consent authority for all works within the road reserve on local roads in the local government area.

History

On 20 January 2004, the Works and Finance Committee considered a report on a proposed “Driveway Policy”. That report identified a need for Council to review the policy on the construction of driveways (to residential properties) within the road reserve. At the time, a City wide review of the then current practices resulted in several issues being identified, including but not limited to unsafe steep driveways, inappropriate and dangerous finishes and inadequate consideration of future footpaths exposing Council to additional costs in providing infrastructure.

The report also highlighted it was proposed to develop a policy to address the issue. It also acknowledged a resource implication and that any policy should be exhibited. The report foreshadowed commencement in July 2004.

On 19 March 2004, a report to the Executive Committee commented there would be a need to have a dedicated resource. The Committee resolved that the:

“new position of Restorations Officer be further considered by Council in conjunction with the 2004/05 Budget considerations.”

No additional resources were provided in the 2004/5 budget. A draft policy was prepared but was never finalised. It is also important to note that under the Codes SEPP, private certifiers must obtain approval for works in the road reserve.

In short, some home builders and owners are seeking approval, some are not and Council has not actively pursued applications or sought compliance with Council standards. The application of s138 of the Roads Act 1993 has been inconsistent.

To deal with this, Council has been imposing a condition on approvals requiring compliance with Council’s standards for driveways. However, it is considered timely and prudent to ensure compliance with the provisions of the Roads Act 1993 for the reasons outlined earlier.

In the State’s guide to complying development, the following comment is made:

“If you require any works to be done on the street or footpath, such as construction of a new driveway crossing, or alterations to the footpath pavement you will need to obtain separate approval from council under s138 of the Roads Act 1993, prior to the issue of a complying development certificate.”

Subdivisions

When a subdivision is approved, certain street types warrant the construction of a footpath. The construction of a footpath is required typically prior to issue of a Subdivision Certificate. The Subdivision Certificate is the certification which enables the subdivision to be submitted to Land and Property Information to enable the creation of land title.

Council however has been agreeable to ‘bonding’ the works to enable completion at a later date. The reason for this is that builders tend to park on footpaths, have deliveries and multiple contractors attend the site and regrettably cause damage to the footpath/road reserve.

Whilst this approach (bonding) may help to avoid damage to paths, home builders/owners tend to construct driveways with little regard to the future levels required for a footpath or the existing level of the footpath area. If the pedestrian paths were in place however, this would assist in predetermining driveway gradients and garage floor levels to some extent. It is noted that not all streets will have footpaths especially if minor roads such as cul-de-sacs.

Photo 2 – Typical situation in a new estate.



Photo 3 – damaged footpath, Ulladulla.



What do other Council's do?

Kiama, Shellharbour, Wollongong and Wingecarribee Councils require formal applications for works in the road reserve and have documented standards for construction. Kiama, Shellharbour and Wollongong also have nominated approved contractors to do the work. At one point, Shellharbour City had a specific officer dedicated to the task to ensure that all new driveways were constructed to required standards.

Kiama Council has a comprehensive Driveway and Footpath Works Procedure Manual 2016 - 2017, (recently updated) and a strict process to manage works in the road reserve. Refer to the Council web page and information on driveways including access to the manual via the following link:

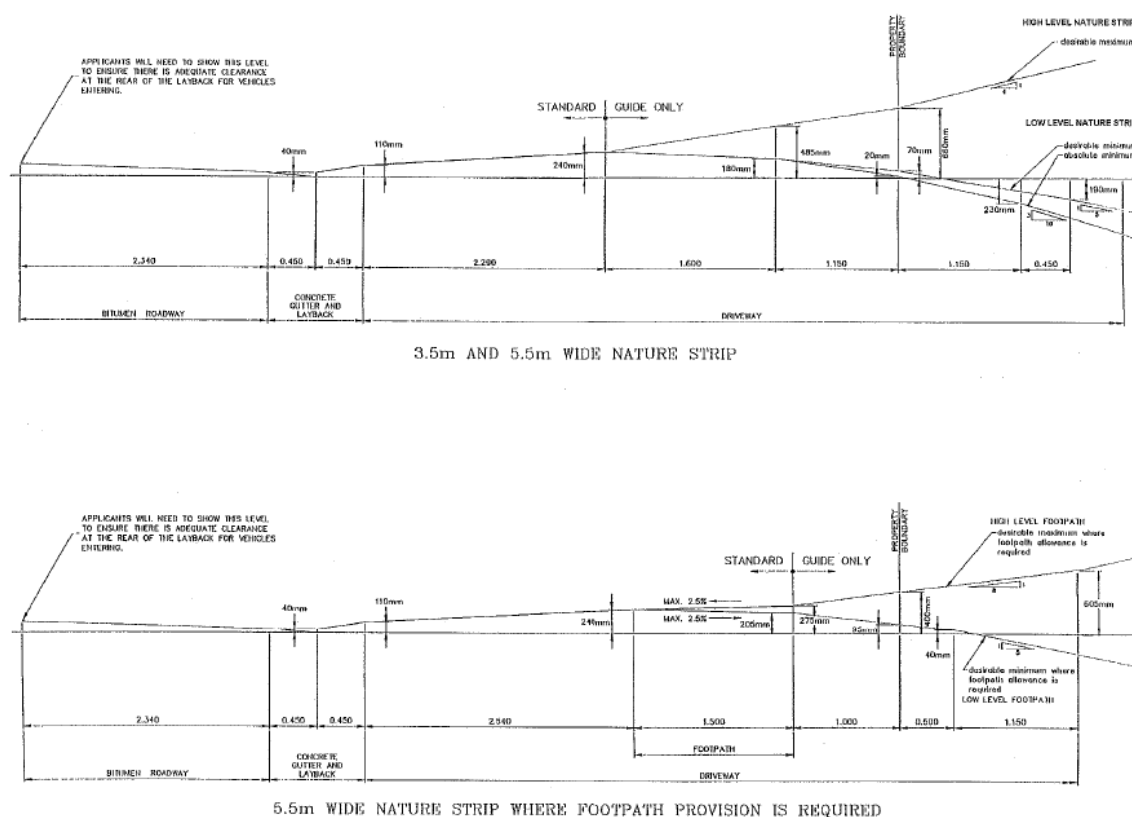
<http://www.kiama.nsw.gov.au/residents/roads---traffic/driveways-and-footpaths>

With respect to subdivision works, Shellharbour Council has required street trees to be planted prior to Subdivision Certificate and for any development thereafter, applicants pay a significant bond to protect the tree which is returned 6 months after project completion. Footpaths are generally constructed when the estate is mostly completed. A footpath masterplan dictates where the paths are to be built.

Driveway specifications and profiles

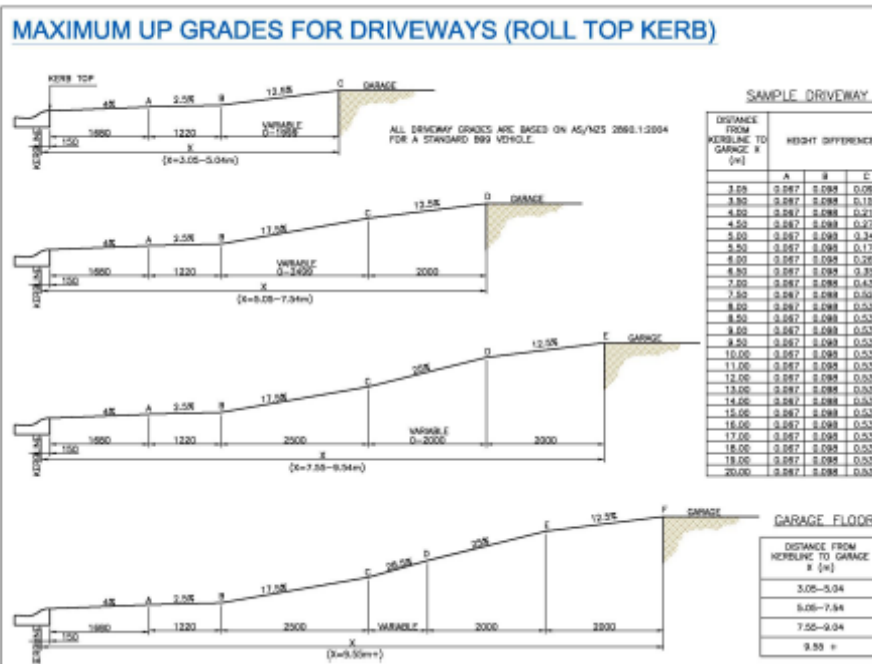
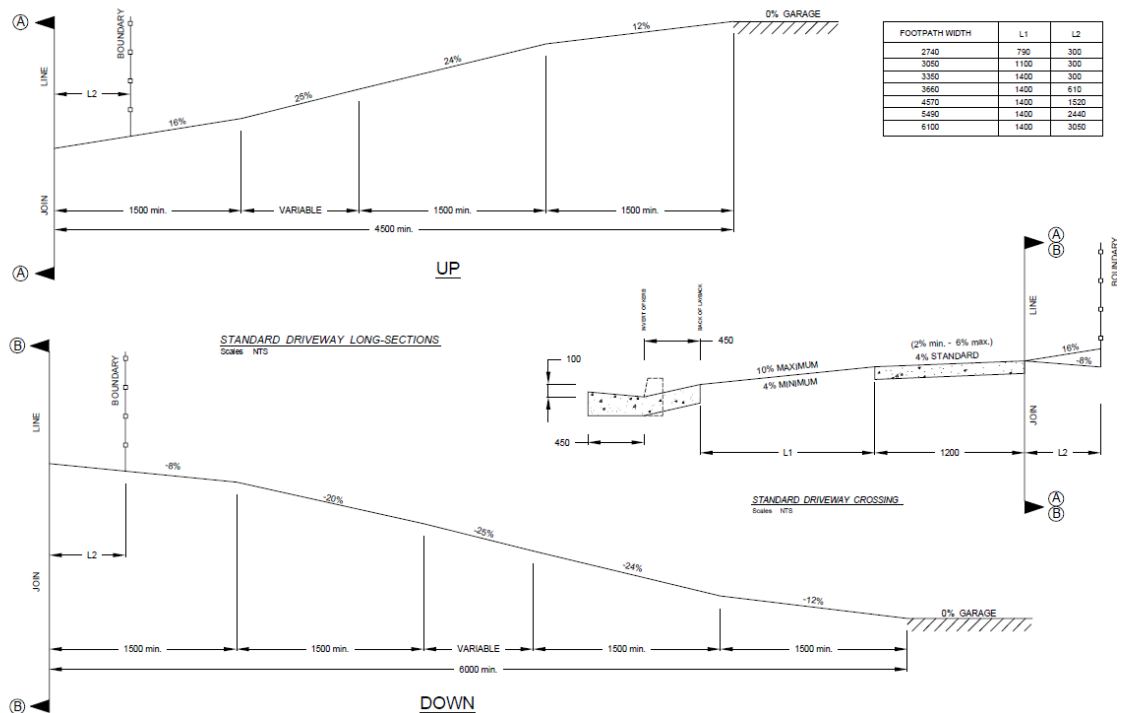
It is also important to note that Council's relies on a 1994 drawing to inform applicants and it is timely that this be revised to show a clear long section with relevant grades. This could be easily modelled/based on any number of Councils with reference to relevant Australian Standards, which have standard specifications which have found to be used for considerable periods of time and found to be satisfactory.

Figure 1 – Council's 1994 Drawing

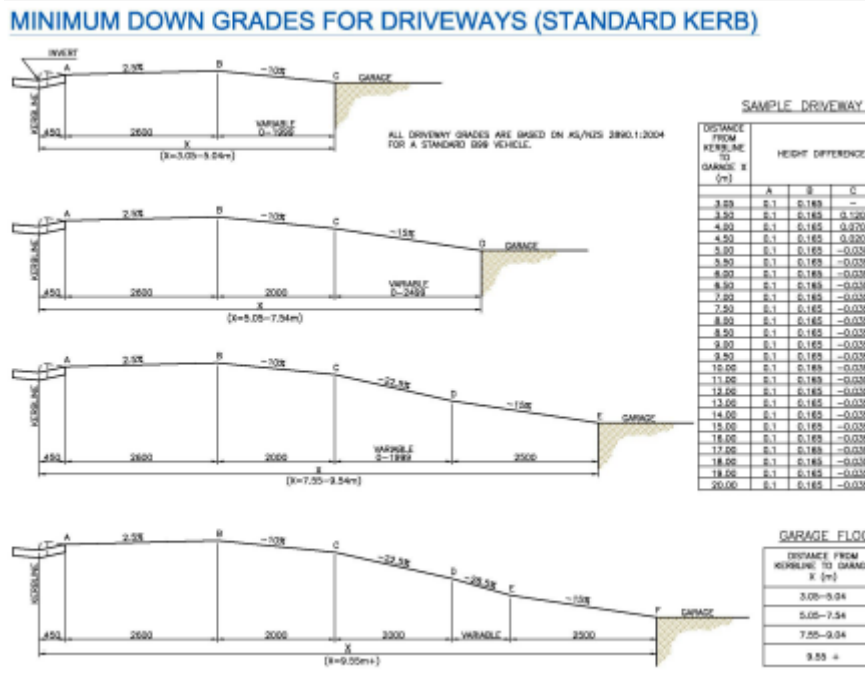


DE17.38

Figure 2 – Examples of Typical Driveway Profiles used by Neighbouring Councils



DE17.38



Community Engagement

The development industry groups have been consulted with respect to s138 approvals and there is generally support for regularising the process.

The implementation of existing legislation requiring an approval does not require notification. In the event however that a formal policy or procedure is ultimately developed along the lines of Kiama Council by way of example, it would be prudent to undertake a consultation process particularly if any policy is of a nature warranting formal consideration and adoption by Council.

Policy Implications

It is also important to note that Council's Development Application form, offers the applicant the ability to apply for a s138 approval concurrent with their development. By ticking this box on the form, there is the ability to charge the fee, assess the matter and issue an approval. Alternatively, a separate application can be made.

For single dwellings, it is recommended that the building surveyors undertaking inspections for the dwellings, do the inspections for the driveways. At most, this would be prior to the driveway being constructed and upon completion of the work which could also be concurrent to the final inspection for the dwelling. With respect to all other development types, the status quo would be maintained which is that the Subdivision Officer inspects the sites/works.

The Subdivision Officer effectively 'covers' and inspects the entire local government area and is responsible for subdivision works as well as driveways and it is simply not possible for that Council officer to inspect from the north to the south of the local government area for *all* works. In this regard, noting the resource implication, the role must be shared and it appears logical that this role could be given the building surveyors who are already inspecting the site for building works. It is practical, that the Surveyors inspect the driveway, being ancillary to the residential development of the land. Additionally, the Cadet Engineer may be able to assist the Subdivision Officer with the workload.

In the fullness of time, it is recommended that a similar approach to the northern neighbouring councils is adopted - that is, detail a process and standards, which clearly sets out what Council's expectations are, including standards of construction etc in a comprehensive policy document. This would require a dedicated resource for a one off project but would result in a clearly articulated set of expectations for developers and the broader community.

Financial Implications

Home builders/owners will have to pay for the s138 approval (currently set at \$138.50) and an inspection fee (\$118.50). It is not proposed to charge a plan checking fee for single dwellings. It is also proposed for these fees to change to match the fee charged by Assets and Works for the same section 138 approvals for consistency. This fee is currently \$220 and will likely increase in 2017/18 by the minimum percentage rate.

By comparison with other Councils, current application costs are as follows:

- Wollongong - \$249
- Shellharbour - \$317
- Kiama - \$190 (including 2 inspections and \$100 for additional inspections) this fee refers specifically to a 'concrete driveway'.
- Wingecarribee - \$210 plus \$160 per inspection.

It will be an additional cost to home owners, but is a very minor cost relative to the purchase and construction of a new home. Further, the capturing of driveways works to ensure compliance will result in a better outcome for both homeowners and Council with respect to footpaths and driveways in road reserves.

With respect to extensive works in the road reserve that do require detailed plan checking such as lengths of kerb and guttering, pram ramps and so on and multiple inspections that as the section 138, plan checking and 2 inspections be charged with any additional fee authorised by the Development Manager.

Risk Implications

The unregulated construction of driveways has resulted in driveways where vehicles scrape, unsatisfactory gradients over footpaths and trip hazards, extreme difficulty in integrating footpaths with driveways, much to the frustration of subdivision developers who bond their footpath works and construct later when estates are more substantially developed.

Photo 4 – Driveway in Worrigee. This driveway is not only steep, it is elevated above the footpath and presents a trip hazard. It would be difficult to construct a footpath and integrate footpath levels (which need to be relatively flat) with this driveway which has an excessive slope. Noting that it is common practice to use a driveway for vehicle parking, the steepness of the driveway is also of concern. Some Councils acknowledge the use of the driveway for car parking and have adopted specific levels for driveways where it is or acknowledged their use for parking.

Photo 4 – Driveway in Worrigee



Photo 5 shows another excessively steep driveway in Worrigee. This driveway resulted in compliance investigations with the developer not being able to construct a satisfactory footpath and delays in the delivery of the pedestrian footpath in the locality.

Photo 5 – Steep driveway in Worrigee



DE17.38

Photo 6 shows a section of footpath in the Twin Waters Estate, Worrige. This footpath undulates up and down between driveways in an attempt to integrate with the driveway pavements.

Photo 6 – Existing Footpath in Twin Waters (See also Photo 1)



DE17.38

Internal Consultations / Comments

Council's Section Managers for Building and Compliance, Asset Management and Manager for the Ulladulla Service Centre were consulted with respect to this report.

The Ulladulla Service Centre Manager advised that there is also the ability for Council to issue generic approvals as an alternative to individual applications. This could apply to driveways that meet a certain standard in prescribed situations and should be further considered following the development of revised designs for Shoalhaven. Further, Council could also develop generic Traffic Management Plans for certain situations eg a conventional lot in a local street. A generic plan could not be issued for busy roads or where a site adjoins an intersection where more detailed controls would be required.

Council's Asset Manager advised that he was supportive of an accreditation system for concreters similar to Kiama and Shellharbour Councils. This approach has merit and relies on a system of certification but would have to be embedded in a procedure/policy to enable administration and enforcement.

CONCLUSION

Apart from ensuring compliance with Council's statutory obligations and managing a degree of risk, there are considerable advantages in ensuring appropriate and compliance driveway construction.

The way to ensure this is by consistently requiring approval for the works and specifying and achieving compliance with the relevant standards via an approval and inspection process, in accordance with the Roads Act 1993.

Additionally, there will be a better quality outcome, reduced asset maintenance burden on Council in the long term and improved streetscape and a consistent result. This is

commensurate with modern community expectations. The community is looking for improved quality of infrastructure in our new estates and developers are also seeking to deliver better outcomes as well as have a consistent application of the 'rules'.

DE17.39 Development Application DA16/1759 - 2159 Moss Vale Road Barrengarry - Lot C in DP 18081

HPERM Ref: D17/88129

Group: Planning Environment & Development Group

Attachments:

1. Clause 4.6 Variation Statement re Clause 4.2D - Minimum Lot Size [↓](#)
2. Concurrence Letter from Department of Planning & Environment [↓](#)
3. Clause 4.6 Variation Statement re Clause 4.3 - Building Height Limit [↓](#)
4. Site Plan [↓](#)
5. Elevations [↓](#)
6. Street Elevations [↓](#)
7. Rendered 3D Sketch and Colour Scheme [↓](#)
8. Shadow Diagrams [↓](#)

Description of Development: Erection of single storey dwelling house

Owner: Jonathan Darwen

Applicant: Jonathan Darwen

Notification Dates: 21 July to 5 August 2016

No. of Submissions: No submissions received

Purpose / Reason for consideration by Council

Council is in receipt of an application to construct a new dwelling house at lot C DP 18081, 2159 Moss Vale Rd, Barrengarry. The lot is one of nine of similar size created by a subdivision in 1937 and is the last lot to be developed.

The existing lot and the adjoining small lots are zoned RU1 - Primary Production. The site has an area of 752m² and this zoning requires a minimum 40 hectare lot size under clause 4.2D of Shoalhaven Local Environmental Plan 2014 (SLEP 2014). This variation is beyond Council's delegation and specific concurrence from the Secretary of the Department of Planning is required. This concurrence has been granted and Council may allow development on this lot.

The dwelling exceeds the 5.5 metre building height set by clause 4.3 of SLEP 2014.

- a. The front pavilion of the building has a height of 6.855 metres (24.6% variation);
- b. the rear pavilion has a height of 6.285 metres (14.3% variation).

These variations are beyond the procedures for cl 4.6 variations which provides for variations in excess of 10% to be reported to Council. The application is therefore presented to Council for determination of the variations.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the following variations to the relevant development standards in Shoalhaven LEP 2014 for the purpose of the erection of a dwelling house on Lot C in DP18081:
 - a. variation to the minimum lot size of 40Ha to 750m², and
 - b. variation to the 5.5m building height under clause 4.3 to 6.855m.

DE17.39

2. That the application is referred back to staff for determination.

Options

1. Support the variation as presented in the application.

Implications: The development can proceed as proposed, subject to meeting other considerations under section 79C of the Environmental Planning and Assessment Act and subject to such conditions as may be imposed arising from those considerations.

2. Decline to support the variations.

Implications: The applicant would be entitled to appeal against Council's refusal in the Land and Environment Court.

3. Decline to support the building height variation (only) and invite the applicant to redesign the proposal so as to meet the 5.5 metre building height.

Implications: The applicant would need to substantially redesign the proposal. If the applicant refuses to change the design they would be entitled to appeal Council's failure to determine the application to the Land and Environment Court as a deemed refusal.

Background

Proposed Development

The proposal is to erect a single storey dwelling on the land. The dwelling comprises two pavilions linked by a lower roofed section housing the entry hall/foyer. Each pavilion has a simple rectangular form with gable roof having a pitch of 40 degrees. The wall cladding is primarily of painted horizontal boards and roofing is of pre-coated corrugated steel sheet. A rendered three-dimensional sketch with colour scheme as viewed from the Moss Vale Road frontage is provided at Figure 1.



Figure 1 – 3D sketch – From Moss Vale Road

The front pavilion contains the sleeping quarters and the rear pavilion contains the living quarters. The building has three bedrooms and a total floor area of 152 m². The site plan for the application is at Figure 2.

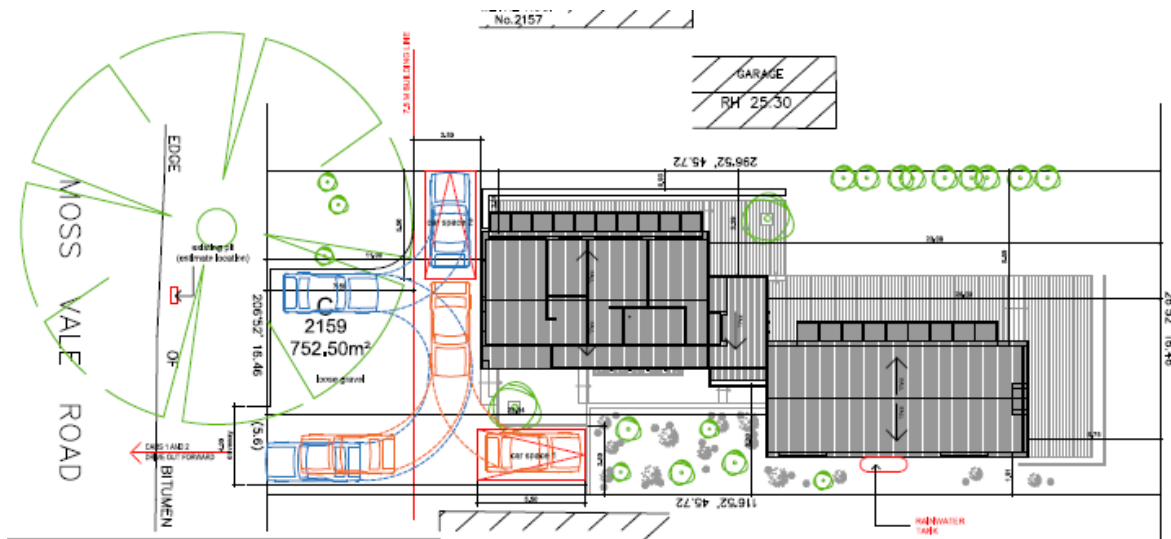


Figure 2 – Site plan

Figures 3, 4 and 5 are elevations of the proposed development. The red dotted line depicts the 5.5 metre building height limit. The 5.5 metre building height control originated from Development Control Plan (DCP) 66 - Kangaroo Valley which was transferred into SLEP 2014 as a development control in accordance with the requirements for the Standard Instrument. The intent in the original DCP was to ensure the building height in the hamlet of Barrengarry maintained a compatible scale with adjoining and adjacent development and was single story with a pitched roof (expressed in the performance criteria and acceptable solutions).

