

Development Committee

Meeting Date: Tuesday, 14 November, 2017
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 5)
Clr Joanna Gash - Chairperson
Clr John Levett – Deputy Chairperson
All Councillors
General Manager or nominee

Please note: Council's Code of Meeting Practice permits the electronic recording and broadcast of the proceedings of meetings of the Council which are open to the public. Your attendance at this meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

Agenda

1. **Apologies / Leave of Absence**
2. **Confirmation of Minutes**
 - Development Committee - 10 October 20171
3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
7. **Reports**
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8. Confidential Reports

Nil

Development Committee

Delegation

THAT 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

- a. 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.
- b. 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.
- c. 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.
- d. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which seeks to vary 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.
- e. 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
- f. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
- g. Review of determinations of development applications under sections 82A and 96AB of the EP&A Act that the General Manager requires to be determined by the Committee.
- h. 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, 10 October 2017
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.03pm

The following members were present:

Clr Joanna Gash - Chairperson
Clr Patricia White
Clr John Wells – left the meeting, the time being 6.41pm.
Clr Amanda Findley
Clr Kaye Gartner – arrived, the time being 5.08pm.
Clr Nina Cheyne
Clr Annette Alldrick
Clr John Levett
Clr Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener – arrived, the time being 5.21pm.
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Apologies / Leave of Absence

An apology was received from Clr Guile.

Confirmation of the Minutes

RESOLVED (Clr White / Clr Cheyne) MIN17.892

That the Minutes of the Development Committee held on Tuesday 12 September 2017 be confirmed.

CARRIED

Declarations of Interest

Nil

DEPUTATIONS AND PRESENTATIONS

Mr Andrew Dawes, JACA Property Group, addressed the Committee in relation to item DE17.74 DA16/2070 – 7 Beach Street, Huskisson – Lot B DP 359526 – Proposed Residential Flat Building

Note: Clr Gartner arrived, the time being 5.08pm.

Ms Joy Lever, addressed the Committee in relation to item DE17.74 DA16/2070 – 7 Beach Street, Huskisson – Lot B DP 359526 – Proposed Residential Flat Building

Note: Clr Kitchener arrived, the time being 5.21pm

REPORTS

Procedural Motion - Bring Item Forward

RESOLVED (Clr Pakes / Clr Levett) MIN17.893

That the matter of item DE17.74 DA16/2070 – 7 Beach Street, Huskisson – Lot B DP 359526 – Proposed Residential Flat Building be brought forward for consideration.

CARRIED

DE17.74 DA16/2070 – 7 Beach Street, Huskisson – Lot B DP 359526 – Proposed Residential Flat Building	HPERM Ref: D17/253749
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Recommendation (Item to be determined under delegated authority)

That Development Application DA16/2070 to demolish the existing dwelling and ancillary outbuilding and construct a residential flat building at Lot B DP 359526, 7 Beach Street, Huskisson be approved subject to the recommended conditions of consent contained in Attachment 6 of this report.

RESOLVED (Clr White / Clr Gartner) MIN17.894

That Development Application DA16/2070 to demolish the existing dwelling and ancillary outbuilding and construct a residential flat building at Lot B DP 359526, 7 Beach Street, Huskisson be approved subject to the recommended conditions of consent contained in Attachment 6 of this report.

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

AGAINST: Nil

CARRIED

DE17.67 Possible Affordable Housing Opportunity - Coomea Street, Bomaderry - Initial NSW Government Response	HPERM Ref: D17/285258
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Recommendation (Item to be determined under delegated authority)

That Council

1. Acknowledge the advice received from the NSW Government in this regard;
2. Continue to work on the possible demonstration affordable housing project at Coomea Street, Bomaderry;

3. Approach the five first phase service providers under the Social and Affordable Housing Fund (SAHF) to see if they are interested in being part of the project; and
4. Request the NSW Minister for Social Housing to consider making a budget bid for additional social and affordable housing in Shoalhaven and ensure that the NSW Government work with Council on redeveloping some of their land to a higher and better use to assist in this regard.

RESOLVED (Clr Findley / Clr Cheyne)

MIN17.895

That Council

1. Acknowledge the advice received from the NSW Government in this regard;
2. Continue to work on the possible demonstration affordable housing project at Coomea Street, Bomaderry;
3. Approach the five first phase service providers under the Social and Affordable Housing Fund (SAHF) and other providers to see if they are interested in being part of the project; and
4. Request the NSW Minister for Social Housing to consider making a budget bid for additional social and affordable housing in Shoalhaven and ensure that the NSW Government work with Council on redeveloping some of their land to a higher and better use to assist in this regard.
5. Endorse the Mayor continuing to advocate in respect to affordable housing to State and Federal Ministers.

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

AGAINST: Nil

CARRIED

Note: The Committee thanked Gordon Clark for his work on this project.

**DE17.68 Proposed Submission - Options Paper: Short Term
Holiday Letting in NSW**

**HPERM Ref:
D17/306769**

Recommendation (Item to be determined under delegated authority)

That Council make a submission to the NSW Government on the Options Paper: Short Term Holiday Letting in NSW consistent with the content of the report and continue to be involved as required in any outcomes that eventuates.

RESOLVED (Clr Wells / Clr Findley)

MIN17.896

That Council make a submission to the NSW Government on the Options Paper: Short Term Holiday Letting in NSW consistent with the content of the report and continue to be involved as required in any outcomes that eventuates.

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

AGAINST: Nil

CARRIED

**DE17.69 Berry Landcare Grant - Berry Wildlife Corridor -
Inclusion on Terrestrial Biodiversity Map - Shoalhaven
LEP 2014**

**HPERM Ref:
D17/268800**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support making ongoing amendments to the Terrestrial Biodiversity Map as part of a Shoalhaven Local Environmental Plan 2014 housekeeping amendment process, where landholders in Berry and surrounds have accepted public money for revegetation and agreed to enter into a conservation agreement over that land.
2. Write to the Berry Landcare group to congratulate them on gaining a substantial grant to improve the biodiversity linkages in the area, and advise them that this will be reflected in the Shoalhaven Local Environmental Plan 2014 through future amendments.

RESOLVED (Clr Wells / Clr White)

MIN17.897

That Council:

1. Support making ongoing amendments to the Terrestrial Biodiversity Map as part of a Shoalhaven Local Environmental Plan 2014 housekeeping amendment process, where landholders in Berry and surrounds have accepted public money for revegetation and agreed to enter into a conservation agreement over that land.
2. Write to the Berry Landcare group to congratulate them on gaining a substantial grant to improve the biodiversity linkages in the area, and advise them that this will be reflected in the Shoalhaven Local Environmental Plan 2014 through future amendments.

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

AGAINST: Nil

CARRIED

**DE17.70 Shoalhaven Development Control Plan 2014, Chapter
N19 Huskisson Mixed Use Zones - Draft Amendment
Preparation and Proposed Public Exhibition**

**HPERM Ref:
D17/216331**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Prepare and publicly exhibit Draft Chapter N19 Huskisson Mixed Use Zones of Shoalhaven Development Control Plan 2014 for a minimum period of 28 days in accordance with the *Environmental Planning & Assessment Act 1979*.
2. Advise the relevant Community Consultative Body (Huskisson Woollamia Community Voice) of the public exhibition.
3. Report the outcomes of the public exhibition period to Council when appropriate.

RESOLVED (Clr Gartner / Clr Cheyne)

MIN17.898

That Council:

1. Prepare and publicly exhibit the proposed amendments to Draft Chapter N19 Huskisson Mixed Use Zones of Shoalhaven Development Control Plan 2014 for a minimum period of 28 days in accordance with the *Environmental Planning & Assessment Act 1979*.

2. Advise the relevant Community Consultative Body (Huskisson Woollamia Community Voice) of the public exhibition.
3. Report the outcomes of the public exhibition period to Council when appropriate.

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

AGAINST: Nil

CARRIED

DE17.71 Update - Nowra Riverfront Precinct - Strategic Direction and Next Steps

**HPERM Ref:
D17/286874**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Receive this update on the progress of the Nowra Riverfront Precinct planning work for information; and.
2. Receive a further report once the draft detailed urban design controls have been prepared in accordance with the recommended strategic directions, that considers how to proceed with a potential Planning Proposal for new zones/building heights and supporting planning controls

RESOLVED (Clr Gartner / Clr Watson)

MIN17.899

That Council:

1. Receive this update on the progress of the Nowra Riverfront Precinct planning work for information; and.
2. Receive a further report once the draft detailed urban design controls have been prepared in accordance with the recommended strategic directions, that considers how to proceed with a potential Planning Proposal for new zones/building heights and supporting planning controls
3. In preparing the draft urban design controls, consider retaining the height controls within the citywide DCP chapter N7 and give further consideration to a more flexible height within the precinct east of the Osborne Street corridor.