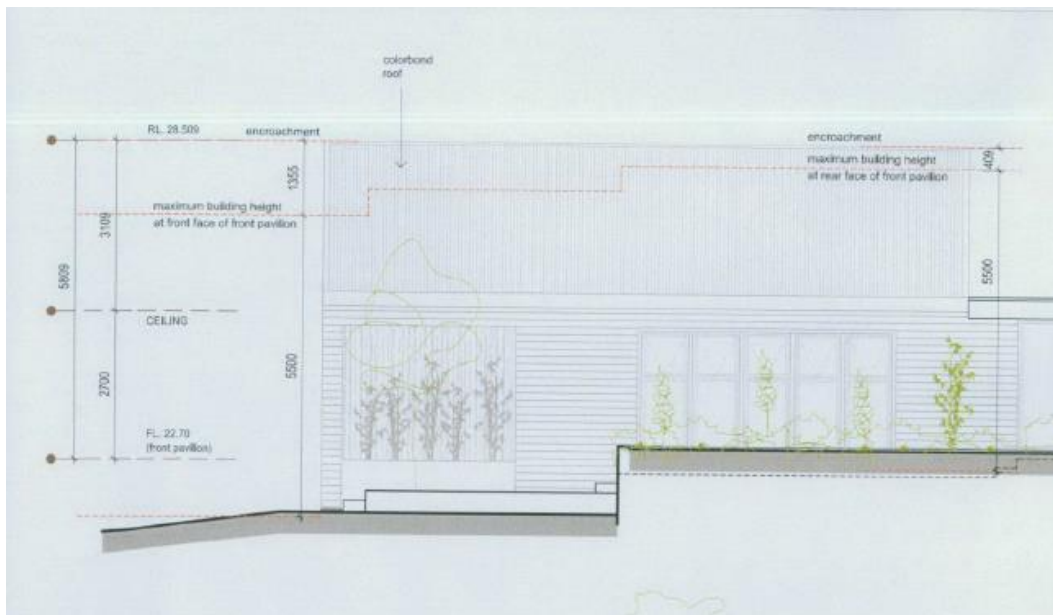


Figure 3 – Elevation – front pavilion

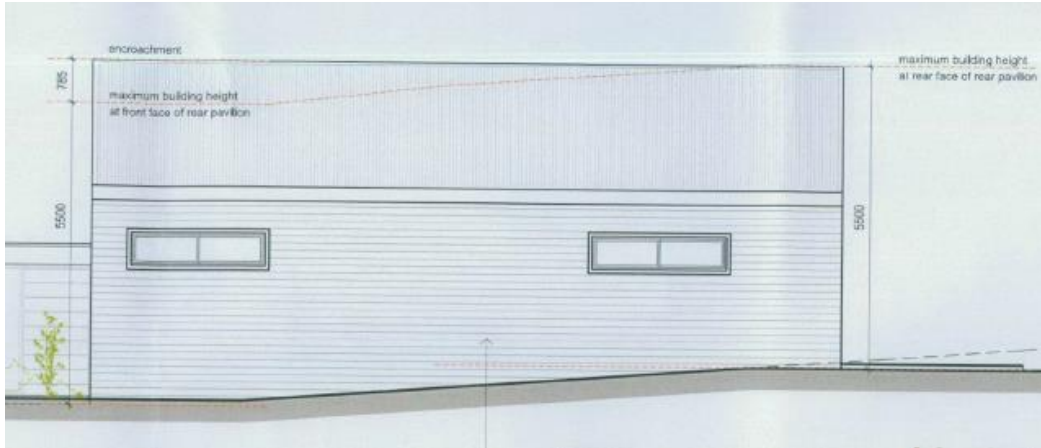


Figure 4 – Elevation – rear pavilion



Figure 5 – Street elevation

Subject Land

The subject land is identified as lot C in DP 18081. This allotment was created by subdivision in 1937 and is one of nine residential sized lots. The subject lot is highlighted in orange at Figure 6.



Figure 6 – Location map showing the subject allotment

Site & Context

The site is vacant except for a small open-fronted shed that looks to have been used as a horse shelter. It is a rectangular lot with an area of 752.46 m², a width of 16.46 metres and a depth of 45.72 metres. The site falls to the street frontage with a total fall of about 3 metres overall.

The site has frontage to Moss Vale Road which is a two lane rural road with a speed limit of 80 km/h at this location. There is an open drainage swale at the front of the property with a stormwater pipe headwall at the midpoint of the block that takes stormwater to the eastern side of Moss Vale Road. There is a large eucalypt tree in the road reserve at the southern end of the frontage of the land.

Both town water and mains sewerage are available to the site.

On each side of the site there are single dwellings on similar sized lots. To the rear of the site there is a larger vacant lot of 3.49 ha. Opposite the site is a small rural holding of 9.52 ha containing a dwelling with an approval for a bed and breakfast. Three properties to the west is the former Barrengarry Post Office, store and residence, now operating as the Kangaroo Valley Pie Shop. This building is listed as a heritage item under the SLEP 2014.

A street view of the site from Moss Vale Road frontage is shown at Figure 7.



Figure 7 - View of the site from Moss Vale Rd
(Source: Google Maps)

History

The land was created by subdivision in 1937. There have been a number of dwelling applications over the years with the following outcomes:

BA 93/3130 – approved but withdrawn by applicant as work not proceeding.

DA 93/2274 – approved (not activated)

DA 02/3584 – withdrawn

DA 15/2353 - withdrawn

The current application (DA 16/1759) is essentially the same as DA15/2353 but now has a statement of concurrence from the Department of Planning and Environment in respect of the minimum lot size variation.

Issues

There are two issues for Council to consider with this application and these relate to variation of the minimum lot size and the maximum building height under SLEP 2014.

The subject land is zoned RU1 Primary Production and is subject to the following development standards:

- a) a minimum lot size for the erection of a dwelling of 40 hectares under clause 4.2D; and
- b) a maximum building height of 5.5 metres under clause 4.3.

Clause 4.2D of Shoalhaven LEP2014

Clause 4.2D references the Minimum Lot Size Map which specifies a minimum lot size for the erection of a dwelling of 40 hectares.

Applicant's Submission

The following information was provided by the applicant in support of this variation:

- Clause 4.6 variation statement for clause 4.2D (Attachment 1).

The principal reasons for support outlined in the variation statement are:

- the use of the land for the purposes of a dwelling house is logical because it is the same size as adjoining residential lots and will complete the row of housing at Barrengarry;

- the lot is fragmented and alienated from the adjacent rural land and it would not be used for primary production given its size and fragmented nature;
- the development is unlikely to have a significant impact on either the adjoining residential or rural land.

Discussion

The applicant needs to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. Council cannot grant consent for such a development unless it is satisfied the applicant has adequately addressed the above matters. Further, the proposal must be in the public interest because it is consistent with the objectives of both the development standard and the zone in which the development is proposed.

The objectives of the development standard are:

- (a) *to minimise unplanned residential development;*
- (b) *to enable the replacement of lawfully erected dwelling houses in certain rural, residential and environment protection zones;*
- (c) *to control rural residential density affected by historical subdivision patterns in Zone R5 Large Lot Residential.*

Objectives (b) and (c) above are clearly irrelevant to the current proposal as there is not an existing lawfully erected dwelling and the land is not within the R5 Large Lot Residential zone.

The development is considered to be consistent with objective (a) as:

- the lot was created by a subdivision in 1937 that facilitated the development of dwellings on small lots and effectively established Barrengarry;
- Council has developed water and sewerage networks to service existing residential development at Barrengarry;
- Shoalhaven Water has provided a connection point for this property to the pressure sewer system servicing Barrengarry.

The objectives of the RU1 Primary Production zone are:

- *to encourage sustainable primary industry production by maintaining and enhancing the natural resource base;*
- *to encourage diversity in primary industry enterprises and systems appropriate for the area;*
- *to minimise the fragmentation and alienation of resource lands;*
- *to minimise conflict between land uses within this zone and land uses within adjoining zones;*
- *to conserve and maintain productive prime crop and pasture land;*
- *to conserve and maintain the economic potential of the land within this zone for extractive industries.*

Development for the purpose of a dwelling house is permissible with consent in the RU1 Primary Production zone. It is unlikely that the development would be able to be used for any purpose associated with primary production, due to its extremely small size and close proximity to a number of dwellings. The site is already fragmented and it is unlikely that it would be consolidated with adjoining rural land. Given that the land is bordered on two sides by land used for residential purposes, the proposed use will not conflict with existing or proposed use of surrounding land for primary production purposes.

Consequently the development is considered to be consistent with the zone objectives.

The applicant has adequately addressed the required matters and the proposal will be in the public interest because it is consistent with the objectives of both the development standard and those of the RU1 Primary Production zone.

Concurrence of the Department of Planning and Environment

The lot has an area of 752.46 m² and this zoning requires a minimum 40 hectares. This is a variation of 98.12%. As the variation is more than 10% from the minimum lot size, Council cannot grant approval to the application without the concurrence of the Department of Planning and Environment.

The Secretary's delegate has granted concurrence to the application (refer to copy of letter at Attachment 2). This concurrence does not oblige Council to support the variation but allows Council to approve the application if it so determines. In this instance, the variation is recommended.

Clause 4.3 of Shoalhaven LEP 2014

Clause 4.3 of SLEP 2014 imposes a 5.5 metre maximum building height on the land. The application proposes a building with a maximum height of 6.855 metres. The elements of the building that exceed the 5.5 metre height limit are the front pavilion of the building, which has a maximum height of 6.855 metres (24.6% variation) and minimum height of 5.909 metres (7.4% variation), and the rear pavilion which is compliant at its western extremity and has an encroachment to 6.285 metres (14.3% variation) at its eastern extremity.

Applicant's Submission

The following information was provided by the applicant in support of this variation:

- clause 4.6 variation statement for clause 4.3 (Attachment 3);
- an assessment of the impact of the development on nearby heritage items (contained within the clause 4.6 variation statement);
- elevations showing height of the buildings in relation to the 5.5 metre height limit (Attachment 5);
- street elevations (Attachment 5);
- rendered 3D sketch and colour scheme (Attachment 7);
- shadow diagram (Attachment 8).

The clause 4.6 variation statement identified the following reasons for the variation to the height limit:

- the proposed height non-compliance is only minor and will not be out of character with the surrounding buildings;
- the likely impacts of the proposed development will not differ noticeably compared to a strictly complying development scheme;
- the building seeks to respond to the 3 metres in fall from the rear of the site to the front by stepping down the slope in three levels;
- the proposal is a superior design outcome compared to a complying scheme;
- the gable roof form and materials are compatible with neighbouring buildings and the rural character of the area.

Discussion

Again, the applicant needs to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. Council cannot grant consent for such a development unless it is satisfied the applicant has adequately addressed the above matters. Further, the proposal must be in the public interest because it is consistent with the objectives of both the development standard and the zone in which the development is proposed.

The objectives of the development standard are:

- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

The development is considered to be consistent with the objectives of the development standard for the following reasons:

- the building is a single storey dwelling with a modest floor area;
- the development has addressed the design guidance in the Kangaroo Valley DCP Chapter (Chapter N1 of Shoalhaven DCP 2014) to minimise the scale of the development and to reflect the simplicity of building forms and external materials that are characteristic of the area;
- the front of the building is set back 4m further than the existing predominant building line of 7.5m – 8m and this minimises the visual impact from the street frontage;
- the development will not have any adverse impact in terms of disruption of views or loss of privacy to adjoining development and will have minimal and acceptable impact on solar access;
- the height of the building will not have an adverse effect on the nearest heritage item, the former Barrengarry Post Office, store and residence, and the steep gable form of the roof references the street elevation of the Post Office and store in a respectful manner;
- other heritage items, although addressed in the applicant's variation statement, are sufficiently distant from the site for the development to not be impacted by the proposal.

Community Engagement

Notification was carried out in accordance with Council's Community Consultation Policy with letters sent to the owners of fourteen (14) properties within a 100m buffer of the site. The notification was for a 14 day period.

No submissions were received during or after the notification period.

Planning Assessment

The Development Application will be assessed under s79C of the Environmental Planning and Assessment Act 1979.

Policy Implications

There are no specific policy implications that arise from this matter. The procedure in clause 4.6 of Shoalhaven LEP-2014 provides a framework for the variation of standards in a manner which does not undermine the development standard.

Financial Implications

If the decision is appealed it will result in costs to Council for defending the appeal. In most cases this prospect is reasonably remote and is not a matter Council is required or entitled to consider in determining a development application. Accordingly it should not be given any weight in Council's decision.

Legal Implications

If the application is refused, or if the applicant is dissatisfied with Council's determination, the applicant is entitled to appeal to the Land and Environment Court.

Under some circumstances, third parties may have a right to appeal Council's decision to the Land and Environment Court.

Summary and Conclusion

The variation to the 40 hectare minimum lot size is supported for the following reasons:

- the site is well-suited to the proposed use of a dwelling house having regard to its location within a strip of similar sized residential lots at Barrengarry;
- all urban services are available to the site, enhancing its suitability for the intended purpose;
- use of the land for primary production purposes is unlikely and would probably result in unacceptable impacts on the adjoining residential lots.

The variation to the 5.5 metre maximum building height is supported for the following reasons:

- the building is single storey and is of modest scale;
- the design reflects the desired character for development in the Kangaroo Valley area;
- the increased front setback reduces the visual impact of the building;
- no issues of loss of amenity, views, solar access, or adverse impact on heritage significance on nearby heritage items have been raised in assessment;
- no submissions have been received in relation to the development or the variation.

In the cases of both development standards, it is considered that the the applicant has adequately addressed the matters set out in clause 4.6 of SLEP 2014 and the proposal will be in the public interest as it is consistent with the objectives of both the development standards and the RU1 Primary Production zone.

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Thursday, 11 February 2016

General Manager
Shoalhaven City Council
PO Box 42
Nowra, NSW 2541

Architecture
Urban Design
Planning
Interior Architecture

Attention: David Anstiss
Team Coordinator Building Certification

RE: 2159 Moss Vale Road, Barrengarry – DA15/2353
Proposed Clause 4.6 variation to Clause 4.2D of the Shoalhaven Local
Environmental Plan 2014 (LEP)

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Dear David Anstiss,

Adelaide
Auckland
Brisbane
Melbourne
Shanghai
Sydney

This letter is prepared by Architectus Group Pty Ltd in relation to a proposed residential development at 2159 Moss Vale Road, Barrengarry, Kangaroo Valley (DA15/2353). Shoalhaven City Council advised the Applicant, Jonathan Darwen, that the site does not have a dwelling entitlement. This letter provides justification for dwelling entitlement in relation to Clause 4.2D of the LEP using a Clause 4.6 variation to development standard.

Background

A Dwelling Entitlement Potential Search Certificate was issued to the Applicant by Shoalhaven City Council in relation to the site at 2159 Moss Vale Road, Barrengarry, Kangaroo Valley on the 4th of December 2015. The Certificate reveals that "the land does not comply with Clause 4.2D(3) of Shoalhaven (LEP) 2014 and therefore the erection of a dwelling house is not permissible" on the land.

An Application for Records Search in relation to the property was submitted to council on the 21st of January 2016 requesting information regarding prior development consents applying to the site. The Records Search was received on the 3rd of February 2016 and advised that "all Development Applications and Building Approvals relating to this property were either cancelled or withdrawn and therefore no records can be provided".

Site and context

The subject site is an unoccupied lot in the village of Barrengarry, approximately 2.7 kilometres north-west of the village of Kangaroo Valley. The property is located within the City of Shoalhaven Local Government Area (LGA).

The lot is 752.5m² and is legally known as Lot C in Deposited Plan 18081. The lot has not been subdivided or changed configuration since 1937, as shown in the Lot and Deposited Plan prepared for the site in that year. Refer to the local context plan at **Figure 1** below and Lot and Deposited Plan attached.

Architectus Group Pty Ltd
ABN 90 131 245 684

Managing Director:
Nominated Architect:
Ray Brown
NSWAB 6359

architectus™



Figure 1 Barrengarry Local Context Plan
Site outlined in red
Source: Six Viewer, NSW Government

There are a number of detached residential buildings on both sides (north and south) of the subject site and of a similar size. Farmland abuts the site at the rear (west) and opposite the site along Moss Vale Road (east). The land falls approximately 3 metres from north-west (rear) to south-east (front). The adjacent primary production land appears from aerial photography to be used for animal grazing. Refer to the local context plan at **Figure 2** below.

The Applicant has advised that a land value search via the NSW Government's Register for Land Value, reveals the land value of the subject lot is equivalent to the neighbouring lots in Barrengarry which have dwelling entitlement. Additionally, the Applicant notes that Council rates charged to the subject site are in line with the valuation of the property granted by the Valuer General of NSW.

The site is zoned **RU1 Primary Production** under the LEP. It is subject to a minimum 40 hectare lot size under Clause 4.2D (3).

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Figure 2 Site Context Plan
Site outlined in red
Source: NearMap

Clause 4.2D Erection of dwelling houses on land in certain rural, residential and environment protection zones

The provisions of Clause 4.2D of the Shoalhaven LEP 2014 apply to the site and are addressed at **Table 1** below. Clause 4.2D relates to the erection of dwelling houses on land in certain rural, residential and environment protection zones.

Table 1 Response to Clause 4.2D of Shoalhaven LEP 2014

| Clause 4.2D of LEP | Response |
|---|---|
| 1) The objectives of this clause are as follows: | |
| a) to minimise unplanned rural residential development, | <p>The site is the only unoccupied lot in the village of Barrengarry. Use of the land for the purpose of residential development completes an existing row of residential dwellings currently interrupted by the vacant lot being the subject site.</p> <p>As infill development, the proposed building will maintain the compact scale of the village of Barrengarry and is of a design, scale and materiality that is consistent with the existing character of the locality, which is protected by the applicable planning controls.</p> <p>Kangaroo Valley is identified as one of six 'settlements with growth potential' in the Shoalhaven Local Government Area by the Shoalhaven City Council Growth Management Strategy (2014). The Strategy recommends the commencement of investigations to determine the potential for increased density within the existing urban area of Kangaroo Valley township. The Strategy notes that housing types should encourage a higher permanent population to ensure the sustainability of existing services. The proposed development supports the Growth Management Strategy as it is for the purpose of residential development within an existing village and will</p> |

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| | |
|--|--|
| | increase density without impacting surrounding agricultural land. |
| b) to enable the replacement of lawfully erected dwelling houses in certain rural, residential and environment protection zones, | No dwelling houses have been erected on the site. The Records Search prepared by Shoalhaven City Council (received 3/02/2016) reveals that all Development Applications and Building Approvals relating to the property were either cancelled or withdrawn. |
| c) to control rural residential density affected by historical subdivision patterns in Zone R5 Large Lot Residential | The subject site is not situated in Zone R5 Large Lot Residential . |
| 2) This clause applies to land in the following zones: a) Zone RU1 Primary Production, b) Zone RU2 Rural Landscape, c) Zone RU4 Primary Production Small Lots, d) Zone R5 Large Lot Residential, e) Zone E2 Environmental Conservation, f) Zone E3 Environmental Management, g) Zone E4 Environmental Living. | The subject site is zoned RU1 Primary Production . |
| 3) Development consent must not be granted for the erection of a dwelling house on land to which this clause applies unless the land: a) is a lot that has at least the minimum lot size shown on the <u>Lot Size Map</u> in relation to that land, or | The subject site is an existing lot of 752.5m ² and is located adjacent to lots of a similar size, as indicated on the Lot and DP Plan provided for the site. The site is the only unoccupied lot in the middle of a row of houses, therefore the residential development will complete the village of Barrengarry. |
| b) is a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or | The lot was created before the commencement of the Shoalhaven LEP 2014. The lot has not been subdivided or changed configuration since 1937, as shown in the Lot and Deposited Plan prepared for the site in that year and attached to this letter. No dwelling houses have been erected on the site. Refer to response to 1) b) above. |
| c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or | Shoalhaven City Council officer, Marie-Louise Foley, advised that the lot resulted from the subdivision of a former land holding. Refer to response to 1) b) above. |
| ca) is a lot created under clause 4.1E (3)(d)(ii), or | The site is an existing lot and was not created under Clause 4.1E (3)(d)(ii). |
| d) would have been a lot or a holding referred to in paragraph (a), (b) or (c) had it not been affected by: i. a minor realignment of its boundaries that did not create an additional lot, or | Not applicable. Refer to response to 1) b) above. |
| ii. a subdivision creating or widening a public road or public reserve or for another public purpose, or | As above. |
| iii. a consolidation with an adjoining public road or public reserve or for another public purpose. | As above. |

Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

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| | |
|---|--|
| 4) Development consent must not be granted under subclause (3) unless: | |
| a) no dwelling house has been erected on the land, and | No dwelling houses have been erected on the land. |
| b) if a development application has been made for development for the purpose of a dwelling house on the land—the application has been refused or it was withdrawn before it was determined, and | The Records Search prepared by Shoalhaven City Council (received 3/02/2016) reveals that all Development Applications and Building Approvals relating to the property were either cancelled or withdrawn. |
| c) if development consent has been granted in relation to such an application—the consent has been surrendered or it has lapsed. | Refer above. |
| 5) Development consent may be granted for the erection of a dwelling house on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house. | |
| 6) In considering whether to grant consent for the erection of a dwelling house in accordance with this clause on land to which clause 7.3 applies, the consent authority must: | |
| a) consider whether the land is predominantly prime crop and pasture land, and | The lot is fragmented and alienated from the adjacent rural land and would no longer be of use for primary production given its fragmented nature and size. As such, the development is unlikely to have a significant impact on the adjacent primary production land. |
| b) be satisfied that the dwelling house is essential for the proper and efficient use of the land for agriculture (including turf farming). | The land is not currently used for agricultural purposes and would not be of use for primary production in the future given its fragmented nature and size. It is considered that the construction of a dwelling house on the site is the logical use of the lot. |

As the proposed development does not meet any criteria under this clause, a Clause 4.6 variation to the development standard is required to be submitted to Council.

Clause 4.6 Variation to erection of dwelling houses standard

This request for variation to Clause 4.2D is made to Shoalhaven City Council under Clause 4.6 of the Shoalhaven LEP 2014, which allows for an appropriate degree of flexibility in applying certain development standards in order to achieve better outcomes for and from development.

In this instance, it is proposed to vary the minimum lot size of 40 hectares to allow for the erection of a dwelling house on the site identified above.

The lot is 752.5m² and is situated adjacent to lots of a similar size to the north and south (including Lot 10 DP 3237 and Lots A, B, D and E of DP 18081), each of which are occupied by a detached dwelling house. Refer to the site context plan at **Figure 2** above.

The proposed development on the site is for a dwelling house and will comprise a single storey building with a gable roof. The building design will be compatible with the rural character of the area, complement the existing residential development and complete the row of dwellings that make up the village of Barrengarry.

The provisions of *Clause 4.6 Exceptions to development standards* of the Shoalhaven LEP 2014 are addressed in turn below.

Clause 4.6 (2) states:

"Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other

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environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause."

Clause 4.2D of the Shoalhaven LEP 2014 is not expressly excluded from the operation of Clause 4.6, and therefore, variation to the development standard can be considered under this clause.

Clause 4.6 (3) states:

"Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) that there are sufficient environmental planning grounds to justify contravening the development standard."

In this instance, compliance with the minimum lot standard of 40 hectares is considered unnecessary and unreasonable. It is considered there are sufficient environmental planning grounds to justify contravening this development standard for the following reasons:

- The subject site is an existing lot of 752.5m² and is located adjacent to lots of a similar size, as indicated on the Lot and DP Plan provided for the site and evidenced from aerial photographs. The site is the only unoccupied lot in the middle of a row of houses, therefore the residential development will complete the village of Barrengarry.
- Development of the lot for a residential dwelling house will not compromise the primary production of the land, as the lot is already fragmented and alienated from the adjacent rural land, and is no longer of a size or configuration that is amenable to primary production. Its development for a dwelling house is logical and an "orderly and economic use and development of land" (Clause 5(a)(ii) of the Environmental Planning and Assessment Act 1979).
- Environmental controls can be put in place if necessary, for eg. stormwater runoff mitigation measures, for the new dwelling so as not to compromise the rural production values of the land.
- The design of the proposed development will be visually compatible with the neighbouring buildings and the rural character of the area.
- The site can be readily serviced as it has direct access to Moss Vale Road, and the presence of adjacent dwellings means there is already water, sewerage, telecommunications, and electricity supply in the immediate area that can be tapped into for the purposes of the development.

A letter provided by Shoalhaven Water (refer to the letter attached) entitled "Location of Council's Sewers" indicates the location of the existing sewer main adjacent to the site along Moss Vale Road, with tie in connection to the lot, which would be for the purpose of servicing a dwelling house on the site.

- The addition of a dwelling house will support the viability of the village of Barrengarry and residential supply in the area, contributing to Shoalhaven's dwelling targets as identified in the Growth Management Strategy (2014). As mentioned above, Kangaroo Valley is identified as one of six 'settlements with growth potential' in the Shoalhaven by the Strategy. The proposed development will contribute to increased density within the existing residential area of Barrengarry village and a higher permanent population to ensure the sustainability of existing services.

Clause 4.6 (4) states:

Development consent must not be granted for development that contravenes a development standard unless:

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- a) *The consent authority is satisfied that:*
- i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Subsection (3) of Clause 4.6 of the Shoalhaven LEP 2014 is addressed above.

The proposed development will be in the public interest because it will develop an existing lot that is of the correct size and location for residential use, and which will visually complete the row of houses. Its' development will also be in the public interest because it represents an "orderly and economic use and development of land" (Clause 5(a)(ii) of the Environmental Planning and Assessment Act 1979).

The subject site is located in land use zone **RU1 Primary Production**. The objectives of the zone are addressed below:

- 1) *Objectives of zone*
- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
 - *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
 - *To minimise the fragmentation and alienation of resource lands.*
 - *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
 - *To conserve and maintain productive prime crop and pasture land.*
 - *To conserve and maintain the economic potential of the land within this zone for extractive industries.*

The proposed development is for the purpose of a dwelling house. This is a permitted land use within the **RU1 Primary Production** zone.

The site is not used for the purpose of primary production. Due to its small size, configuration and position between residential land uses, the site is unlikely to be used for a primary production purpose in the future. The site is fragmented from the surrounding farm land because it is bounded by residential dwellings to the north and south, and Moss Vale Road to the east. Use of the site for residential purposes would not conflict with or reduce the potential of the surrounding land to be used for the purpose of primary production.

State Environmental Planning Policy (Rural Lands) 2008

The provisions of Clause 10 of State Environmental Planning Policy (SEPP) (Rural Lands) 2008 apply to the site and are addressed in **Table 2** below. Clause 10 relates to matters to be considered in determining development applications for rural subdivisions or rural dwellings.

Table 2 Response to Clause 10 of SEPP (Rural Lands) 2008

| Clause 4.2D of LEP | Response |
|---|--|
| 1) This clause applies to land in a rural zone, a rural residential zone or an environment protection zone. | The site is considered to be located in a rural zone as it is zoned RU1 Primary Production under the Shoalhaven LEP 2014. |
| 2) A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes: | |
| a) subdivision of land proposed to be used for the purposes of a dwelling. | Subdivision of the land is not proposed. |
| b) erection of a dwelling. | The erection of a dwelling house is proposed on the site. |

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| | |
|---|---|
| 3) The following matters are to be taken into account: | |
| a) the existing uses and approved uses of land in the vicinity of the development, | Existing land uses in the vicinity of the subject site includes residential and agricultural land use. The land to the north and south of the subject site are occupied by dwelling houses, and land to the west is used for agricultural purposes. Moss Vale Road, directly adjacent to the site to the east, is a State classified road according to the RMS Schedule of Classified Roads (2014). The proposed development is for the purpose of a dwelling house. This is a permitted land use within the RU1 Primary Production zone. |
| b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development, | It is considered that the construction of a dwelling house on the site is the logical use of the lot, as it is the same size as adjacent residential lots and will complete the row of housing. The lot is fragmented and alienated from the adjacent rural land and would no longer be of use for primary production given its fragmented nature and size. As such, the development is unlikely to have a significant impact on either adjacent residential use or the adjacent primary production land. |
| c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b), | The proposed use of a dwelling house will be compatible with adjacent existing and approved uses (residential) in the vicinity of the site. |
| d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone, | The site is not in a rural residential zone and does not adjoin a rural residential zone. |
| e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d). | There is no anticipated incompatibility of the development of the lot for a dwelling house on adjacent residential use or primary production land. The proposed development and non-compliance with the minimum lot size raises no inconsistencies with the objectives of the zone given it proposes a permissible land use within the zone and will not result in any conflict with nearby active rural land used for primary production. |

Section 149 Planning Certificate

The site is not subject to development restrictions identified in the Section 149 Planning Certificate, as summarised in **Table 3** below.

Refer to the Section 149 Planning Certificate for further detail.

Table 3 Summary of Section 149 Planning Certificate

| Section 149 Planning Certificate | Response |
|---|---|
| Coastal protection | The land is not affected by the operation of the Coastal Protection Act, 1979. |
| Mine subsidence | The land has not been proclaimed to be a mine subsidence district. |
| Road widening and road alignment | The land is not affected by any road widening or road alignment under the Roads act 1993 or any resolution of Council. |
| Hazard risk restrictions | The land is not affected by a policy that restricts the development of the land because of the likelihood of land slip, bushfire, tidal inundation, subsidence, acid sulfate soils, or any other risk (other than flooding). |
| Flood related development controls information | The lot is not located within the "flood planning area" as shown on the Shoalhaven LEP 2014 Flood Planning Area Map. |
| Land reserved for acquisition | The land is not reserved for acquisition by a public authority. |
| Biodiversity certified land | The land is not biodiversity certified land. |

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| | |
|------------------------------|--|
| Biobanking agreements | The Council has not been notified of the existence of a biobanking agreement on the land. |
| Bush fire prone land | The land is not identified as bushfire prone land. |

Summary

This letter provides justification for dwelling entitlement in relation to Clause 4.2D of the LEP using a Clause 4.6 variation to development standard.

In summary, it is considered that the construction of a dwelling house on the site is the logical use of the lot, as it is the same size as adjacent residential lots and will complete the row of housing. The lot is fragmented and alienated from the adjacent rural land and would no longer be of use for primary production given its fragmented nature and size. As such, the development is unlikely to have a significant impact on either adjacent residential use or the adjacent primary production land.

The site is not subject to development restrictions identified in the Section 149 Planning Certificate, that would preclude development of a dwelling house on the land.

It is considered that the non-compliance with Clause 4.2D of the LEP by the proposed development of a dwelling house at 2159 Moss Vale Road, Barrengarry, is justified under *Clause 4.6 Exceptions to development standards*.

Should you wish to discuss any of the above, please feel free to contact Jane Fielding or Jane Anderson on 02 8252 8400.

Yours sincerely,

Jane Fielding
Associate UD&P
Architectus Group Pty Ltd.

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ATTACHMENTS

Land Title

Issued by Land and Property Information NSW, 16th April 2015

Lot and Deposited Plan

Issued by Land and Property Information NSW, 16th April 2015

Section 149 Planning Certificate

Issued by Shoalhaven City Council, 24th April 2015

Location of Council's Sewers Letter

Issued by Shoalhaven City Council, 23rd April 2015



Our ref: 16/10017
Your ref: DA16/1759

John Clague
Consultant Planner
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Dear John

SECRETARY'S CONCURRENCE
Clause 4.6 exception to development standards –
Development Application for creation of a dwelling entitlement for
Lot C DP 18081, 2159 Moss Vale Road, Barrengarry.

I refer to your request for the concurrence of the Secretary of the Department of Planning and Environment under Clause 4.6 of the Shoalhaven Local Environmental Plan (LEP) 2014 for the erection of a dwelling on the above site which does not satisfy Clause 4.2 of the Shoalhaven LEP 2014.

I wish to advise that the Secretary's delegate has decided to grant his concurrence to the application for the proposed dwelling.

Should you have any further questions in relation to this matter, please contact Ms Lisa Kennedy, Planning Officer on 4224 9457.

Yours sincerely

Graham Towers 5/9/16

Graham Towers
Team Leader
Southern Region
As a delegate of the Secretary

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Friday 16th October, 2015

General Manager
Shoalhaven City Council
PO Box 42
Nowra, NSW 2541

Architecture
Urban Design
Planning
Interior Architecture

Attention: Assessing Officer
Development and Environmental Services

RE: 2159 Moss Vale Road, Barrengarry
Proposed variation to building height standard under Clause 4.6 of the Shoalhaven
Local Environmental Plan 2014

Architectus Sydney
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19 Martin Place
Sydney NSW 2000 Australia
T +61 2 8252 8400
F +61 2 8252 8800
sydney@architectus.com.au
www.architectus.com.au

Dear Assessing Officer,

Adelaide
Auckland
Brisbane
Melbourne
Shanghai
Sydney

This letter is prepared by Architectus Group Pty Ltd in relation to a proposed residential development at 2159 Moss Vale Road, Barrengarry, Kangaroo Valley. It provides justification for the proposed development to vary the maximum building height standard under Clause 4.6 of the Shoalhaven Local Environmental Plan (LEP) 2014.

The subject site is an unoccupied lot in the hamlet of Barrengarry, approximately 2.7 kilometres north-west of the village of Kangaroo Valley. The property is located within the City of Shoalhaven Local Government Area (LGA). The lot is 752.5m² and is legally known as Lot C in DP 18081. Refer to the local context plan at **Figure 1** below.

There are a number of detached residential buildings on both sides (north and south) of the subject site. Farmland abuts the site at the rear and opposite the site along Moss Vale Road. The land falls approximately 3 metres from north-west (rear) to south-east (front).

Architectus Group Pty Ltd
ABN 90 131 245 684
Managing Director:
Nominated Architect:
Ray Brown
NSWAPB 6359

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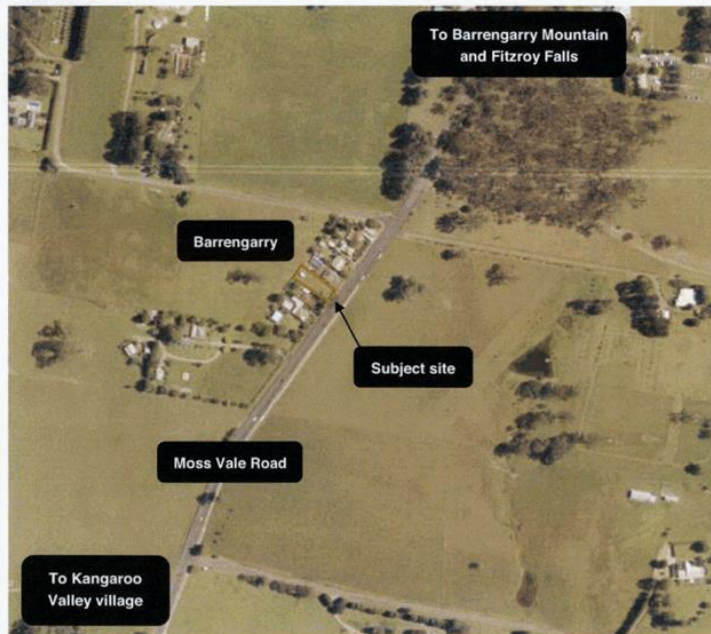


Figure 1 Barrengarry Local Context Plan
Site outlined in red
Source: Six Viewer, NSW Government

Clause 4.6 Variation to Building Height Standard

This request for variation is made to Shoalhaven City Council under Clause 4.6 of the Shoalhaven LEP 2014, which allows for an appropriate degree of flexibility in applying certain development standards in order to achieve better outcomes for and from development.

In this instance, it is proposed to vary the maximum building height of 5.5 metres by 1.355 metres at the front of the building (front pavilion) and up to 0.785 metres at the eastern (front) elevation of the rear pavilion which is setback 25.54 metres from the boundary. It is noted that the western (rear) elevation of the rear pavilion is within the maximum building height standard. The maximum building height is 6.855 metres at the front of the building (front pavilion).

The extent of the non-compliance is illustrated by the elevations provided at **Figures 2, 3 and 4** below.

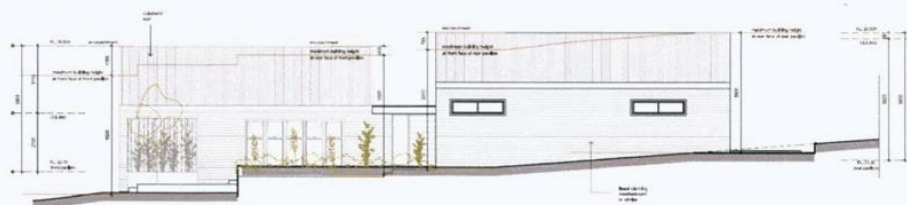


Figure 2 North elevation

The proposed building height in relation to the maximum building height control illustrated by the red dashed lines.

Source: Alex Urena Design Studio

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Figure 3 East elevation (view from Moss Vale Road)

The proposed building height in relation to the maximum building height control illustrated by the red dashed lines.

Source: Alex Urena Design Studio



Figure 4 West elevation (view from rear of the site)

The proposed building height in relation to the maximum building height control illustrated by the red dashed lines.

Source: Alex Urena Design Studio

As the land falls approximately 3 metres from the rear of the site to the front of the site, the proposed building responds to the change in level by stepping down the slope over three levels, including a front podium, central hall and rear podium. As such, the proposed building's encroachment on the Shoalhaven LEP 2014 building height standard of 5.5 meters is not equal across the site. The roofline at the façade of the front podium encroaches on the standard by 1.355 meters, however the roofline of the rear podium at the rear of the building complies with the standard. Refer to the attached architectural plans prepared by Alex Urena Design Studio dated October 2015.

The provisions of *Clause 4.6 Exceptions to development standards* of the Shoalhaven LEP 2014 are addressed below.

Clause 4.6 (2) states:

"Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause."

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The maximum height control, being Clause 4.3 of the Shoalhaven LEP 2014, is not expressively excluded from the operation of Clause 4.6, and therefore, variation to the maximum height standard can be considered under this clause.

Clause 4.6 (3) states:

"Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) *that there are sufficient environmental planning grounds to justify contravening the development standard."*

In this instance, compliance with the maximum building height standard is considered unnecessary as the proposal allows the development to respond to the topography without resulting in a major departure from the controls or the desired development outcome envisaged by the planning controls. It is considered there is sufficient environmental planning grounds to justify contravening this development standard for the following reasons:

- The proposed height non-compliance is minor and will not be out of character with the surrounding buildings. Note, the dwelling house at 2165 Moss Vale Road (Lot 10 DP 3237) appears to have an attic that encroaches well above the level of the proposed pavilion ridge line. Refer to the attached street elevation plan. Refer to **Figure 5** below.

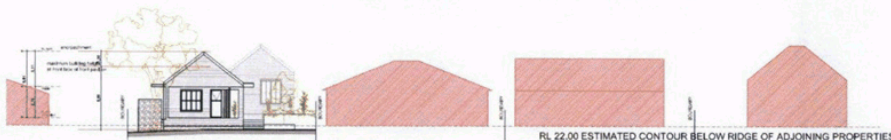


Figure 5 East elevation (view from Moss Vale Road)

The proposed building height in relation to the proposed development is illustrated by the red dashed lines.
Source: Alex Urena Design Studio

- The expected impacts of the proposed development (visual impact, overshadowing, views and vistas primarily) will not be noticeably different when compared to a strictly complying development scheme.
- The proposal is considered to provide a superior design outcome when compared to a complying scheme. The slope of the land requires the building to step down the site over three levels, and the proposed design adjusts to the change in level as much as possible without compromising the built form. The gable roof form style and materiality of the proposal is compatible with the neighbouring buildings and the rural character of the area.

Clause 4.6 (4) states:

Development consent must not be granted for development that contravenes a development standard unless:

- a) *The consent authority is satisfied that:*
 - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Subsection (3) of Clause 4.6 of the Shoalhaven LEP 2014 is addressed above.

The objectives of Clause 4.3 height of buildings are addressed below:

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1) The objectives of this clause are as follows:

- a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,

Comment:

The subject site is currently a vacant lot surrounded by detached residential dwellings. The proposed development reflects the existing scale of the surrounding buildings. As infill development, the proposed building will maintain the compact scale of the hamlet of Barrengarry and is of a design, scale and materiality that is consistent with the existing character of the locality, which is protected by the applicable planning controls.

The proposal also completes an existing row of houses currently interrupted by the vacant lot being the subject site. The proposed height non-compliance is not considered to be contrary to the existing built form scale of the hamlet.

- b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

Comment:

The expected impacts of the proposed development will not be noticeably different when compared to a strictly complying development scheme. The visual impact of the development will be minimal as it is infill development. Views and vistas from surrounding properties will not be impacted as the site does not sit within any significant view lines or vistas. Overshadowing only impacts the driveway and the house of the adjacent property to the south in the morning of mid-winter. Solar access is maintained to the primary outdoor open space of the neighbouring property at all times and only impacts the northern elevation of the neighbouring dwelling at 9am, with the shadow off the house by midday. The height non-compliance does not significantly worsen this overshadowing.

- c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

Comment:

There are a number of local heritage items located in close proximity to the subject site. They are known as Barrengarry Store, post office and residence at 2167 Moss Vale Road (item 7), "Cavan"—dairy farm complex at 26B Cavan Road (item 6), and "Ascot"—dairy farm complex at 49 Upper Kangaroo River Road (item 10). Refer to **Figure 6** below.



Figure 6 Barrengarry Heritage Map
Site outlined in red
Source: Shoalhaven LEP 2014, Heritage Map, Sheet HER_012A



Figure 7 Barrengarry Store
Source: Google Maps

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The local heritage item known as 'Barrengarry Store' is located four lots to the north of the subject site. The building functions as a general store, post office and café. The built form is of a typical rural store with a wide covered balcony and Dutch gable roof. Refer to **Figure 7** above.

The proposed development at 2159 Moss Vale Road will not impact upon the heritage significance of the Barrengarry Store. The general proportions, design features, paint schemes and landscaping will be sympathetic with the heritage item. The new building will contribute to the street scape and reflect the scale of the Barrengarry hamlet.

The other listed local heritage items in close proximity to the subject site are predominantly farm land. The dairy farm complexes on the land are not easily visible from Moss Vale Road or from the subject site. The proposed development will not negatively impact on the 'dairy farm complex' heritage items.

The subject site is located in land use zone **RU1 Primary Production**. The objectives of the zone are addressed below:

1) *Objectives of zone*

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To conserve and maintain productive prime crop and pasture land.
- To conserve and maintain the economic potential of the land within this zone for extractive industries.

The proposed development is for the purpose of a dwelling house. This is a permitted land use within the **RU1 Primary Production** zone.

The proposed development and height non-compliance raises no inconsistencies with the objectives of the zone given it proposes a permissible land use within the zone and will not result in any conflict with nearby active rural land used for primary production.

In summary, the development proposes to vary the maximum building height of 5.5 metres by a maximum of 1.355 metres resulting in a maximum building height of 6.855 metres towards the façade of the front podium. The proposed height non-compliance is minor and will not be out of character with the surrounding buildings. Additionally, the expected impacts of the proposed development on surrounding dwellings will not be noticeably different when compared to a strictly complying development scheme.

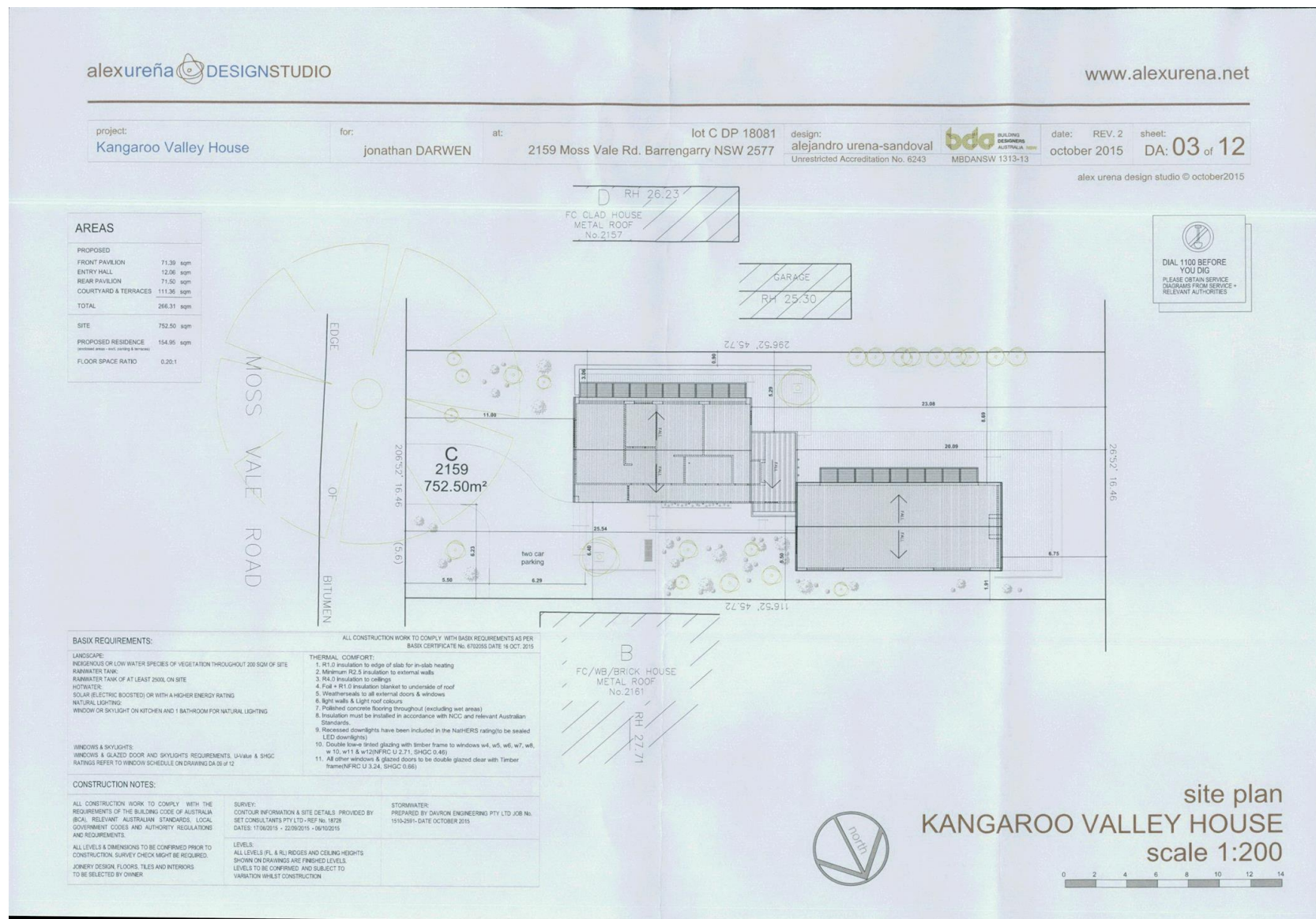
It is considered that the minor encroachment on the building height development standard at 2159 Moss Vale Road, Barrengarry, is permitted under *Clause 4.6 Exceptions to development standards*.