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

AGAINST: Nil

CARRIED

DE17.72 Shoalhaven DCP 2014 - Required Amendment - Chapter G4: Tree & Vegetation Management - NSW Government Land Management & Biodiversity Conservation Reforms

**HPERM Ref:
D17/308277**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the draft Amendment 21 to Shoalhaven Development Control Plan 2014 which includes amendments to Chapter G4 Tree and Vegetation Management and to the Dictionary (detailed in Attachment 1) and which is consistent with Option 1 in the report; and
2. Exhibit the draft Amendment for a minimum period of 28 days in accordance with legislation; and

3. Consider a further report after public exhibition to consider any submissions received and to adopt the amendment for finalisation.

Note: Cllr Wells left the meeting, the time being 6.41pm.

Note: Cllr Gartner left the meeting, the time being 6.43pm.

RESOLVED (Cllr Findley / Cllr Levett)

MIN17.900

That Council:

1. Adopt the draft Amendment 21 to Shoalhaven Development Control Plan 2014 which includes amendments to Chapter G4 Tree and Vegetation Management and to the Dictionary (detailed in Attachment 1) and which is consistent with Option 1 in the report; and
2. Exhibit the draft Amendment for a minimum period of 28 days in accordance with legislation; and
3. Consider a further report after public exhibition to consider any submissions received and to adopt the amendment for finalisation.

FOR: Cllr White, Cllr Gash, Cllr Findley, Cllr Levett, Cllr Cheyne, Cllr Alldrick, Cllr Pakes, Cllr Watson, Cllr Kitchener, Cllr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE17.73 Development Application – proposed 2 lot subdivision at Lot 4 DP1027849 (no.22) James Farmer Grove, Woollamia

HPERM Ref: D17/99695

Recommendation (Item to be determined under delegated authority)

That the request to permit the provision of effluent pump out services to proposed lot 1 and subdivide the flood affected land:

1. Be supported.
2. Refer the application back to staff for determination.

RESOLVED (Cllr Watson / Cllr Pakes)

MIN17.901

That the request to permit the provision of effluent pump out services to proposed lot 1 and subdivide the flood affected land:

1. Be supported.
2. Refer the application back to staff for determination.

Note: Cllr Gartner returned to the meeting, the time being 6.43pm.

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

AGAINST: Nil

CARRIED

**DE17.74 DA16/2070 – 7 Beach Street, Huskisson – Lot B DP
359526 – Proposed Residential Flat Building**

**HPERM REF:
D17/253749**

Item dealt with earlier/later in the meeting see MIN17.894.

DE17.75 Yalwal Camping Area (Danjera Dam)

**HPERM Ref:
D17/320884**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Close the Yalwal camping area and temporarily close the area to public access after advertisements and notifications to legitimate known user groups
2. Prepare a plan for upgrading of the area for day use in consultation with key user groups.
3. Explore the opportunity for biobanking the credits associated with the EEC, excluding the proposed day-use area
4. Explore opportunities with adjoining landowner for eco tourism potential.

MOTION (Clr Gash / Clr White)

That Council:

1. Close the Yalwal camping area and temporarily close the area to public access after advertisements and notifications to legitimate known user groups
2. Prepare a plan for upgrading of the area for day use in consultation with key user groups.
3. Explore the opportunity for biobanking the credits associated with the EEC, excluding the proposed day-use area
4. Explore opportunities with adjoining landowner for eco tourism potential.

AMENDMENT (Clr Watson / Clr Pakes)

That this item be deferred to the next Development Committee Meeting, Tuesday 14 November 2017, pending a site inspection with Councillors and Council Staff.

Note: Clr Alldrick left the meeting, the time being 7.06pm.