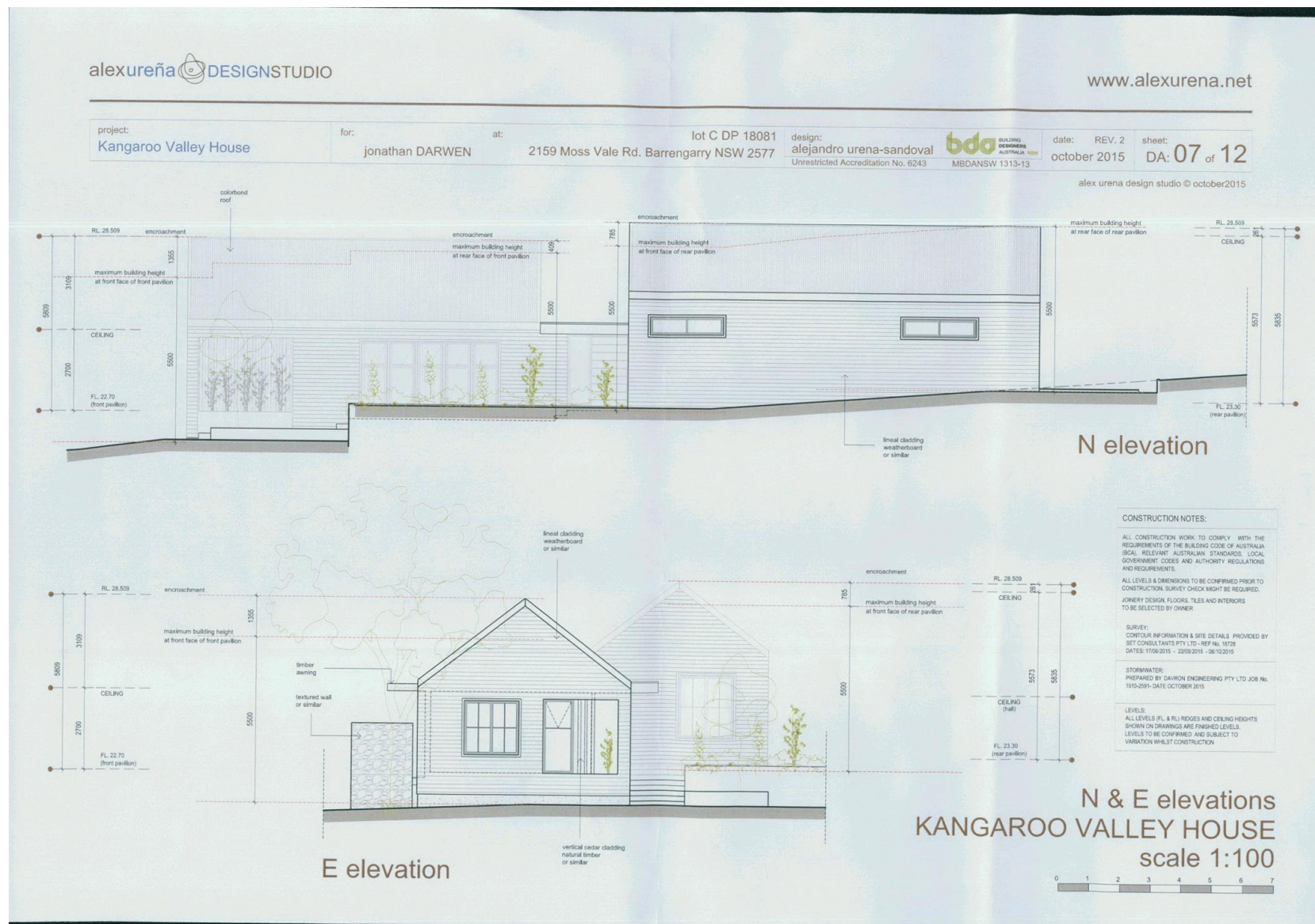
Should you wish to discuss any of the above, please feel free to contact Camille Lattouf or Jane Anderson on 02 8252 8400.

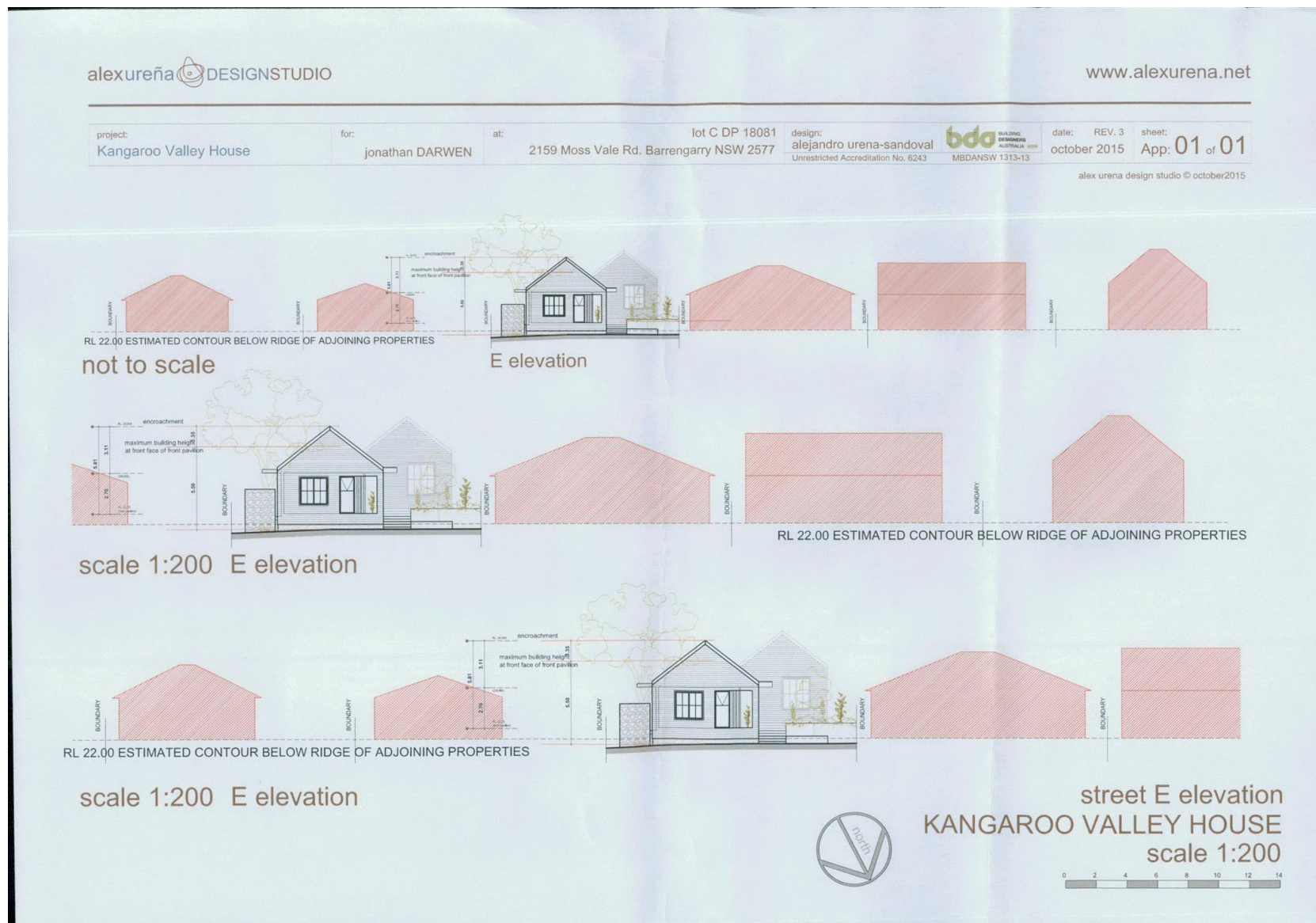
Yours sincerely,



Camille Lattouf
Senior Urban Planner
Architectus Group Pty Ltd.







alexureña DESIGNSTUDIO

www.alexurena.net

project:
Kangaroo Valley House

for:
jonathan DARWEN

at:
2159 Moss Vale Rd. Barrengarry NSW 2577

design:
alejandro urena-sandoval
Unrestricted Accreditation No. 6243

bda BUILDING DESIGNERS AUSTRALIA NSW
MBDANSW 1313-13

date: REV. 1
october 2015

sheet:
DA: 09 of 12

alex urena design studio © october 2015



Window Schedule - Part A

| NO. | BASIX | DESCRIPTION | HEAD HEIGHT | DESCRIPTION | TYPE | O | NFRC U | SHGC |
|-----|-------|-------------|-------------|---------------------------|------------------------------------|---|--------|------|
| W1 | W1 | ASW1818 | 2400 | SLIDING WINDOW | TIMBER, DOUBLE GLAZED CLEAR | E | 3.24 | 0.66 |
| W2 | W2 | AW2410 | 2470 | BOTTOM FIXED - TOP HINGED | TIMBER, DOUBLE GLAZED CLEAR | E | 3.24 | 0.66 |
| W3 | W3 | AFW0918 | 2430 | FIXED WINDOW | TIMBER, DOUBLE GLAZED CLEAR | E | 3.24 | 0.66 |
| W4 | W4 | AW0824 | 2430 | BOTTOM FIXED - TOP HINGED | TIMBER, DOUBLE GLAZED LOOSE TINTED | N | 2.71 | 0.46 |
| W5 | W5 | AW0824 | 2430 | BOTTOM FIXED - TOP HINGED | TIMBER, DOUBLE GLAZED LOOSE TINTED | N | 2.71 | 0.46 |
| W6 | W6 | AW0824 | 2430 | BOTTOM FIXED - TOP HINGED | TIMBER, DOUBLE GLAZED LOOSE TINTED | N | 2.71 | 0.46 |
| W7 | W7 | AW0824 | 2430 | BOTTOM FIXED - TOP HINGED | TIMBER, DOUBLE GLAZED LOOSE TINTED | N | 2.71 | 0.46 |
| W8 | W8 | AW0824 | 2430 | BOTTOM FIXED - TOP HINGED | TIMBER, DOUBLE GLAZED LOOSE TINTED | N | 2.71 | 0.46 |
| W9 | W9 | AFW0825 | 2400 | FIXED WINDOW | TIMBER, DOUBLE GLAZED CLEAR | N | 3.24 | 0.66 |
| W10 | W10 | ASW1821 | 2700 | SLIDING WINDOW | TIMBER, DOUBLE GLAZED LOOSE TINTED | N | 2.71 | 0.46 |
| W11 | W11 | ASW2406 | 2700 | SLIDING WINDOW | TIMBER, DOUBLE GLAZED LOOSE TINTED | N | 2.71 | 0.46 |
| W12 | W12 | ASW2406 | 2700 | SLIDING WINDOW | TIMBER, DOUBLE GLAZED LOOSE TINTED | N | 2.71 | 0.46 |

ALL INFORMATION TO BE VERIFIED ON SITE PRIOR TO ORDERING AND CONSTRUCTION

BASIX REQUIREMENTS

APPLICANT MUST INSTALL THE WINDOWS GLAZED DOORS AND SHADING DEVICES DESCRIBED IN THE TABLE IN ACCORDANCE WITH THE BASIX CERTIFICATE.
THE DWELLING MAY HAVE 1 SKYLIGHT (4.75SQM) AND UP TO 2 WINDOW DOORS (6.7 SQM) WHICH ARE NOT LISTED IN THE TABLE EXCEPT WHERE GLASS IS SINGLE CLEAR OR SINGLE TONED. EACH WINDOW MUST HAVE A U-VALUE NO GREATER THAN LISTED AND SHGC + OR - 10% OF THAT LISTED, CALCULATED IN ACCORDANCE WITH HSR CONDITIONS.

WHERE POSSIBLE MANUFACTURERS STANDARD SIZES SHOULD BE USED AND APPROVED BY BUILDER/OWNER PRIOR TO SIGNING. POWDERCOATED COLOURS TO BE SELECTED BY OWNER. SUPPLIED WITH SECURITY SCREENS (FLY SCREENS) TO BE SELECTED BY OWNER. KEY AND LOCK. FURNITURE TO BE SELECTED BY OWNER. THE BUILDER/CONTRACTOR MUST REPORT ALL DISCREPANCIES TO THE DESIGNER TO AVOID IT/IN PRIOR TO SIGNING AND CONSTRUCTION COMMENCING. WHERE DISCREPANCIES HAVE NOT BEEN REPORTED OR AMENDED, BUILDER/CONTRACTOR WILL BE HELD RESPONSIBLE FOR ALL DETAILS. SHOULD FURTHER DETAILS BE NEEDED, THE BUILDER/CONTRACTOR SHALL OBTAIN DETAILS PRIOR TO SIGNING OF CONTRACT. FAILURE TO ADHERE TO THESE CONDITIONS, THE BUILDER/CONTRACTOR RELEASES ANY RIGHT TO CLAIM FOR A VARIATION DUE TO INTERPRETATION OF DOCUMENTATION. BUILDER/OWNER TO APPROVE PRIOR TO CONSTRUCTION.

Window Schedule - Part B

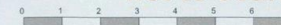
| NO. | BASIX | DESCRIPTION | HEAD HEIGHT | DESCRIPTION | TYPE | O | U-VALUE | SHGC |
|-----|-------|-------------|-------------|-------------------------------|-----------------------------|---|---------|------|
| W13 | W13 | ASW1921 | 2700 | SLIDING WINDOW | TIMBER, DOUBLE GLAZED CLEAR | W | 3.24 | 0.66 |
| W14 | W14 | AFW1106 | 2700 | FIXED WINDOW | TIMBER, DOUBLE GLAZED CLEAR | W | 3.24 | 0.66 |
| W15 | W15 | ASW1921 | 2700 | SLIDING WINDOW | TIMBER, DOUBLE GLAZED CLEAR | W | 3.24 | 0.66 |
| W16 | W16 | ABFD3427 | 2700 | BIFOLD DOOR | TIMBER, DOUBLE GLAZED CLEAR | S | 3.24 | 0.66 |
| W17 | W17 | ABFD3427 | 2700 | BIFOLD DOOR | TIMBER, DOUBLE GLAZED CLEAR | S | 3.24 | 0.66 |
| W18 | W18 | ALW0427 | 2400 | LOUVERS | TIMBER, DOUBLE GLAZED CLEAR | N | 3.24 | 0.66 |
| W19 | W19 | ALW0427 | 2400 | LOUVERS | TIMBER, DOUBLE GLAZED CLEAR | N | 3.24 | 0.66 |
| W20 | W20 | ALW0427 | 2400 | LOUVERS | TIMBER, DOUBLE GLAZED CLEAR | N | 3.24 | 0.66 |
| W21 | W21 | ALW0427 | 2400 | LOUVERS | TIMBER, DOUBLE GLAZED CLEAR | N | 3.24 | 0.66 |
| W22 | W22 | ASD2024 | 2400 | SLIDING DOOR | TIMBER, DOUBLE GLAZED CLEAR | S | 3.24 | 0.66 |
| W23 | W23 | ASW0924 | 2400 | SLIDING WINDOW | TIMBER, DOUBLE GLAZED CLEAR | W | 3.24 | 0.66 |
| W24 | W24 | AD2427 | 2700 | BOTTOM SLIDING - TOP LOUVERS | TIMBER, DOUBLE GLAZED CLEAR | S | 3.24 | 0.66 |
| W25 | W25 | AD2427 | 2700 | BOTTOM SLIDING - TOP LOUVERS | TIMBER, DOUBLE GLAZED CLEAR | S | 3.24 | 0.66 |
| W26 | W26 | AD1227 | 2700 | BOTTOM CASEMENT - TOP LOUVERS | TIMBER, DOUBLE GLAZED CLEAR | S | 3.24 | 0.66 |
| W27 | W27 | AD2927 | 2700 | BOTTOM SLIDING - TOP LOUVERS | TIMBER, DOUBLE GLAZED CLEAR | S | 3.24 | 0.66 |

ALL INFORMATION TO BE VERIFIED ON SITE PRIOR TO ORDERING AND CONSTRUCTION

view 1 - front aspect

view 2 - rear aspect

3D views & window schedule
KANGAROO VALLEY HOUSE
not to scale





DE17.40 Planning Proposal (Rezoning) - St Vincent and Deering Streets, Ulladulla (Your Urban Designer)

HPERM Ref: D17/91270

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Planning Proposal - Your Urban Designer (under separate cover) [↗](#)

Purpose / Summary

Obtain direction on a Planning Proposal (PP) that has been received for Lots 1-7, 9 DP 21597 and Lot CP SP 42583, St Vincent and Deering Streets, Ulladulla.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Give in principle support for the proposed rezoning and building height review for Lots 1-7, 9 DP 21597 and Lot CP SP 42583, St Vincent and Deering Streets, Ulladulla; and submit a Planning Proposal to the NSW Department of Planning and Environment for Gateway determination upon receipt of the final outstanding owners consent.
2. Request that the following be required as a condition of the Gateway determination:
 - a. Additional visual impact assessment and/or modelling for the planning proposal site following completion of the Review of Building Heights Study (part of Ulladulla CBD) as required by Council.
 - b. Economic feasibility analysis to consider the proposed heights following completion of the Review of Building Heights Study (part of Ulladulla CBD).
 - c. Stage 1 Contamination Assessment for Lots 3-7, 9 DP 21597 and Lot CP SP 42583.
3. Require the proponent to pay pro rata costs associated with the preparation of the Review of Building Heights Study.
4. Advise the proponent, adjacent land owners and relevant community groups of this decision, noting the opportunity for formal consultation later in the process.
5. If necessary, receive a further report following receipt of the Gateway determination.

Options

1. Support the PP as per the recommendation.

Implications: This will enable staff to prepare and submit the PP to the Department of Planning & Environment (DP&E) for the initial Gateway determination. Appropriate consideration of contamination, economic feasibility and building height will be required and facilitated through the process.

2. Support the proposed rezoning, but reduce the height limit for consideration.

Implications: While this option could reduce the impact of the proposed development on adjoining properties and be more aligned with community expectation, it may impact on development feasibility.

3. Not support the PP.

Implications: This option is not preferred as the proposed rezoning will potentially allow for a better development outcome for the wider site and could provide greater retail/commercial and residential opportunities for the Ulladulla Town Centre.

Background

This matter was the subject of a number of submissions as part of the Citywide LEP process where the subject rezoning was sought. Given that it was outside the 'like for like' zoning intent of that process it was resolved that the matter be considered via a proponent initiated PP.

Council has now received a PP (Attachment 1) from 'Your Urban Designer' on behalf of one of the landowners (Mr J Babington of Techmah Pty Ltd) to rezone land on the corner of St Vincent and Deering Streets, Ulladulla (Lots 1-7, 9 DP 21597 and Lot CP SP 42583) (See Figure 1 – Subject Land) from B5 Business Development (See Figure 2 – Current Zoning) to B4 Mixed Use under Shoalhaven LEP2014 to enable higher density residential development on the site.

The proponents PP also proposes to increase the maximum building height from 7.5 metres (current mapped maximum height) to 14 metres (proposed specific mapped height for this site) to facilitate the proposed development.

A copy of the proponents PP has been made available on Council's website at the following link: <http://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D17/85957>.



Figure 1: Aerial Map

DE17.40

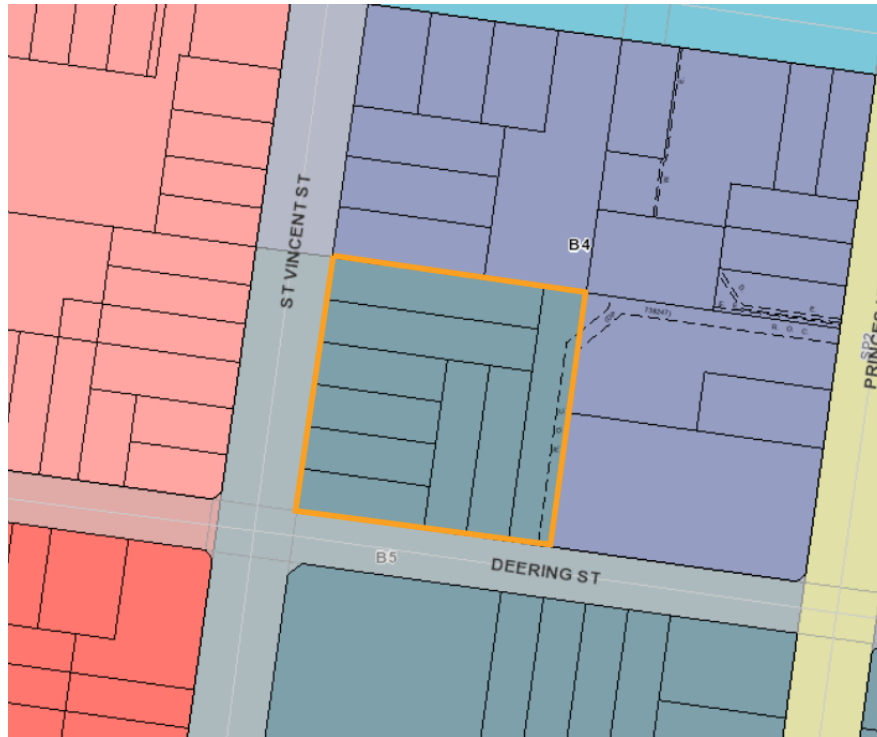


Figure 2: Current Zoning

Prior to receiving the proponents PP, a pre-lodgement meeting was held between the proponent and Council staff over Lot 1 and 2 DP 21597 St Vincent Street, Ulladulla only (the Babington site). Staff advised that rezoning the entire B5 zoned area within the block would be preferable rather than the two lots in isolation. Additionally, it was advised that potential contamination of the site would need to be considered. The requested change in height was not proposed or discussed at the pre-lodgement meeting.

At the time of writing this report, owner's consent for all land within the PP subject area has been provided, with the exception of one. Council staff formally accepted the PP on the basis that this remaining signature would be required before the PP could be sent to DP&E for a Gateway determination. As such, the report recommendation reflects this requirement.

Planning Proposal

The proponents PP seeks to rezone the subject land from B5 Business Development to B4 Mixed Use under the Shoalhaven Local Environmental Plan (LEP) 2014 to enable higher density residential development on the site, most likely in the form of residential flat buildings/shop top housing with at grade parking. The rezoning would extend the existing B4 Mixed Use zone that currently applies to the rest of the land within the wider block. This is essentially a change from one business zone to another.

The current B5 Business Development zone was implemented as part of the Citywide LEP as a 'like for like' transfer from the previous Business 3(b)(transitional) zoning of the site under Shoalhaven LEP 1985. The previous 3(b) zone reflected the ongoing historical land uses associated with the site (manufacturing/steel fabrication/boat building).

Whilst the current B5 zoning of the site permits mixed use development as 'shop top housing', it would also essentially require the entire ground floor to be commercial in nature. It is noted that the surrounding adjacent land to the north and east in the same block does not have this restriction due to the B4 zoning. The proponent has indicated that a B4 Mixed Use zone would enable an element of flexibility resulting in a better design outcome, as shop

top housing would require at grade parking (behind a commercial or residential façade) to ensure feasibility. Further, a limited amount of commercial floor space would better compliment the adjoining residential development along the western side of St Vincent Street.

The proponents PP also proposes to increase the maximum mapped building height limit of 7.5 metres to 14 metres to enable the development to achieve a more desirable (and feasible) outcome for the proponent. Within the current maximum height of 7.5 metres a two storey development could be expected, however with a 14 metre height a 4 storey development could potentially be achieved.

Relevant Strategies

The following existing planning strategies are relevant to this location and their consistency with the PP is discussed below.

Milton-Ulladulla Structure Plan

This plan applies to the Milton-Ulladulla area and establishes a set of principles to manage appropriate growth in the area and it underpins the current zonings in the area. It identifies Ulladulla CBD as the sub regional retail core and commercial hub of southern Shoalhaven.

The subject site has been identified in the Structure Plan as 'tourist orientated retail' with 'preferred off-street parking' (Figure 3). It is noted that the land to the south and east of the subject site, also earmarked for tourist orientated retail, have not been developed for this purpose. Development mostly consists of general/service retail (including bulky goods) and commercial land uses.

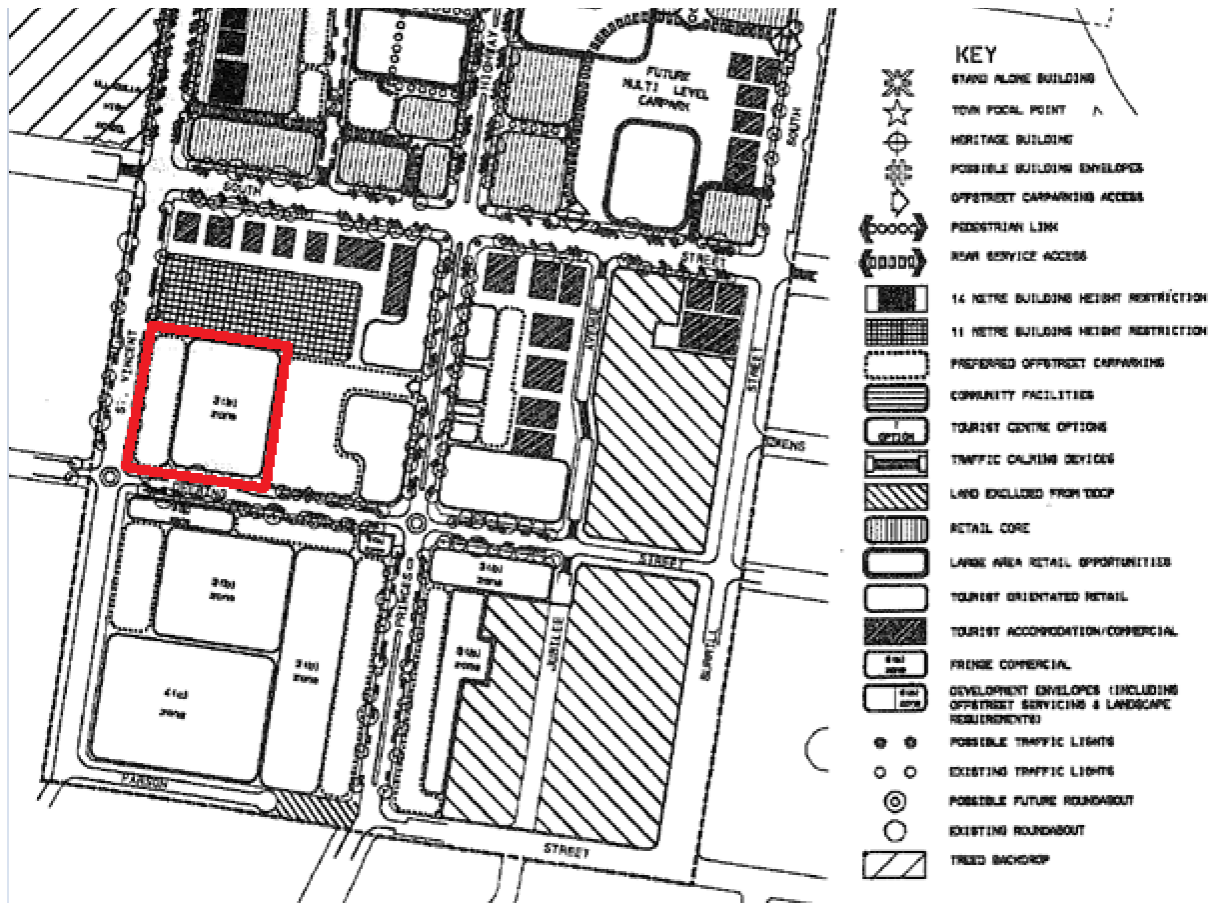


Figure 3: Excerpt of Milton-Ulladulla Structure Plan (Ulladulla CBD)

DE17.40

The Structure Plan outlines the demand for appropriate housing within the Milton-Ulladulla area to respond to population growth and future demographics (e.g. aged population).

The requested rezoning will still enable the provision of retail and commercial floor space within the Ulladulla CBD and would not diminish the opportunity for tourism orientated retail should the demand be present. Further, the provision of supplementary residential development in this location does not hinder this opportunity, but seeks to cater for the growing demand of higher density residential development close to centres.

The PP is thus considered to be broadly consistent with the Structure Plan and enables an appropriate level of flexibility.

Illawarra-Shoalhaven Regional Plan

This Plan aims to encourage a variety of housing choices to meet the Regions changing housing demands over the next 20 years. Direction 2.2 of the Plan seeks to 'support housing opportunities close to existing services, jobs and infrastructure in the region's centres' and the PP is consistent with this direction. Ulladulla is one centres identified where increased housing activity should be focussed.

The PP is considered to be broadly consistent with the Regional Plan.

Community Strategic Plan, Shoalhaven 2023 (CSP)

This Plan (currently under review) identifies objectives and strategies for prosperity in Shoalhaven and creating opportunities for growth to existing services. The following objectives and strategy are directly relevant to this PP:

- Objective 1.5 - Major town centres that are attractive, vibrant and popular destinations.
- Objective 2.2 - Population and urban settlement growth that is ecologically sustainable and carefully planned and managed.
- Strategy 2.2.1 - Develop land use and related plans for the sustainable growth of the City which use the core principles of the Growth Management Strategy and ESD principles, also carefully considering community concerns and the character of unique historic townships.
- Strategy 2.2.2 - Facilitate the provision of housing that meets the changing needs and expectations of the community.

The PP is not inconsistent with the CSP.

Key Issues

The initial review of the proponents PP has identified the following key issues related to height (amenity) and contamination impacts. Consideration of these issues will need to be conditioned as part of the Gateway determination should Council support the advancement of the PP.

Height - Amenity Impact

Currently the site is surrounded by:

- Low, medium and higher density residential development to the west, south west and north.
- One and two storey retail and commercial premises to the east and south.

It is acknowledged that the change in one business zone to another to enable residential flat development would be more complementary to the surrounding residential area than the

current manufacturing/boat building business on the site. However, the requested increase in height is perhaps the issue that requires closer scrutiny as it is likely to impact on the streetscape and character of the surrounding residential area, and will potentially have a significant impact on adjacent low density residential properties that have a maximum building height of 7.5 or 8.5 metres. Further, the prominence of the site, being located on a ridgeline, could result in future development being visible from beyond the immediate vicinity. Figure 4 shows the site and the current mapped LEP heights on adjoining land.



Figure 4: Height of Surrounding Land

The original intent of the current height controls for the site were to ensure that any development along the ridge of Deering Street would not have an adverse impact on the appearance of the town centre from the civic centre/harbour area.

The proponents PP does not provide any discussion on possible visual impacts and broader visibility of future development.

The proponents PP does not attempt to justify the increase in height with the provision of any supporting documentation. The justification for the proposed 14m height is that “the proposed development would have the height in-line with existing maximum height with the adjoining lots on the northeast of the subject land” and that a 14 metre height limit would enable an economically feasible 4 storey mixed use development that will allow at grade parking. The proponent considers basement car parking to be cost prohibitive. The proponents PP does not provide any discussion on the impact of the increase in height on the streetscape and character of the adjoining area.

On 28 March 2017, Council considered DA16/2412 for a three (3) storey office building comprising ground floor car parking and two levels of office space at Parson Street, Ulladulla. The application sought a 46% (3.5m) variation to the 7.5m height limit. Following the resolution to not support the proposed variation, Council also resolved (part MIN17.218(2)) to:

DE17.40

Undertake a review of the 7.5m building heights in this part of the Ulladulla Town Centre in the next 6 months which is limited to the area south of Deering Street and the B5 and R3 zones.

Council staff have recently commenced the process to engage consultants for the Review of Building Heights Study and have expanded the study area to strategically encompass the two adjacent 7.5m blocks immediately north of Deering Street as shown in Figure 5.

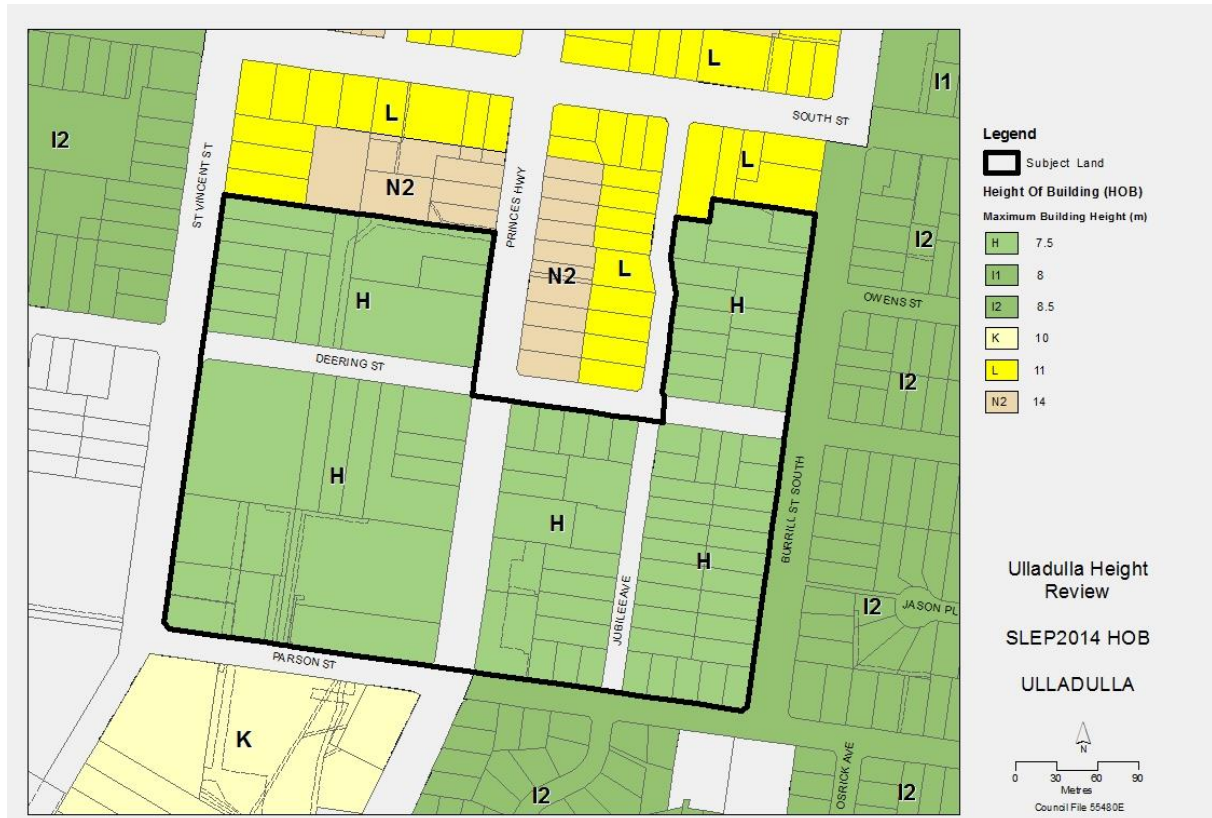


Figure 5: Study Area - Review of Building Heights Study

The subject land for this PP is included in this broader study area. It is expected that the Review of Building Heights Study will inform any change to heights within the study area and will consider the PP subject land as part of the wider precinct rather than in isolation, thus resulting in a better strategic outcome. The proponent will directly benefit from this study and it is thus recommended that relevant costs be recovered via a pro rata arrangement.

Further visual impact assessment and/or modelling may be required in addition to the Review of Building Heights Study to consider the visibility of future development when viewed from the surrounding area. This should be undertaken as required by the proponent to Council's satisfaction following the Gateway determination.

As economic viability is one of the proponent's key justifications for an increase in height, it is recommended that the feasibility of the proposed heights be considered through an economic analysis following the Review of Building Heights Study.

Contamination Impact

Due to the industrial/manufacturing history of the site, there is a risk of contamination. In response to this, the proponent has supplied statements within their PP constituting a Stage 1 Contamination Assessment for 116-118 St Vincent Street which has been considered by Council staff to be acceptable at this stage.

A Stage 1 Contamination Assessment has not been provided for the remaining lots subject to the planning proposal (Lots 3-7, 9 DP 21597 and Lot CP SP 42583). It is recommended that a Stage 1 Contamination Assessment be requested as a condition of the Gateway determination.

This issue is considered relevant at this stage as the rezoning will effectively enable additional residential development on the site and at ground level.

It is noted that contamination also will need to be considered further as part of any future development application.

CONCLUSION:

The proponents PP seeks to rezone the subject land from B5 Business Development to B4 Mixed Use under Shoalhaven LEP 2014. The PP also seeks to increase the maximum height from 7.5 metres to a specific mapped height of 14 metres.

The rezoning proposal is generally consistent with the relevant strategies and will enable the development of higher density residential development in line with the rest of the block. The change from one business zone to another is supported.

Support for the increase in maximum building height from 7.5 metres to 14 metres needs to be considered in the context of the site, its surroundings and visual prominence. The issue of proposed building heights in the Ulladulla CBD has been a vexed issue over a long period of time. As such, the inclusion of the site in the Review of Building Height Study and requirement for additional visual impact and economic feasibility analysis will assist in tailoring the mapped building height as the PP advances.

Community Engagement

The PP has been made available on Council's pre-Gateway Planning Proposal website for information purposes and the adjoining land owners and Ulladulla & Districts Forum were notified accordingly. No submissions were received at the time of writing this report.

Council staff and the proponent were invited to discuss the planning proposal at the Ulladulla & Districts Forum's meeting on 1 May 2017. Concern was raised by Forum Members about the height and potential for residential flat buildings associated with the B4 Mixed use zone.

The PP submission included letters of support from a number of stakeholders (including landowners in proximity to the subject land and the Member for South Coast, Shelley Hancock MP), however it is noted that the support was for the initial scope of the planning proposal being 116-118 St Vincent Street only, not the current 9 lot proposal. A number of the letters note that the current industrial type activity is now not appropriate in this location and the rezoning will allow its relocation. A copy of the letters of support will be available for viewing in the Councillors Room prior to the Development Committee meeting.

If the PP receives Gateway determination, the determination will outline the statutory exhibition requirements in accordance with the relevant legislation. This will involve notifying all adjoining landowners, relevant community groups and other interested parties. There will also most likely be the opportunity for community involvement and input into the broader Review of Building Height Study that has commenced for this area.

Financial Implications

The proponent has paid the initial PP lodgement fee in accordance with Council's Fees and Charges. The proponent will be required to fund or undertake any studies associated with the PP following the Gateway determination. Staff resources are also required to progress the proposal.

Fees for the remaining stages of the PP will be charged in accordance with Council's Fees and Charges.

Due to the direct benefit the proponent will gain from the Review of Building Height Study, it is recommended that the proponent pays pro rata costs associated with the preparation of the Study.

DE17.41 Options - Dual occupancy development - Old residential area of Berry

HPERM Ref: D17/133020

Group: Planning Environment & Development Group
Section: Strategic Planning

Purpose / Summary

Following a notice of motion, Council resolved to investigate the options available for “an amendment to the SLEP aimed at eliminating the ability to create dual occupancies in the old residential area of Berry”.

This report responds to this resolution and details the options available to Council in this regard.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Receive this options investigation report and provide a direction to progress.
2. Consult with the Berry Forum on the preferred option.

Options

1. Pursue an option outlined in this report.

Implications: This is the preferred option as it will enable Council to protect the character of the old residential area of Berry as resolved (MIN 17.131).

2. Receive this report for information.

Implications: This option is not favoured as it does not necessarily respond to the Council resolution. Dual occupancy development will remain permissible with consent within the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and E3 Environmental Management zones in Berry. Within these zones, dual occupancy development could also be considered as complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 potential removing Council involvement in the assessment and construction stages completely.

Background

On 28 February 2017 (MIN17.131), Council considered a notice of motion to protect the character of the old residential area of Berry (the study area). For the purposes of this report, the study area is identified in Figure 1. Council subsequently resolved to investigate options to prohibit dual occupancy development in the study area.

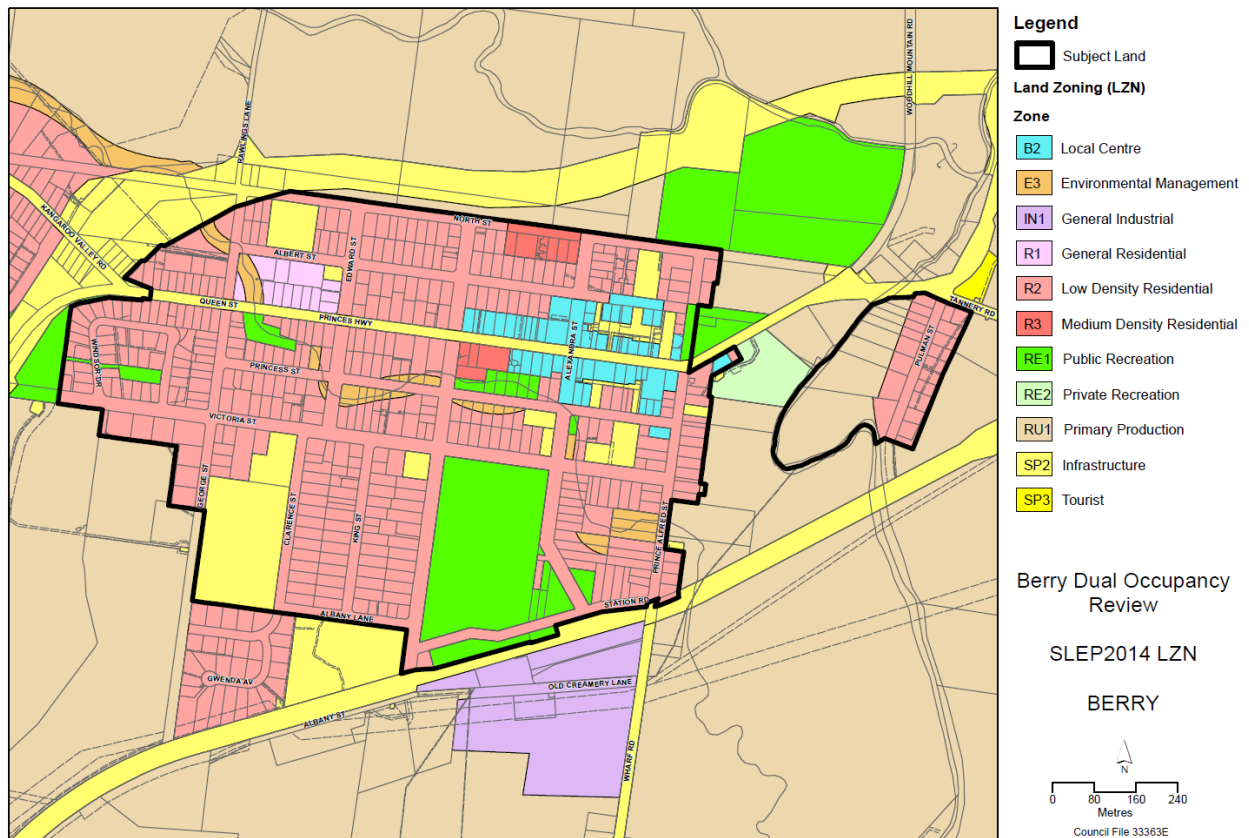


Figure 1: Study area and zoning

The main concern appears to be the changing character of Berry resulting from dual occupancy development where the existing dwelling house is demolished rather than integrated into the proposal.

In 2012, Council resolved as part of the Shoalhaven Local Environmental Plan 2014 (LEP 2014) process to investigate the possible heritage listing of Berry to protect the existing heritage character of the area.

The Berry Community Strategic Plan, which Council endorsed for consideration in December 2016, includes as a focus the desire to “preserve the towns heritage character and ‘village feel’”. This plan also includes a focus to “explore ways to improve housing affordability into the future”.

Within the study area, under Shoalhaven LEP 2014, dual occupancies are currently permissible with consent in the following zones (see Figure 1 for land zoning map):

- R1 General Residential (attached and detached dual occupancy).
- R2 Low Density Residential (attached and detached dual occupancy).
- R3 Medium Density Residential (attached and detached dual occupancy).
- E3 Environmental Management (attached dual occupancy – subject to clause 4.2D Exceptions to dual occupancies (attached) and dwelling houses).

In considering the options to prohibit dual occupancies in the study area, the possible implications of the State Government’s proposed amendment to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) and draft Design Guide should be considered. The proposed Code SEPP Amendment was prepared to fill the gap in complying development policy in the Codes SEPP by introducing provisions that would apply to low rise medium density housing types including dual occupancy development. Under the proposed Code SEPP Amendment, a dual occupancy development could be undertaken as complying development where:

- Dual occupancy development is permissible with consent in the following zones.
 - R1 General Residential

- R2 Low Density Residential
- R3 Medium Density Residential
- RU5 Village
- Land has not been excluded under Clause 1.19 of the Codes SEPP (e.g. land within a heritage conservation area etc.).

This means that Council may ultimately have no involvement in the approval or construction process should the changes be implemented as exhibited. The NSW Department of Planning and Environment (DP&E) are anticipating that the proposed Code SEPP Amendment and Design Guide will be made effective by mid/late-2017.

Options

There are a number of mechanisms available that could work to protect the character of the study area including:

- Prohibit dual occupancies on land within the study area.
- Apply 'matters for consideration' local clause.
- Rezone land within the study area.
- Apply a minimum lot size for dual occupancy development.
- Apply a heritage conservation status to the study area.
- Make no change to Shoalhaven LEP 2014 but manage character via development control plan (DCP) provisions.

These options are discussed in detail below.

Note: this report does not comment on currently permissible higher density land uses in the study area, such as attached dwellings and multi dwelling housing. These land uses are permissible with consent in the R1 General Residential and R3 Medium Density Residential zones (3 zoned areas within the Study Area).

1. Prohibit dual occupancies on land within the study area

As per MIN17.131, Council specifically resolved to investigate prohibiting dual occupancy development in the study area.

When first considering an amendment to Shoalhaven LEP 2014, the model clauses prescribed by the NSW Standard Instrument (Local Environmental Plans) Order 2006 and Standard Instrument—Principal Local Environmental Plan (Standard Instrument LEP) must be considered. The Standard Instrument LEP prescribes the form and content of Shoalhaven LEP 2014.

Theoretically, based on the model clauses within the Standard Instrument LEP, dual occupancy development could be made a prohibited land use in the above zones via the relevant land use tables, as it is not a mandatory land use. This would however effectively prohibit dual occupancy development in these zones throughout Shoalhaven which is not the intent of the Council resolution.

A more appropriate outcome would be to retain dual occupancy development as a permissible land use in these existing citywide zones but prohibit it in the Study Area. A new local clause could be inserted into Shoalhaven LEP 2014 prescribing that dual occupancy development in the Study Area is prohibited despite permissibility in the relevant land use table. This clause would undermine/subvert the intent of the relevant land use tables thereby making it effectively an illegal subzone which would not be supported by DP&E.

Despite the technical ability to prohibit dual occupancies in Shoalhaven LEP 2014, consideration must be given to the broader strategic context. Berry, like all of Shoalhaven, is subject to the provisions of the Illawarra-Shoalhaven Regional Plan (Regional Plan).

Direction 2.1 of the Regional Plan outlines the expectation that zonings and planning controls are to maintain, or in some cases, increase capacity for housing (i.e. higher density land

uses). Direction 2.2 of the Regional Plan supports housing opportunities close to existing services, jobs and infrastructure. Berry is specifically identified as a centre where increased housing activity could be focussed due to its location on the South Coast Railway Line and proximity to the Berry Railway Station. Further, the Regional Plan clearly identifies Berry as having capacity for dual occupancy development.