FOR: Clr Pakes and Clr Watson

AGAINST: Clr White, Clr Gash, Clr Findley, Clr Levett, Clr Cheyne, Clr Gartner, Clr Kitchener, Clr Proudfoot and Russ Pigg

LOST

RESOLVED (Clr Gash / Clr White)

MIN17.902

That Council:

1. Close the Yalwal camping area and temporarily close the area to public access after advertisements and notifications to legitimate known user groups
2. Prepare a plan for upgrading of the area for day use in consultation with key user groups.
3. Explore the opportunity for biobanking the credits associated with the EEC, excluding the proposed day-use area
4. Explore opportunities with adjoining landowner for eco tourism potential.

5. A Councillor inspection of the site be arranged.

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

AGAINST: Clr Watson

CARRIED

There being no further business, the meeting concluded, the time being 7.17pm.

Clr Gash
CHAIRPERSON

DE17.76 Rezoning Investigations - Goodland Road - Landowner Commitment and Future Investigation

HPERM Ref: D17/182093

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Report to 9 October 2013 Development Committee - Planning Proposal - LP384 - Woollamia - Goodland Rd (under separate cover) [↗](#)

Purpose / Summary

To update Council on representations received from landowners in the small lot rural subdivision area at Goodland Road, Woollamia and provide possible options to reconsider the rezoning investigations given changes to legislation, land tenure and the removal of an unauthorised building in the investigation area.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Recommence the Planning Proposal and Planning Agreement process to resolve the development potential of the small lot rural subdivision at Goodland Road, Woollamia, but only on the following basis:
 - a. No additional development will be identified outside of Council's preferred exhibited Development Scenario (and its key elements) included in this report; and
 - b. All owners confirm in writing that they accept that the progression of the PP will only be on the basis of this Development Scenario and provide a written in-principle agreement that they will each sign a revised Voluntary Planning Agreement.
2. Amend the previously exhibited Landowner Agreement and Voluntary Planning Agreement, subject to the above, to include further detail on costings for all landowners, and times at which payments are to be made.

Options

1. Adopt the recommendation.

Implications: This option is preferred as it provides another opportunity to resolve this long standing planning issue. A number of changes have occurred since Council discontinued this matter previously, including change in land ownership, which will hopefully ensure this time that there is more success than the previous attempts to realise the identified development scenario that faltered due to landowner agreement issues. The broader community will benefit if this long-standing issue is resolved consistent with the actions specified within the Jervis Bay Settlement Strategy (JBSS). This option also aims to recoup the investigation costs from landowners. Without resolution of this rezoning investigation, there is no other mechanism for Council to recoup these costs.

DE17.76

The identified and preferred development scenario has the following key elements – defined development footprint, not more than 7 dwellings and the remainder of the land in community title.

2. Council not proceed with the rezoning investigations and provide in principle support for landowners who wish to prepare and fund a private Planning Proposal in accordance with the identified preferred Development Scenario included as **Attachment 1** to this report and the JBSS.

Implications: This option removes Council from the funding commitment and provides the landowners support should they wish to prepare and fund their own Planning Proposal. This option would still require updated studies and investigations, however this means that the previous planning work undertaken by Council has not gone to waste and the actions specified in the JBSS are not abandoned.

3. Council not proceed with the rezoning investigations until such time as all affected landowners fully commit to the matter and the costs associated with it. This could possibly be done through getting the owners to sign a deed of agreement or similar prior to the matter recommencing.

Implications: if this is possible, it would at least ensure that all owners are fully committed prior to the matter recommencing and would avoid last minute landowner disagreement or lack of commitment derailing the process once considerable work has again been undertaken to resolve it.

Background

Investigations to rezone this land first commenced in the 1990s and considerable resources and staff time have been expended on the project to date with no outcome achieved.

The Report to Council's Development Committee Meeting held on 9 October 2013 details the complex background to this matter. A community title development option and rezoning of the land to allow 7 dwelling houses (see Figure 1 below) was proposed through the exhibition of the Goodland Road Planning Proposal (PP), draft Voluntary Agreement and draft Landowners Agreement. A copy of the report to Council's Development Committee with the exhibited documents is included as **Attachment 1**.