It would be difficult to justify that the prohibition of dual occupancy development in the study area would be consistent with the objectives and actions of the Regional Plan and as a result the related Section 117 Direction related to the implementation of the Regional Plan. Thus, it would be unlikely that any planning proposal to prohibit dual occupancy development would be supported by DP&E.

2. *Apply 'matters for consideration' local clause*

An additional local clause could be inserted into Shoalhaven LEP 2014 requiring additional matters to be considered prior to consent being granted for dual occupancy development in the study area. This could include, for example, character statements or design objectives. However, the wording of any such clause could not make dual occupancy development impossible to realise, or be prohibited, as this would undermine/subvert the intent of the relevant land use tables thereby making it effectively an illegal subzone. Shoalhaven LEP 2014 already includes similar local clauses such as clause 7.16 Ground floor development on land in zone B3 and clause 7.21 Development in the vicinity of the Western Bypass Corridor to name a few.

This option could be pursued via a Council initiated planning proposal. Depending on the proposed matters of consideration, the opportunity for dual occupancy development in Berry could be significantly reduced and therefore may be considered inconsistent with the Regional Plan.

Any local clause, if pursued, would not prohibit dual occupancy development under Shoalhaven LEP 2014 and therefore dual occupancy could ultimately still be considered as complying development under the proposed Code SEPP Amendment.

3. *Rezone land within the study area*

Rezoning the study area could provide an opportunity to prohibit dual occupancy development without adversely impacting other areas in Shoalhaven. Based on the existing zones in Shoalhaven LEP 2014 and Standard Instrument LEP, there are no suitable alternative zone options that would satisfy the requirements of Berry as currently all residential zones allow dual occupancy development.

Blue Mountains City Council (BMCC) is currently petitioning the State Government to make an amendment to the Standard Instrument LEP to insert a suggested new residential zone - R6 Residential Character Conservation. Such a zone would enable BMCC to retain an equivalent to its current Living Conservation zone which generally applies (in part) to an older/period character housing and seeks to protect the character of these areas (e.g. Leura). BMCC have submitted a planning proposal to Gateway for an amendment to its local environmental plan, however until the Standard Instrument LEP is amended, a Gateway determination cannot be issued. Whilst there seems to be some support for an amendment of this nature, there is no certainty that DP&E will agree. Interest from other local government areas and political representations may assist in expediting this process.

Based on the BMCC model, it could be appropriate for Berry to be rezoned R6 if/when the Standard Instrument is amended. This would enable Council to specifically tailor the land use table and objectives for the study area to align with existing and future desired character identified by Council and the community.

Further, as dual occupancy development would be prohibited under Shoalhaven LEP 2014, it could not be considered as complying development under the proposed Code SEPP Amendment.

Introducing an R6 zone into Shoalhaven LEP 2014 to prohibit dual occupancy in the Study Area could be pursued via a planning proposal, however it would be difficult to justify that the prohibition would be consistent with the Regional Plan or related Section 117 Direction. Thus, it would be unlikely that pursuing a planning proposal for a new R6 zone would be supported by DP&E.

4. Apply a minimum lot size for dual occupancy development

A minimum lot size for dual occupancy development in Berry could be introduced into Shoalhaven LEP 2014 to control dual occupancy through lot size. Clause 4.1B Dual occupancy development in Zone R3 acts to restrict dual occupancy development to sites less than 800m² to facilitate a higher density in certain areas. In Berry, the opposite could be applied. A minimum lot size could be applied to require larger sites for dual occupancy development. This may reduce desirability of dual occupancy development, however such a clause would not restrict it entirely. Further, the character of the area could still be adversely impacted by future dual occupancy development.

It may be difficult to justify that the application of a minimum lot size to discourage dual occupancy development in the study area is consistent with the objectives and actions of the Regional Plan, particularly the expectations for Berry. A planning proposal of this nature may not ultimately be supported by DP&E.

A minimum lot size clause would not prohibit dual occupancy under SLEP 2014 and therefore dual occupancy could still be considered as complying development under the proposed Code SEPP Amendment.

5. Apply a heritage conservation status to the study area

Listing an area as a heritage conservation area (HCA) in an LEP is a mechanism to help conserve the overall heritage significance of that area. Should the study area potentially become a HCA, an additional level of protection would be available.

Although dual occupancy development would remain permissible with consent in certain zones within the study area, the demolition of a building within a heritage conservation area would require more rigorous assessment as per legislative requirements. Council is required to consider the effect of the proposed development on the significance of the area and a heritage assessment and/or heritage conservation management plan may be required.

On 15 May 2012, as part of the Citywide LEP process, Council resolved (MIN12.494) to:

Investigate the inclusion of the Berry Township Urban Conservation Area as a Heritage Conservation Area in Council's LEP as a matter for consideration following the completion of LEP 2009.

Any investigation would require a review of the existing Shoalhaven Heritage Study to assess the significance of the whole urban township area and review identified heritage precincts in Berry that were not included as HCAs in Shoalhaven LEP 2014. Council staff have attempted to secure funding via the NSW Heritage Grants for the study, however to date have been unsuccessful. It is estimated that the study would be in the vicinity of \$20,000.00.

Additionally, given the potential impacts of this approach, detailed community consultation and support would be required.

Listing the study area as a HCA could be pursued via a Council initiated planning proposal. A HCA listing could significantly reduce opportunity for dual occupancy in Berry and may be considered inconsistent with the Regional Plan. Despite this, one of the key principles of the Regional Plan is for Councils to “conserve heritage assets when undertaking local strategic planning and development”. Any planning proposal would need to balance the competing actions and directions of the Regional Plan.

HCA's is a specific land exemption under the Codes SEPP and therefore dual occupancy could not be considered as complying development under the Codes SEPP.

6. Make no change to SLEP 2014 and manage character via DCP provisions

Council staff are currently preparing Amendment 9 to Shoalhaven DCP 2014 which includes a review of existing dual occupancy provisions in Chapter G13: Dual Occupancy Development and the introduction of better-quality design controls to improve the standard of finished development. This amendment would help guide better quality dual occupancy development throughout Shoalhaven.

Shoalhaven DCP 2014 could also be amended to include a new area specific chapter applying to the study area. This chapter could include provisions to protect the existing character, including detailed design provisions for dual occupancies beyond the generic provisions of Chapter G13: Dual Occupancy Development. To incentivise the retention of the existing dwelling, a floor space ratio bonus (or the like) could possibly be introduced.

As this is a design based exercise, dual occupancies would remain permissible in Shoalhaven LEP 2014 and there would be no guarantee that incentives would be taken up. As no changes to Shoalhaven LEP 2014 would be made, dual occupancy could ultimately be considered as complying development under the proposed Code SEPP Amendment.

To assist with certainty, a complementary amendment to Shoalhaven LEP 2014 may also be required.

Community Engagement

No community engagement has been undertaken to date as this report details the potential options available to Council. Any amendments to Shoalhaven LEP 2014 or Shoalhaven DCP 2014 will include community consultation in accordance with legislative and project requirements.

The Berry Forum will be advised that this report is being considered by Council and it is suggested that, at a minimum, they be consulted on which option is pursued.

Policy Implications

As identified above, a number of the options put forward may be considered inconsistent with State Government policy (e.g. Illawarra Shoalhaven Regional Plan). As such, future planning proposals, where an amendment to Shoalhaven LEP 2014 is required, may be difficult to pursue without political intervention.

Financial Implications

There are no immediate financial implications for Council as a result of this report.

Should Council continue to pursue listing Berry as a heritage conservation area, Council may need to fund the estimated \$20,000.00 required to review the Shoalhaven Heritage Study.

Any future amendment to Shoalhaven LEP 2014 or Shoalhaven DCP 2014 will require financial commitments from Council. These will be separately considered and reported as needed in the future.

DE17.42 SF10554 – 1 Greens Road Greenwell Point – Lot 1 DP 530097**DA. No:** SF10554/4**HPERM Ref:** D17/140378**Group:** Planning Environment & Development Group
Section: Development Services**Description of Development:** Nine (9) Lot Subdivision**Owner:** Rosebery Spray P/L**Applicant:** Cowman Stoddart Pty Ltd**Notification Dates:** 6 January 2017 to 21 January 2017**No. of Submissions:** Nil**Purpose / Reason for consideration by Council**

This report is provided due to the proposed development being inconsistent with the provisions of Chapter G9: Development on Flood Prone Land, Shoalhaven Development Control Plan 2014 (SDCP 2014).

Recommendation (Item to be determined under delegated authority)

That the Committee:

1. Confirm that it does not support the departure from the Performance Criteria P3.2 and P3.3 of Control 5.3 *Subdivision in the Floodplain*, Chapter G9, SDCP 2014; and
2. Refer the application (SF10554) back to staff for determination.

Options

1. Resolve not to support the departure from the Performance Criteria P3.2 and P3.3 of Control 5.3 *Subdivision in the Floodplain*, Chapter G9, SDCP 2014.

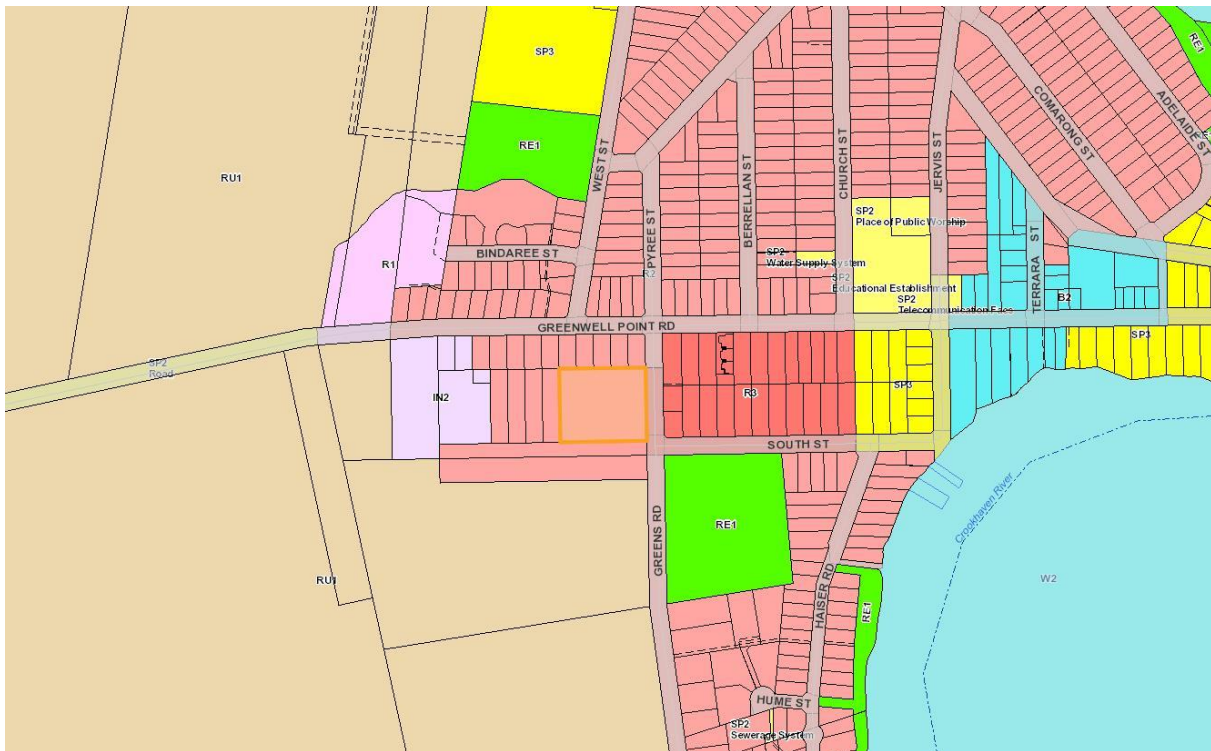
Implications: The application will need to be amended to demonstrate compliance with Chapter G9, SDCP 2014. If this cannot be achieved the application may be determined by way of refusal.

2. Resolve to support the departure from the Performance Criteria P3.2 and P3.3 of Control 5.3 *Subdivision in the Floodplain*, Chapter G9, SDCP 2014.

Implications: This will permit the application to proceed in its current form. Council could be open to litigation if a major flood event occurs and there is substantial damage to assets and increased dependency on emergency services. This is mitigated if council ensures that building envelopes are created above the 1 in 100 flood levels and all structures are in flood free areas. The Floodplain Manual states that it is not designed to sterilise land and council would need to weigh this principle up with the SES position that

development should not place further demands on emergency services during flood events.

Figure 1 – Location Map



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Background

Proposed Development

The application seeks approval for a nine (9) lot subdivision including the demolition of three (3) existing buildings on the subject land and minor earthworks (filling) to provide building platforms on six (6) of the proposed lots.

A 6m wide right of access is proposed to Greens Road in order to service six (6) of the proposed lots.

Subject Land

The development site comprises Lot 1 DP 530097 (1 Greens Road, Greenwell Point). Refer to Figure 1.

Site and Context

The development site:

- Contains an existing factory building, a large timber-framed, steel/fibreglass cladded shed and a concrete storage shed;
- Is zoned R2 Low Density Residential and has an area of 8,555.31m²;
- Is identified as being part flood prone land;
- Has existing access from Greens Road; and
- Adjoins land zoned R2 Low Density Residential and R3 Medium Density Residential, under the Shoalhaven Local Environmental Plan 2014.

History

The following provides details on pre-lodgement discussions, post-lodgement actions and general site history:

- A pre-lodgement meeting was held with Council planning, subdivision and flood engineering staff and the applicant's planning consultants (Development Advisory Unit (DAU) Meeting on 30 May 2016).
- Council resolved on 7 November 2016 to adopt Amendment No. 5 to SDCP 2014 and *"defer the draft changes to Chapter G9: Development on Flood Prone Land relating to subdivision in Greenwell Point to seek legal advice and remove the current wording in the DCP pending a further report on further advice."*
- The application was lodged on 20 December 2016.
- Council's Flood Unit recommended on 2 February 2017 that this application not be supported due to evacuation difficulties in the event of flooding.

Advice from the NSW State Emergency Service (dated 19 January 2017) was included, supporting their recommendation and highlighting that further subdivision and development at Greenwell Point *"would not be an orderly planning outcome, unless sufficient evidence can show that the period of isolation is tolerable for the future residents in flood events up to and including the probable maximum flood."*

- Council resolved on 14 March 2017 to:
 - "1. Not provide additional development restrictions in Greenwell Point and consider each development application on its merit in accordance with the provisions of Shoalhaven LEP 2014 and Shoalhaven DCP 2014; and*
 - 2. Undertake a review of the Lower Shoalhaven River Flood Risk Management Plan, Shoalhaven Local Environmental Plan 2014 and Chapter G9 of Shoalhaven Development Control Plan 2014 as required by this Interim Policy position."*
- With respect to the resolution of 14 March 2017, the report to Council made the following comments:

Implications: Greenwell Point is somewhat unique from Shoalhaven's other villages and towns that are also flood affected, given that the village becomes isolated creating an island in which evacuation and access is severely affected for an extended period of time. The liability for Council in allowing further population intensification of Greenwell Point, contrary to the recommendations of the relevant flood study, could at this stage, be significant. It is difficult to determine the scale of litigation that Council could be open to, if a major flood event occurs and there is substantial damage to assets.

Following consideration of the legal advice, it is apparent that the most straight forward approach to ensure the indemnity offered by Section 733 of the Local Government Act is protected, requires Council to follow the process prescribed in the Floodplain Manual and undertake actions in 'good faith' to maintain this indemnity. If Council resolves to not restrict development in Greenwell Point as recommended by the FRMS&P, it must acknowledge that if challenged, Council will need to demonstrate how, and on what basis it has acted in 'good faith' even though it did not comply with the processes set out in the Floodplain Development Manual. The loss of indemnity is not limited to any policy decisions made by

Council regarding its planning controls, but potentially impacts on future decisions by Council in determining development applications in accordance with Council's adopted policy position.

A review of the FRMS&P is due to commence shortly and it will be carried out in accordance with the principles and process set out in the NSW Floodplain Development Manual 2005. Section 2.7 of which states that "this review should account for changes across the full range of issues originally addressed and consider any associated emergent issues". A detailed explanation of the process prescribed in the Manual is provided in this report and the attached legal advice (Confidential Attachment 1).

One-off changes to the FRMS&P would still require to follow the process in the Manual and any review would need to be facilitated by a Floodplain Risk Management Committee appointed by the Council to make recommendations following a proper and reasoned process that substantially accords with the principles contained in the Floodplain Development Manual....."

Issues

Performance Criteria P3.2 and P3.3 of Control 5.3 Subdivision in the Floodplain, Chapter G9: Development on Flood Prone Land, SDCP 2014

P3.2 states that "the proposed subdivision will not create new lots that are affected by a high hazard area, or floodway in today's flood conditions or in climate change conditions up to the year 2100."

P3.3 states that "the proposed subdivision will not increase the potential population density in any areas (flood prone or flood free) with restricted evacuation access."

The proposed development is inconsistent with this criterion.

Applicant's Submission

In support of this application, the applicant has suggested that this restriction does not apply in that proposed amendments to SDCP 2014 will remove it, allowing for subdivision of flood free land within Greenwell Point. Further to this, the applicant considers that the submitted plan of subdivision "demonstrates that there is the ability to subdivide those areas of the subject site which are not flood prone and which will have access to flood free land."

Discussion

Council's Flood Unit advised the following on 2 February 2017:

"The subject property is categorised as high hazard flood storage. According to Chapter G9 of the Shoalhaven DCP 2014, this property is not suitable for subdivision. Section 5.3 Performance Criteria P3.2, clearly states that "The proposed subdivision will not create new lots that are affected by a high hazard area, or floodway in today's conditions or in climate change conditions up to the year 2100". The applicant has not demonstrated in the submitted Flood Impact Assessment on how this criteria (P3.2) can be achieved.

The applicant has not adequately demonstrated how the proposed subdivision and future developments will not increase dependency on emergency services. The applicant proposed a simplistic approach in that adequate shelter be in place by raising the floor above the flood planning level (FPL). The Lower Shoalhaven

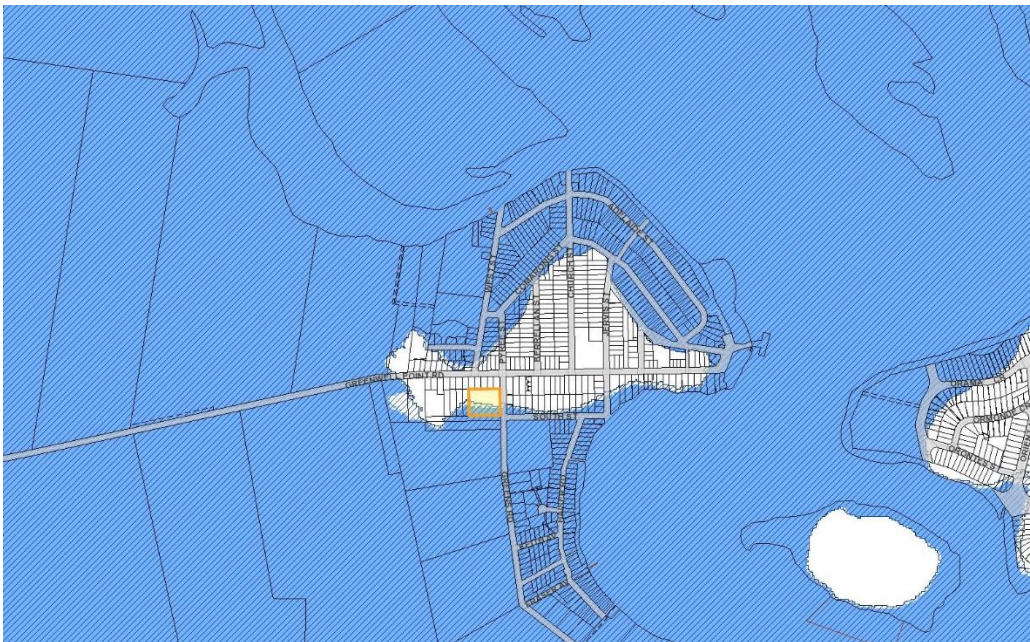
Floodplain Risk Management Study (2008) Page 27 clearly states that the Greenwell Point road is the only access route to Greenwell Point and the road closure can occur relatively early in a flood event even lesser than a 10% AEP event. Even though parts of Greenwell Point are above the PMF level, a flood event can potentially leave the residents without essential services such as power, water or sewer, as well as access to food or medical supplies for up to a number of days. During a flood, the presence of ground above the PMF level at Greenwell Point will encourage people to adopt a shelter in place strategy that may not be a safer alternative.

These facts mentioned above will create a greater reliance on emergency services. This development will intensify the population of Greenwell Point and may induce the emergency services to maintain around the clock safety monitoring of isolated residents or to have to implement dangerous and logistically difficult rescue operations. In addition, SES is not supportive of the 'shelter in place' strategy, as this can increase the risk to emergency service personnel. Before attempting rescue, emergency service personnel will assess the risk to their own safety. There is therefore no guarantee that rescue will be available for residents who are effectively entrapped in a building during a flood.

Hence, any increase in residential development at Greenwell Point will increase the population at risk from flooding. A decision to enable development that deliberately places more people at risk from flooding, is in contravention to emergency management principles supported by the NSW SES."

Figure 2 (below) shows the subject site in relation to the mapped flood planning area. There are existing evacuation difficulties and thus a major concern if further development is permitted in this locality (i.e. as a result of approval of this application).

Figure 2 – Flooding Extract



Planning Assessment

The DA will be assessed under s79C of the Environmental Planning and Assessment Act 1979. Subject to the policy issue being resolved, a favourable assessment could potentially

result in a conditional approval. If the policy departure is not supported, the application would be required to be amended or refused.