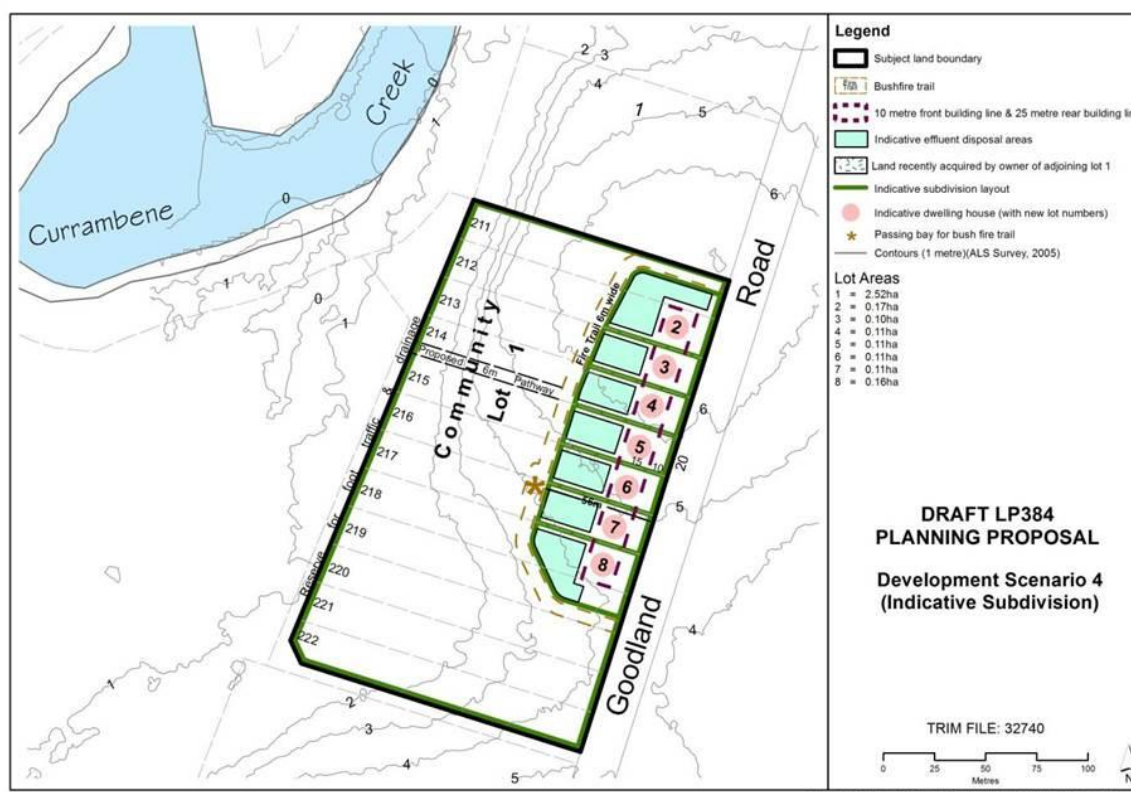


Figure 1: Preferred Development Scenario

The overall aim of the exhibited PP was to resolve the development potential of the small lot rural subdivision at Goodland Road, Woollamia. The purpose of the PP was to identify land suitable for development purposes and to ensure the conservation of land unsuitable for development consistent with the action in the Jervis Bay Settlement Strategy (JBSS) to investigate the development potential of the Woollamia Farmlets, including Goodland Road.

The previously exhibited PP sought to rezone the land from Rural to part E2 Environmental Conservation and part E4 Environmental Living in the now finalised Shoalhaven LEP 2014. An amendment to the minimum lot size to 1500m² in the proposed E4 zoned land was also required to allow for 7 potential dwelling entitlements following re-subdivision of the land. The remaining E2 zoned land was proposed to be mapped with a minimum lot size of 40 hectares.

Due to lack of consensus and commitment from the landowners, Council resolved on 9 October 2013 to:

- Receive the outcomes of the exhibition of the Goodland Road Planning Proposal, Draft Voluntary Agreement and Draft Landowners Agreement for information;
- Not proceed with the Goodland Road Planning Proposal at this time;
- Reconsider a future subsequent Planning Proposal if and only when landowner agreement is reached and the Voluntary Planning Agreement is signed by all landowners.

Since this resolution, the landowners have not reached formal agreement or signed the Voluntary Planning Agreement and Council discontinued the previous Planning Proposal.

DE17.76

Following a request from landowners, Council staff met with landowners in February 2015 to discuss options to move forward. Based on this discussion and further investigations it was apparent that it was difficult for any future rezoning investigations to proceed with the unauthorised works that were previously located at Lot 212. The unauthorised structure has now been removed following compliance action from Council including court proceedings.