Figure 3 – Proposed Subdivision Layout

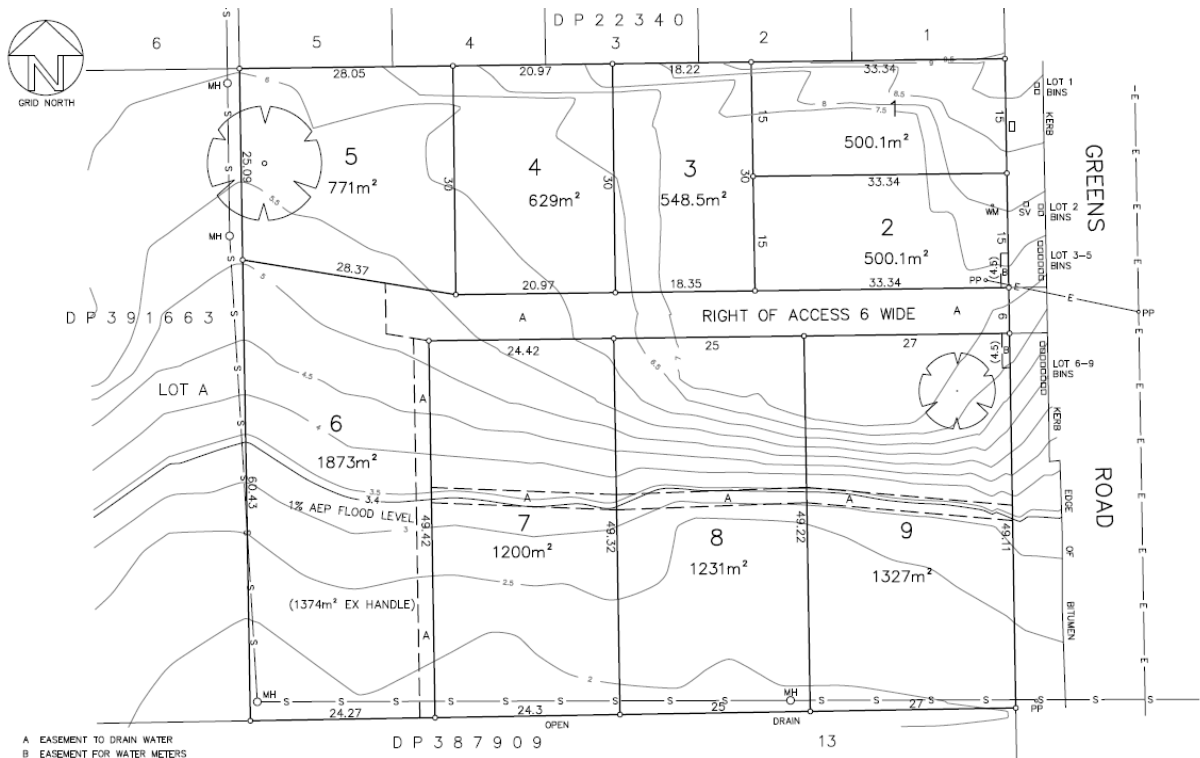
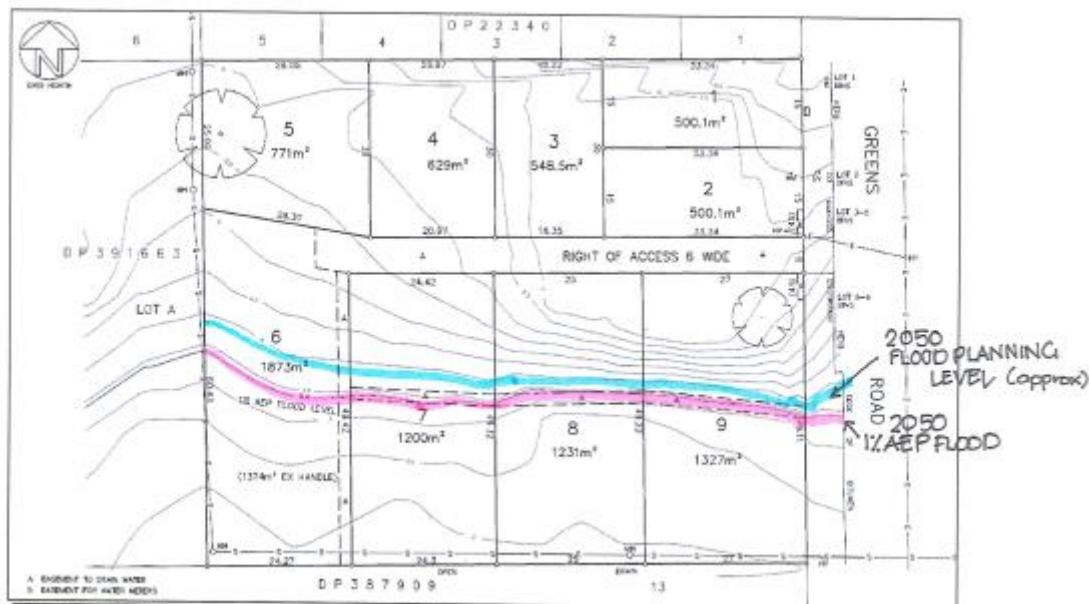


Figure 4 – Flood Planning Levels



Policy Implications

The proposed development conflicts with the Performance Criteria (P3.2 and P3.3) of Control 5.3 Subdivision in the Floodplain, Chapter G9: Development on Flood Prone Land, SDCP 2014. It is particularly noted that the development, if approved, will increase the potential population density in Greenwell Point, which already has restricted evacuation access, as detailed in the Flood Unit's comments above.

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Consultation and Community Engagement:

Notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 60m buffer of the site, including Greenwell Point Get to the Point Program (Inc.) during the period 6 January 2017 to 21 January 2017.

No submissions were received with respect to the notification.

Financial Implications:

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW.

Legal Implications

If the development application is refused, the applicant could elect to challenge the decision in the Land and Environment Court. The liability for Council in allowing further population intensification of Greenwell Point, contrary to the recommendations of the relevant flood study, is unknown. It would also need to be pointed out that the extent and type of flood event relative to impacts, would also potentially influence any action.

Summary and Conclusion

The proposed development is inconsistent with the provisions of Chapter G9: Development on Flood Prone Land, Shoalhaven Development Control Plan 2014 (SDCP 2014) – as outlined in this report.

Council may not be covered by protections of Section 733 of Local Government Act if further population intensification of Greenwell Point is permitted and a major flood event occurs, causing substantial damage to assets and greater reliance on emergency services.

Based on the current framework, the policy departure should not be supported and the application either determined or deferred pending the review of the Lower Shoalhaven River Flood Risk Management Plan, Shoalhaven Local Environmental Plan 2014 and Chapter G9 of Shoalhaven Development Control Plan 2014 as required by Council's resolution of 14 March 2017.

DE17.43 Development Application – 98 Canberra Crescent, Burrill Lake – Lot 149 DP 15648

DA. No: DA17/1350/4

HPERM Ref: D17/144057

Group: Planning Environment & Development Group
Section: Ulladulla Service Centre

Attachments:

1. Revised Statement of Environmental Effects (under separate cover) [⇒](#)
2. 3D Elevations, Colours and Finishes [↓](#)
3. Clause 4.6 Exception to Development Standard [↓](#)
4. Site Photo's for 98 Canberra Cr, BURRILL LAKE - Lot 149 DP 15648 (under separate cover) [⇒](#)

Description of Development: Two Storey Pole House

Owner: Elliot Marshall

Applicant: True North design

Notification Dates: 11 – 25 April 2017

No. of Submissions: One (1) in objection
Nil in support

Purpose / Reason for consideration by Council

This application is reported to the Committee due to a variation to the 8.5m maximum building height set by clause 4.3 of Shoalhaven LEP 2014. The variation is required to be determined by the Development Committee due to the variation exceeding 10%.

Recommendation (Item to be determined under delegated authority)

That the Development Committee

1. Support the variation to maximum building height of 8.5m set by clause 4.3 of Shoalhaven LEP 2014 for two storey pole home at 98 Canberra Crescent, Burrill Lake to a maximum building height of 11.15m;
2. Refer the application back to staff for determination.

Options

1. Support the variation.

Implications: The development can proceed as proposed, subject to meeting the matters for consideration under section 79c of the Environmental Planning and Assessment Act 1979 and subject to conditions that may be imposed arising from those considerations.

2. Variation not supported but applicant invited to submit revised plans

Implications: The current variations are not supported but the applicant is given feedback on changes to reduce the requested variations. Therefore, revised plans may be

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resubmitted for determination by Development Committee or by Senior Council Officers if the revised proposal is within the Delegation Guidelines.

Location Maps



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Background

Proposed Development

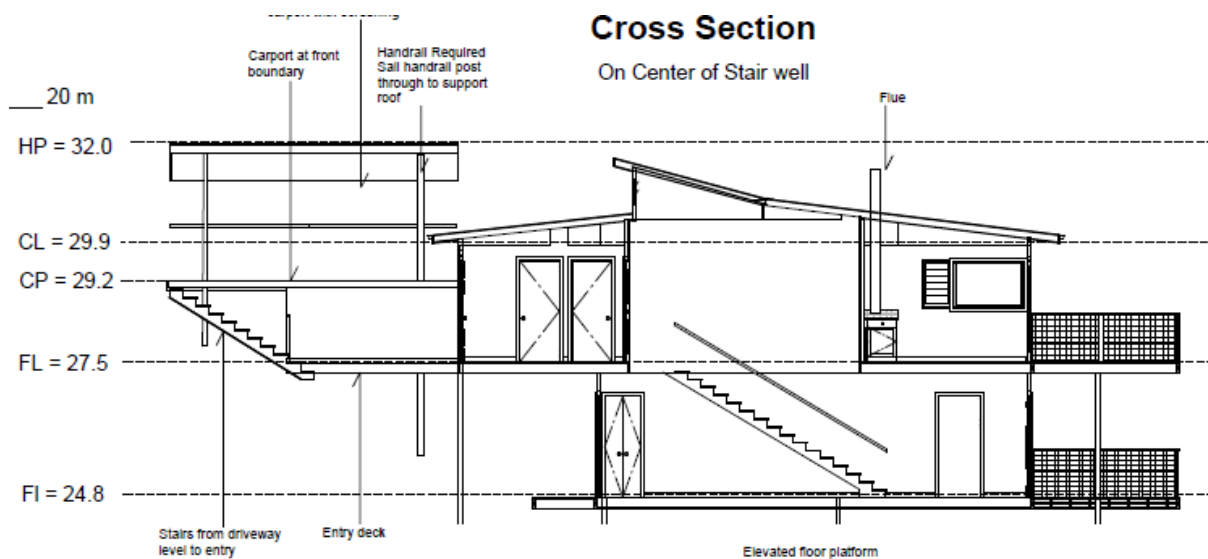
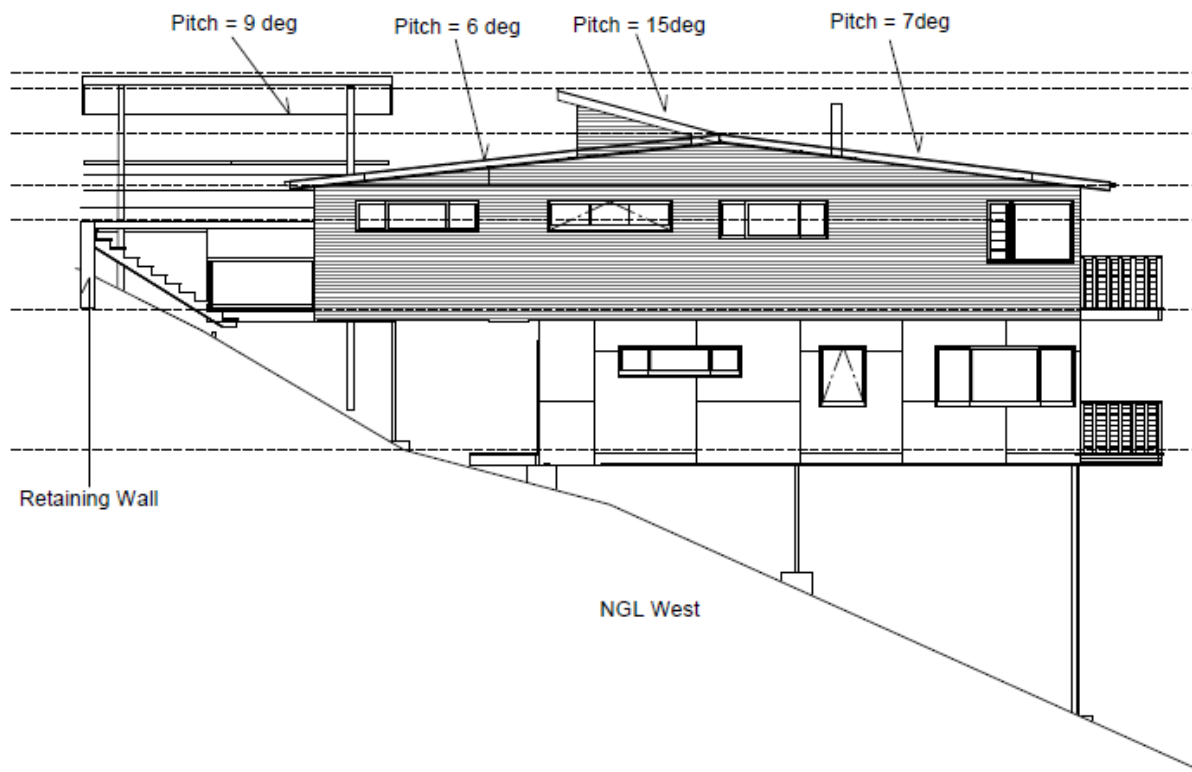


The proposal is for the construction of a 220m², two storey pole frame home, including a 20 m² single carport with low pitched skillion roof. The dwelling contains 4 bedrooms, 2½ bathrooms, office, combined living/dinning and lower level rumpus room. The roof is a low pitched gable design with a series of clerestory windows pitched to the North. The exterior façade of the dwelling is a combination of bare stone panel to the lower level and colorbond cladding above.

The development begins with zero setback from the Northern boundary (Canberra Crescent) for carport before projecting 2.5m, Southwest, for a 2m wide deck attached to the dwelling. The dwelling has a 4.5m setback from the street and projects a total of 23m from front boundary. Access to street is via stair case running parallel to Northwestern side of Carport. The lower level of the residence is underslung 2.7m below the FFL of upper level and is accessed from internal staircase only.

Both the upper and lower levels have unroofed, 3m wide, South facing decks cantilevering 1.5m from the pole structure. The Western elevation and section below demonstrate layout of development and provide details of levels:

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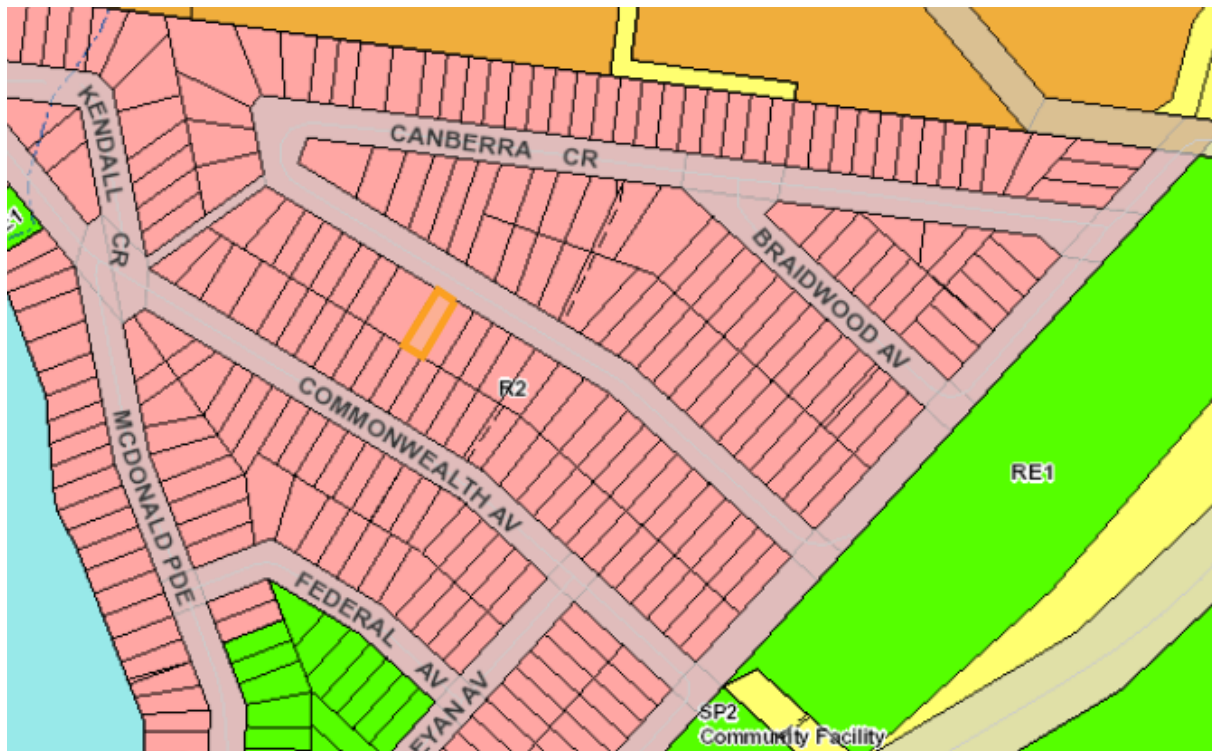


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Subject Land

The land is a 442.62 m² vacant Lot is within an existing residential subdivision created in 1927. The allotment frontage to Canberra Crescent is 12.190m and has a depth of 36.575m.

The land is zoned R2 - Low Density Residential and is subject to a 8.5m maximum building height under clause 4.3 of the LEP.



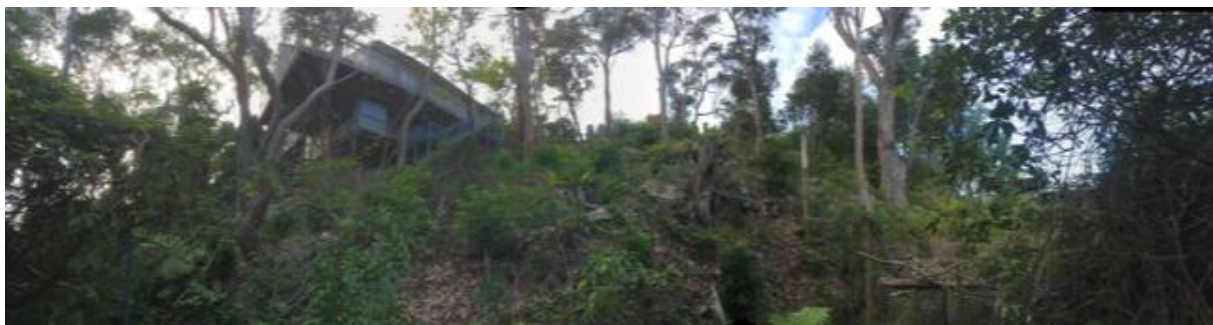
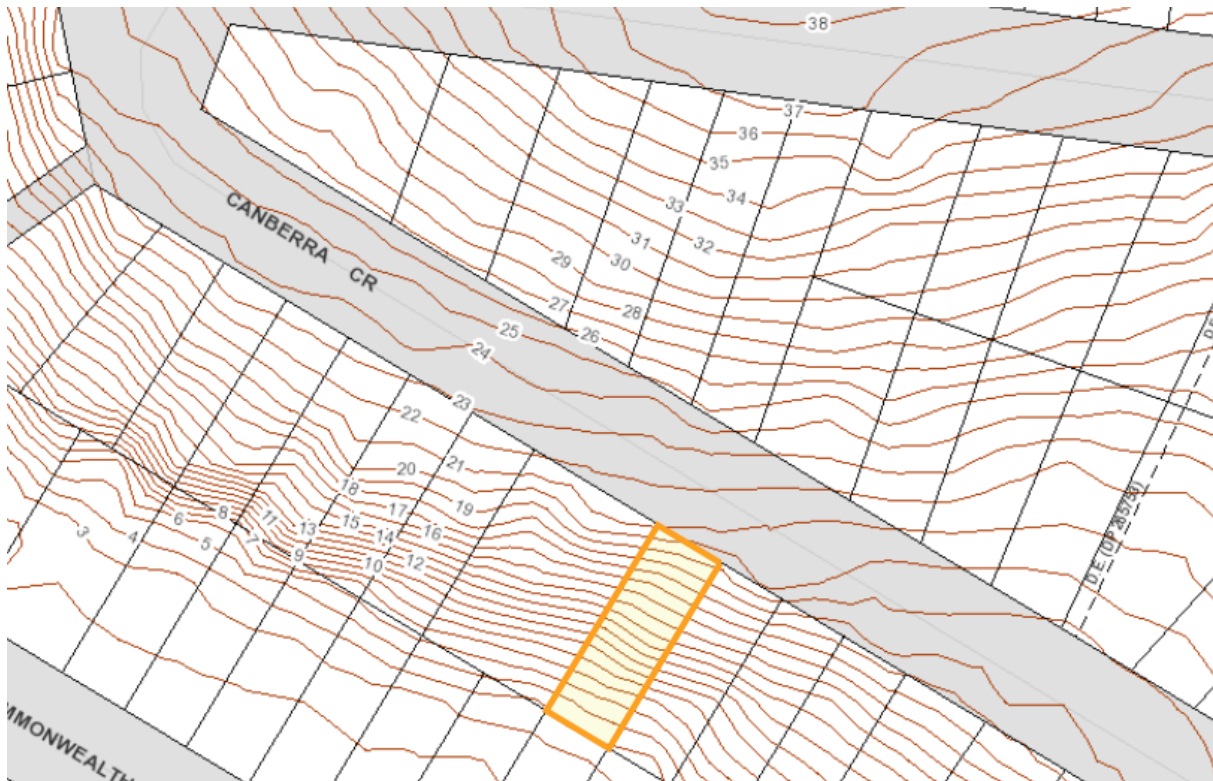
Site & Context



View at Lot from Federal Avenue

The site is steep sloping with 10 metres of fall over the first 20 meters from the road frontage. This section of the land is where the proposed building is located and equates to an approximate gradient of 27°. The majority of allotments on the south side of Canberra Crescent are steep sloping sites which can be seen in the mapping overlay below showing contours at 1m intervals. There are a number of similar pole frame designs along Canberra Crescent due to the geographical and geological challenges of the sites.

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The property is identified as "sensitive area" on Shoalhaven LEP 2014 - Natural Resources Sensitivity overlay and is affected by Clause 7.7 Landslide risk and other land degradation. Clause 7.7 applies to land comprising steep slopes and susceptible to other forms of land degradation. A geotechnical report has been included within the application and recommendations integrated into the design.

The allotment is vegetated and is known to contain vegetation that comprises an Endangered Ecological Community (Bangalay Sand Forest of the South East Sydney Basin Bioregion, Schedule 1 NSW TSC Act 1997) and potential habitat for hollow dependant threatened fauna (hollow bearing trees). It is acknowledged that the site is within existing residential area however these matters will be addressed to fulfil Council's obligations under S5A of the EP&A Act 1979. An Assessment of Significance has been requested to include recommendations for the mitigation of impacts to the EEC and any threatened fauna detected. Measures will be incorporated as conditions of consent for the development.

Cadastre : 98 Canberra Cr

Owner : **E J MARSHALL**

Address : **98 Canberra Cr**

Details : **Lot 149 DP 15648**

Suburb : **BURRILL LAKE**

UPN : **21045**

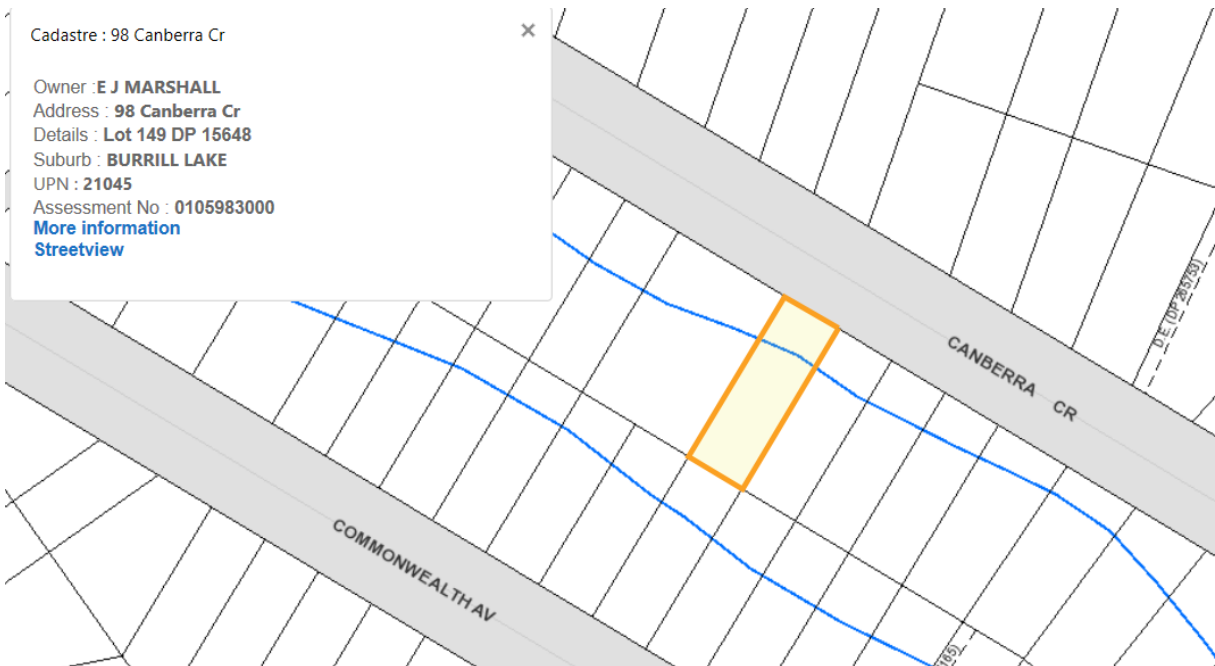
Assessment No : **0105983000**

[More information](#)

[Streetview](#)



The LEP Biodiversity Zone applied to this allotment starts approximately 9.2m from the street frontage. Site inspections have been completed and the two trees to be removed for the development are outside of the Biodiversity Zone.