Current Land Ownership

Since Council's resolution in 2013, a number of properties in the Goodland Road investigation area have been sold. This includes the separation of the largest landholding (Lots 220-222 and 216-218) into 3 separate landholdings. This landholding was previously a further sticking point in the rezoning investigations as the landowner had no legal ability to act on the land as it was in the hands of Trustees.

There are 12 lots in the investigation area and currently there are 9 landowners in total (previously there were 7). Council's preferred community title development scenario indicates 7 potential building envelopes. This means that not all landowners will receive a dwelling entitlement if Council's preferred development scenario progresses through a PP and is ultimately rezoned.

8 of the 9 landowners have provided a signed form to one of the landowners who has been trying to coordinate things and they were forwarded to Council for consideration. The commitment forms stated that the owner/s of land in Goodland Road "intend for our land in Goodlands Road, Woollamia be rezoned to allow for a residential home to be built upon it". The remaining landowner who did not provide a commitment form has indicated through recent discussions with their representative that they would like to be included in the PP, however are not in a financial position to contribute costs and would prefer to be bought out of the subdivision by the other landowners.

It is noted that the advice provided by the owners is somewhat non-committal. Should Council recommence the process it should only be on the basis of the previously exhibited plan and only if all of the owners provide a written in-principle agreement that they will each sign a revised Voluntary Planning Agreement

If Council decides to again recommence the rezoning investigations, there would still be a requirement for a community title subdivision to be undertaken. This means there would be 7 lots with potential building envelopes and 1 community title lot collectively owned by the 7 owners. The 7 owners would be responsible for the majority of the costs and there would need to be some sort of landowner agreement to determine compensation for the landowners who would not receive a building lot and would effectively be bought out of the estate.

Voluntary Planning Agreement

A Voluntary Planning Agreement (VPA) between the landowners and Council is still considered to be the most appropriate mechanism to recoup the costs of rezoning investigations and to facilitate re-subdivision of the land.

The legal drafting and execution of a VPA and Landowner Agreement was difficult to achieve previously due to some landowners not agreeing to pay the costs and the fact that the majority of the land was in the ownership of an Estate with no legal ability to sign on behalf of the land at that time.

The purpose of the previously exhibited draft VPA was to:

- a) Assist the rezoning of the developable envelope of the Land as E4 Environmental Living with the remainder of the Land being zoned E2 Environmental Conservation (under the new Shoalhaven LEP and in accordance with the Standard Instrument);
- b) Facilitate a re-subdivision of the Land under the Community Land Development Act 1989. It is proposed that the 12 lots that currently comprise the land be firstly consolidated into a single allotment and then re-subdivided into 7 smaller lots (Zoned E4) and one large Community Lot (Zoned E2). The smaller lots would range in size from 0.10 – 0.17ha (1,000 m² – 1,700 m²). The residual community lot would be 2.52ha.

The draft VPA also included:

- Specifics relating to development, such as requirements for bushfire protection, restoration works;
- Subdivision, electricity, road drainage and management of the community title allotment;
- The recoupment of Council's costs totalling \$160,000 (capped at expenditure up to 2010) which pertain to the rezoning process and studies that have already been completed;
- Council's agreement and obligations to the landowners relating to the rezoning process;
- Landowners' and Council's agreement of the development standards such as water supply;
- Building construction standards, dwellings, effluent disposal systems bushfire protection;
- Measures that will apply to any development proposed for the subject land; and
- Dispute resolution processes and other legal specifics.

The draft VPA would need to be revised and updated based on current ownership patterns and the costs within it updated. The potential staging of costs could be considered if this is a sticking point for the landowners.

Paper Subdivision Provisions

The *Environmental Planning and Assessment Amendment (Paper Subdivisions) Regulation 2013* (the Regulation) and corresponding paper subdivision provisions now contained in Schedule 5 of the *Environmental Planning and Assessment Act 1979* (EPA Act) (PS Amendments) commenced on 8 March 2013.

The provisions in the EP&A Act and Regulation provide a potential mechanisms to help overcome common barriers to development such as fragmented ownership, rezoning and infrastructure requirements for current subdivision standards. A copy of the relevant Guidelines are available online: <http://www.planning.nsw.gov.au/Policy-and-Legislation/Buildings/~media/EA53A0E32FF84942B4E47E961B880864.ashx>

Investigations into whether the Paper Subdivisions Legislative Provisions could be utilised in this case previously concluded that there was not 60% of landowners or 60% of the landholdings that were willing to continue with the PP.