History

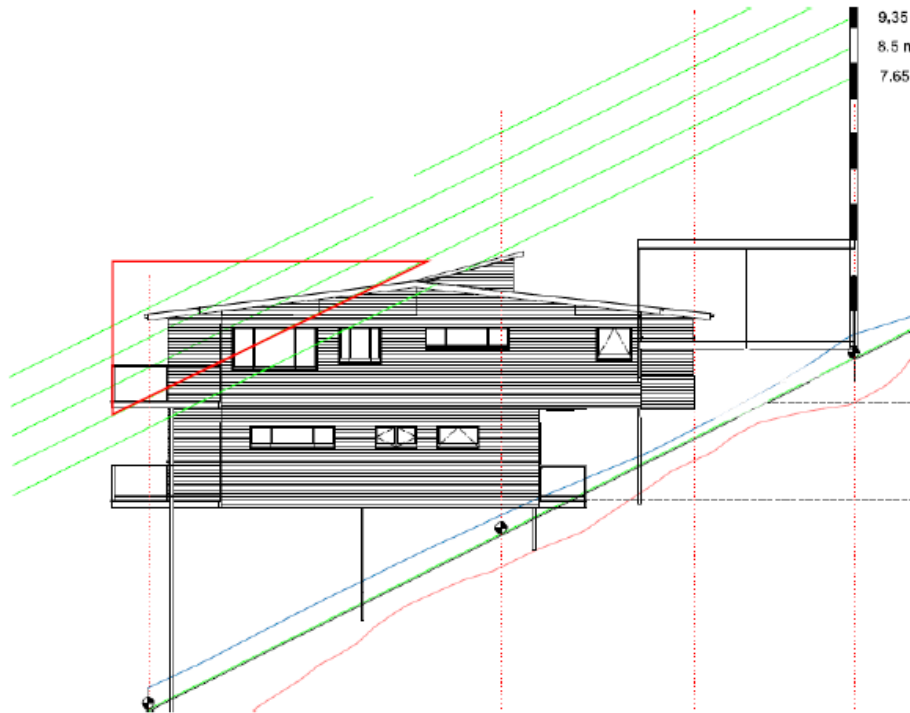
The subject lot was declared 7 June 1927 (B636416). Its description is Lot 149 DP 15648. The lot was purchased current owner in May 2017. This is the first Development Application lodged for the allotment.

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Issues

Clause 4.3 Shoalhaven LEP 2014

This clause of the LEP imposes a 8.5m maximum building height on the subject land. The application proposes a building with a maximum height of 11.15m. The elements of the building that exceed the 8.5m height limit are for a section of the upper level walls, roof and cantilevered balcony projecting South. These elements are included within red triangle on picture below: D17/157896 provided further information on spot heights.



Applicant's Submission

The applicant's Clause 4.6 variation statement and supporting information is included as Attachment 1 in this report. This document satisfactorily addresses the thirteen matters required to vary a development standard and includes mapping where relevant. An extract from this document is included below:

The applicants supporting statement on how the proposal is consistent with the objectives of Clause 4.3 of the development standard is below:

The proposal is consistent with objectives of the development standard, particularly as this dwelling is compatible with the height, bulk and scale of the existing development within the immediate residential locality.

The existing developments in the area were all constructed prior to LEP 2014 permitting them to be constructed to a height maximum of 11m from natural ground level which was acceptable before the maximum height policy was revised in the LEP as a development

standard. The nature of the terrain in this area is sloped at approximately 50% and requires variation to the building height limit to allow the land to be developed in a reasonable manner. This application is consistent with the established character of this residential neighbourhood.

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The Council's desired future character for the locality however, can only be determined by Council's strategic plans for the region; in this instance, there are no specific strategic plans for this area or Burrill Lake. Therefore, desired character can only be determined from a review of the development control plan Chapter G12 and the nature of the existing development approved by Council in the locale.

The height objective of the LEP is to ensure that new development is harmonious with the character of the area and are sympathetic to existing / likely future dwellings. Further, the steep nature of the immediate locality has effectively set a precedent in this instance for the desired character, where Council has consciously & consistently approved dwellings over the years which breached the adopted height standard as it applied under Council's Minimum Building Code & DCP 91 prior to the adoption of DCP 2014.

It is only under Shoalhaven Local Environmental Plan 2014 that height is a development standard and no longer solely an acceptable solution / matter for consideration under DCP provisions. Endeavouring to comply with the height development standard is likely to lead to adverse environmental impacts in terms of bulk and scale, visual prominence, impact upon slope stability, cut and fill etc., than this proposal will have.

To support the departure & assist in Council's assessment of the proposal, a detailed review has been completed to ensure the proposal is compliant with the objectives of current policy and is provided in the Statement of Environment Effects (SEE) attached to the submitted DA.

To summarise the content of the SEE with relevance to the policy objectives:

- Overall the proposed development is 1m lower than the immediately adjacent neighbour.
- Shadow diagrams validate compliance to minimal impact on solar access of neighbouring residence.
- The proposed development is balanced with the sharing of views and development potential of the site relationship.
- Privacy sensitive zones have been identified and are protected.
- The size and bulk of the development is compatible to the amenity of the area.
- The proposed developments Finished Floor Level is 1.9m lower than the road and as a result has minimal visual impact from the street and no negative impact on views of Northern neighbours.
- Existing building precedent validates variation request.
- Fundamentals for adequate design on steep land is undermined by the height restriction.

The NSW Department of Planning & Environment Guide to Varying a Development Standard provides:

"A proposed variation to a development standard may, in some circumstances, achieve the underlying purpose of the standard as much as one which complies. If the development is not only consistent with the underlying purpose of the standard, but also with the broader planning objectives for the locality, strict compliance with the standard would be deemed to be unreasonable and unnecessary and council could approve a variation."

It is considered that this proposal presents a circumstance where the purpose of the development standard is achieved in the application and where endeavouring to achieve strict compliance with the development standard (i.e. 8.5m) is likely to lead to an undesirable environmental outcome. Therefore, compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

Discussion

The applicant needs to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. Council

cannot grant consent for such a development unless it is satisfied that the applicant has adequately addressed the above matters and that the proposal will be in the public interest because it is consistent with the objectives of both the development standard and the zone in which the development is proposed.

The objectives of the development standard is:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

It is considered that the development is consistent with the objectives of the development standard, as described below:

- The height of the proposal is one meter lower than neighboring dwelling to the West (No.94), will sit comfortably with the existing character of the locality and is not incompatible with surrounding development;
- The bulk and scale of the development has been reduced through the cantilevering of building elements, clever articulation and selection of differing cladding systems;
- The visual impact from the development has been minimised through the selection of earth toned colour palette to help the home blend into terrain;
- Existing vegetation is to remain where possible. Additional planting of will assist in the screening of the elevated platform from streets below and neighboring allotments;
- Highly valued views have been retained due to the gable roof of the proposal measuring only .8m above the FFL of No.94 as shown in the picture below;
- There is no impact on views from houses to north of the street as the roof of the carport and house are less than 2.1m above top of street gutter;
- The southern decks and balustrade will act as horizontal screen to disrupt direct views into properties below;
- Solar diagrams demonstrate their will be no loss of solar access to neighboring allotments to the south.



View looking South-east from first floor balcony

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Planning Assessment

The DA has will be assessed under s79C of the Environmental Planning and Assessment Act 1979, the proposal does include a proposed variation to the front building setback which will be included in the final assessment, however, this part of the structure does not exceed the maximum building height and is consistent with existing development along this side of Canberra Crescent.

Policy Implications

There are no specific policy implications that arise from this matter. The variation procedure provided for by clause 4.6 of Shoalhaven LEP 2014 provides a framework for variation of standards in a manner which does not undermine the policy aspects of the development standard

Consultation and Community Engagement:

One (1) submission was received in relation to Council's notification of the development. This was in the nature of an objection to the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 25m buffer of the site. The notification was for a 14 day period.

Key issues raised as a result of the notification are provided below.

Rear set back (5.1.3 Setback and Building Lines)

Concern was raised in relation to the setback of the building from the rear boundary, the building is set back 15m from rear boundary and is consistent with Acceptable Solution A3.2 and Table 1 within Chapter G12 of DCP which requires 0.9m.

Solar Access (5.3.6 Solar Access)

Concerns were raised about solar access, however, shadow diagrams submitted which meet the requirements. Also the existing vegetation provides significant shading to the properties along the northern side of Commonwealth Ave.

Financial Implications:

If the application is appealed it will result in costs to Council of defending the appeal. However, this prospect, which in most cases is reasonably remote, is not a matter that Council is required or entitled to consider in determining a development application and accordingly it should not be given any weight in Council's decision.

Legal Implications

If the application is refused, or if the applicant is dissatisfied with Council's determination, or if the applicant can appeal on the basis of a deemed refusal because of Council's delay in determining the application, the applicant is entitled to appeal to the Land and Environment Court.

Summary and Conclusion

The building height variation is supported for the following reasons:

- The site is steep and therefore provides challenges in designing a building of reasonable floor space, amenity and utility while minimising the number of levels;

- Houses in the street of a similar height were approved under DCP 91 prior to maximum building height of 8.5m being transferred to a development standard in SLEP 2014;
- The proposal is consistent with the height, bulk and scale of the existing and desired future character of the locality;
- The proposal has minimal visual impact, disruption of views, loss of privacy and loss of solar access to existing development;
- The applicant has adequately addressed the matters set out in clause 4.6 of Shoalhaven LEP 2014;
- The proposal will be in the public interest because it is consistent with the objectives of both the development standard and those of the R2 Low Density Residential zone.

Artist Impression

Prelim Building Details

Roofing - Colorbond (Wind Spray - Grey)
Upper Level Cladding - Colorbond (Monument)
Upper Level Cladding - Natural Iron Bark Feature Cladding south
Upper Level Cladding - Natural HW Timber Feature north
Lower Level Cladding - Bare Stone (Color Natural - Grey/White)
Glass - Pro E, Aluminum (Timber look)
Balustrade - Vertical Picket Steel (Night Sky - Dark)
Decking - TBD
Internal flooring - Blonde hardwood (Blackbutt)
Structural Steel - Gal
Carport and driveway - Concrete Charcoal Toner



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Visual Representation



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PLANSCAPES[®]

ABN 77 697 007 763
Town Planning Consultancy

General Manager
Shoalhaven City Council
P O Box 42
NOWRA NSW 2541

8 March 2017
Our Ref: #201621

Attention: Mr Warwick Papworth

Dear Warwick

RE: DA for new dwelling - 98 Canberra Crescent Burrill Lake – Clause 4.6 Exception to Development Standard

I am writing on behalf of Mr Elliott Marshall, owner of the abovementioned land, in order to provide Council with justification for a breach of the building height development standard contained in Clause 4.3 of the Shoalhaven Local Environmental Plan 2014. This document is to accompany a development application made by True North Design Co on Mr Marshall's behalf.

We provide the following justification for the contravention of the 8.5m development standard of Clause 4.3 of the Shoalhaven Local Environmental Plan 2014. This statement is provided in the format of Council's Applicant's Guidelines in this regard.

Clause 4.6 provides Council with the flexibility to assess and determine development applications which do not strictly comply with the development standards of the Shoalhaven Local Environmental Plan 2014. These are specifically exceptions to the development standard rather than variations. The development standard, in this case Clause 4.3, does not expressly prohibit the operation of Clause 4.6 in relation to contravening the development standard.

The objectives of the clause 4.6 state:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

It is our contention that this application demonstrates that strict compliance with the 8.5m height development standard provided on the LEP Building Height map is unreasonable and unnecessary in the circumstances of this case, and that strict compliance with result in an adverse environmental outcome.

1. What is the name of the environmental planning instrument that applies to the land?

Shoalhaven Local Environment Plan 2014, notified in the Government Gazette 22 April 2014

2. What is the zoning of the land?

The zoning of the land is R2 Low Density Residential

3. What are the objectives of the zone? Attach a zoning map of the land and surrounding properties

Objectives of R2 zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.



Figure 1 - SLEP 2014 land zoning map from www.legislation.nsw.gov.au

4. What is the development standard being varied and its numeric value? e.g. 40ha lot size. Attach a map of the development standard for the land and surrounding properties.

The standard is the building height of 8.5m (from existing ground level -excluding vents, chimneys etc); this height limit would apply to any permissible development.



Figure 2 - Height of Building Map from www.legislation.nsw.gov.au

5. Under what clause is the development standard listed in the environmental planning instrument?

Shoalhaven Local Environment Plan 2014 - Clause 4.3 Building Height as illustrated on the above LEP map extract (Figure 2).

6. What are the objectives of the development standard?

The objectives of this Clause 4.3 Height of Buildings are as follows:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

7. What is proposed numeric value of the development standard in your development application and the percentage variation (between your proposal and the environmental planning instrument)?

Shoalhaven Local Environment Plan - Clause 4.3 Building Height specifies that No 98 Canberra Crescent is to have a maximum building height of 8.5m from the natural terrain level.

As the terrain profile has a gradient of 50%, the proposed development at its highest point is 11m which is a departure from the development standard of approximately 30%.

The site has a cross fall from west to east, where the land adjacent to the eastern boundary at the worst point in relation to the proposed dwelling house construction (approximately 20m from street boundary), is 1.5m lower than the same line on the western boundary.

This cross fall exacerbates the extent of the dwelling that exceeds the 8.5m height development standard. On the western side of the building, approximately 3.5% of the of the total wall area (on that façade) is outside the building limit, on the eastern side the surface area of the wall above the limit is approximately 14%, as shown on the elevations. A median position was chosen to represent the slope of the site in regards to its impact upon the height plane, as seen on the application plans. This variation in terms of surface area of the eastern elevation above the 8.5m height limit is approximately 9.0% of the wall.

The proposed development requires a 30% variation to the LEP of 8.5m to accommodate the gutter at its highest point from NGL and 20% to accommodate the south facing wall at it heights point above NGL.

A 30% height increase to the LEP of 8.5m equates to a building height limit of 11m. It is important to note that existing development on similarly sloped adjacent or nearby lots have been granted this building height variation during their development application assessment.

8. How is the proposal consistent with the objectives of the zone in which the development is proposed to be carried out?

The objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.

While dwelling houses are one form of development permissible in the R2 residential zone, the proposal directly meets the objectives of the zone by providing low density housing in an area of growing demand when vacant land is scarce and Council is not able to rezone more land for urban development under current regional strategies.

The proposal provides a dwelling in an infill situation. The proposed dwelling is consistent with the character of the street along with the style and height of dwellings adjacent. It is compatible with the environment and the character of the existing residential neighbourhood.

The LEP does not contain any development standard for low density in terms of lot yield or FSR, nor does it define the term in order to establish the desired character. However, 'low density' character can be derived from DCP Chapter G12 for Dwelling Houses and Ancillary Structures.

Dwelling houses are subject to a floor space ratio of 0.5:1 under DCP Chapter G4 and this dwelling achieves that FSR acceptable solution. Therefore, it is considered that the dwelling proposed in this application is consistent with the character of the locality (which is predominantly detached dwelling houses on single residential allotments) and it therefore complies with the objectives of the zone.

Other forms of development permissible in this low density residential zone (other than dual occupancy) are not subject to density or floor space ratio provisions in DCP 2014.

9. How is the proposal consistent with the objectives of the development standard?

The objectives of Clause 4.3 are:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

The proposal is consistent with objectives of the development standard, particularly as this dwelling is compatible with the height, bulk and scale of the existing development within the immediate residential locality.

The existing developments in the area were all constructed prior to LEP 2014 permitting them to be constructed to a height maximum of 11m from natural ground level which was acceptable before the maximum height policy was revised in the LEP as a development

standard. The nature of the terrain in this area is sloped at approximately 50% and requires variation to the building height limit to allow the land to be developed in a reasonable manner. This application is consistent with the established character of this residential neighbourhood.

The Council's desired future character for the locality however, can only be determined by Council's strategic plans for the region; in this instance, there are no specific strategic plans for this area or Burrill Lake. Therefore, desired character can only be determined from a review of the development control plan Chapter G12 and the nature of the existing development approved by Council in the locale.

The height objective of the LEP is to ensure that new development is harmonious with the character of the area and are sympathetic to existing / likely future dwellings. Further, the steep nature of the immediate locality has effectively set a precedent in this instance for the desired character, where Council has consciously & consistently approved dwellings over the years which breached the adopted height standard as it applied under Council's Minimum Building Code & DCP 91 prior to the adoption of DCP 2014.

It is only under Shoalhaven Local Environmental Plan 2014 that height is a development standard and no longer solely an acceptable solution / matter for consideration under DCP provisions. Endeavouring to comply with the height development standard is likely to lead to adverse environmental impacts in terms of bulk and scale, visual prominence, impact upon slope stability, cut and fill etc., than this proposal will have.

To support the departure & assist in Council's assessment of the proposal, a detailed review has been completed to ensure the proposal is compliant with the objectives of current policy and is provided in the Statement of Environment Effects (SEE) attached to the submitted DA.

To summarise the content of the SEE with relevance to the policy objectives:

- Overall the proposed development is 1m lower than the immediately adjacent neighbour.
- Shadow diagrams validate compliance to minimal impact on solar access of neighbouring residence.
- The proposed development is balanced with the sharing of views and development potential of the site relationship.
- Privacy sensitive zones have been identified and are protected.
- The size and bulk of the development is compatible to the amenity of the area.
- The proposed developments Finished Floor Level is 1.9m lower than the road and as a result has minimal visual impact from the street and no negative impact on views of Northern neighbours.
- Existing building precedent validates variation request.
- Fundamentals for adequate design on steep land is undermined by the height restriction.

The NSW Department of Planning & Environment Guide to Varying a Development Standard provides:

"A proposed variation to a development standard may, in some circumstances, achieve the underlying purpose of the standard as much as one which complies. If the development is not only consistent with the underlying purpose of the standard, but also with the broader planning objectives for the locality, strict compliance with the standard would be deemed to be unreasonable and unnecessary and council could approve a variation."

It is considered that this proposal presents a circumstance where the purpose of the development standard is achieved in the application and where endeavouring to achieve strict compliance with the development standard (i.e. 8.5m) is likely to lead to an undesirable environmental outcome. Therefore, compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

For this site and development proposal, strict compliance with the development standard is unreasonable and unnecessary in two main ways.

The first is the existing building height precedent established by Council in this locality:

- Council has granted concession for other buildings in the area to contravene the DCP height restriction (as an acceptable solution) that this proposal now faces as an LEP development standard. The height development standard is essentially based upon Council's desired character for flat to gently sloping blocks of land.
- The terrain character of the lot is not considered standard and the terrain profile falls 10m over the proposed 20m developable area of the site. To achieve the height development standard while complying with the street building line of 6.0m, the building would have to be split level with minimal overlapping connections between the levels which reduces the functionality of the building as a cohesive dwelling house and increases the construction costs and site disturbance for little or no gain other than achievement of the standard.
- It is therefore unreasonable & unnecessary to strictly comply with a height restriction that is likely to result in adverse environmental impacts.

The second and more important reason that compliance with the development standard is unreasonable and unnecessary, is due to the stability of the site.

- The site is zoned as Natural Resource Sensitive (Clause 7.7 SLEP2014 - Landslide Risk) and requires a development proposal that will have minimal impact on the established terrain condition. Cut and fill cannot be conducted with assurance to the stability of the site.

In consideration of this, a steel pole construct is necessary and the design has achieved the lowest possible floor levels without impacting on the latent stability of the site. It is acknowledged that this is a deliberate contravention of the standard in a sensitive manner in order to achieve a better environmental outcome for this site and reduce potential impacts on neighbours.

Meeting the objectives of the LEP whilst having minimal impact on the existing terrain must be a balance with the priorities of safety and stability having the highest importance. Consequently, the zoning of the site and height restriction are in contradiction to each other. The zoning objectives call for a design that can be constructed safely and guarantee site stability, the height limit undermines this objective by restricting suitable construction solutions for the site and is therefore considered unreasonable.

This proposal has demonstrated compliance with the objectives of the standard and the zone, and requests a height variation consistently granted to existing adjacent

developments, with little adverse environmental impact. The objectives of the standard are achieved notwithstanding the contravention of the development standard.

11. How would strict compliance with the development standard hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act.

The objects of this Act are:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and co-ordination of communication and utility services,
 - (iv) the provision of land for public purposes,
 - (v) the provision and co-ordination of community services and facilities, and
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
 - (vii) ecologically sustainable development, and
 - (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Strict compliance with the 8.5m development standard would likely lead to increased potential for landslip which contravenes the proper management and conservation of natural areas (i.e. the site). Further, in that regard, strict compliance with the standard does not promote the orderly development of land or result in a better environmental outcome.

The lot is partially identified under Council's DCP Chapter G4 as containing EEC, and in order to protect the ecological values of this area, concrete pad footings are to be utilised for the new dwelling as they have the least impact on tree roots. This assists to protect the environment as does permitting native vegetation growth to be promoted by the owner so roots can provide support against erosion, protecting the slope.

12. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

It is our contention that there are sufficient environmental planning grounds to justify contravening this development standard, given the circumstances of this case.

In this particular case, the slope stability issues are sufficient reason to minimise the potential soil disturbance that would be likely as a result of endeavouring to comply with the required building line and height limitations.

The geotechnical report demonstrates that the proposed dwelling and footing design is most suitable for this site and has little environmental impact.

13. How will the proposal be in the public interest?

The proposed development is on one of three side by side undeveloped lots on Canberra Crescent. Endeavouring to comply with unrealistic Building height restrictions in combination with sewer easement traversing the lots has prevented development by creating impractical design constraints and unfeasible associated costs.

This proposal has the potential to "break the ice" by establishing a council supported building precedent for acceptable development for this undeveloped area of Canberra Crescent. The potential for further development in the area is in the public interest because it will provide an avenue for investment and growth in the community.

Through reviewing the LEP height code for this area the Shoalhaven council will be working to refine the system they have established and the community will benefit through more appropriate development controls for the area.

Notwithstanding, Council has been consistent in its approach in permitting breaches to the 8.5m height acceptable solution of DCP 91 due to the site constraints, which were assessed and considered to be within the public interest. This application is consistent with previous applications which have in effect set a precedent for this locality.

This proposal does not have an adverse impact upon privacy or intrusion into the view of neighbouring properties as a result of contravening the height development standard. It is considered that this proposal has merit and is worthy of Council's support.

Conclusion

The proposed development is obligated to meet the objectives of the Shoalhaven DCP & LEP as well as Biodiversity and Natural Resource Sensitive Zoning. The proposed design effectively meets of the objectives of the policies and zoning applied to this lot.

This application to review the LEP height limit would not be lodged if the consensus of industry professionals and existing building precedent did not support the design.

It is our contention that this breach of the height development standard is well justified given the circumstances of this case and Council should be able to determine the application on its merits. Should you require any further information in relation to this application please contact Mr Tony Marshal of True North Design on 0414 442 119 in the first instance.

Yours Faithfully



Kerry Rourke
Town Planner

LOCAL GOVERNMENT AMENDMENT (GOVERNANCE & PLANNING) ACT 2016

Chapter 3, Section 8A Guiding principles for councils

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Chapter 3, Section 8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services

Chapter 3, 8C Integrated planning and reporting principles that apply to councils

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils:

- (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) Councils should identify strategic goals to meet those needs and aspirations.
- (c) Councils should develop activities, and prioritise actions, to work towards the strategic goals.
- (d) Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) Councils should regularly review and evaluate progress towards achieving strategic goals.
- (f) Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) Councils should collaborate with others to maximise achievement of strategic goals.
- (h) Councils should manage risks to the local community or area or to the council effectively and proactively.
- (i) Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.