As a result of property sales and new landowners, there is a possibility that the level of landowner support needed to use these provisions (at least 60% of the landowners and the owners of at least 60% of the total area of the land) could be reached. As such, this legislation could potentially be used to allow Council (should it wish to take on this role)

to compel other landowners to co-operate with the majority of landowners in the process. Landowner support can only be demonstrated through a formal ballot process.

However, the process to prepare a Development Plan and Subdivision Order and potentially implementing the Development Plan appears to be onerous and expensive and in this case, would draw Council into a potential dispute among private landowners over compensation. As such, it may not be an appropriate use of Council resources.

Under the legislation, there are limited authorities for the subdivision of land including:

- the corporation (meaning the corporation sole established under section 8 of the EP&A Act), or
- Local council, or
- Urban Growth NSW, or
- Development corporation established under the *Growth Centres (Development Corporations) Act 1974 NSW*, or
- Any other body prescribed by the Regulation (Note: Currently, none are prescribed).

Given the complexity of the above provisions, they should only be considered as a last resort if the recommended approach does not work.

Landowner Costs

There are two sets of landowner costs currently associated with this rezoning. The first set relate to Council recouping the money expended to date associated with the preparation of environmental studies, valuations, legal costs, consultant costs and any additional costs to finalise the rezoning and VPAs as per a previous resolution of Council.

The second set are the future costs associated with the implementation of any development scenario over the site (i.e. subdivision and development costs). In order for Development Scenario 4, or any alternative development scenario, to proceed, it is necessary for landowners to make a commitment to cover these costs. Council previously sought an undertaking from landowners to pay these current and future costs as part of the implementation of Development Scenario 4 via a land owner survey sent out in late 2010. At that point, not all owners indicated a commitment to paying current and future costs based on Development Scenario 4. Some owners indicated that they did not have sufficient funds to finance them.

A number of landowners have indicated that they would be willing to fund the rezoning and development costs at the appropriate point in time. The landowners felt that previous proposals required a risky commitment to pay high costs without any guarantee of some development or benefit.

Community Engagement

The broader community will benefit if this long-standing issue is resolved one way or another consistent with the actions specified within the Jervis Bay Settlement Strategy.

Community engagement would occur as part of the exhibition of a PP and draft VPA if the investigations recommence. The directly affected landowners have had the opportunity to comment during previous rezoning investigations and would again be directly advised of any public exhibition.

Financial Implications

To date, Council has expended more than \$180,000 on studies, valuations, legal costs and consultant costs. Many of these costs were to be recouped via the VPA. It was previously indicated through Council discussions that no more funds should be expended on the resolution of this small lot rural subdivision without gaining a commitment from owners to pay all current and future costs.

The continuation of the PP will require significant staff time. Staff have already expended considerable time previously on this project and there is no indication that recoupment of costs will be achieved. Council needs to determine if it wishes to continue to spend staff time and Council resources on this project when no resolution is clear or guaranteed. Council also needs to determine whether this project should be included in the Strategic Works Program given the other important strategic planning projects such as Urban Release Area planning that is being undertaken at this time.

DE17.77 Hitchcocks Lane, Berry - Proponent Initiated Planning Proposal

HPERM Ref: D17/325322

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments:

1. Executive Summary - Proponent's Planning Proposal [↓](#)
2. Plans of Proposal - Proponent's Planning Proposal [↓](#)
3. Berry Forum Committee Submission [↓](#)
4. Proponent Response to Berry Forum Committee Submission [↓](#)

Purpose / Summary

Detail a proponent initiated Planning Proposal (PP) that has been received to enable a residential expansion opportunity at Berry and obtain direction in this regard.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Prepare a Planning Proposal to rezone part (as detailed in the plans within this report) of Lots 762 and 763 DP 1224932, Hitchcocks Lane, Berry, to an R2 - Low Density Residential Zone with:
 - a. A 500 m² minimum lot size; and
 - b. An 8.5 m maximum height of buildings.
2. Forward this Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination with a request that the determination be subject to a condition allowing up to 25% of the site to be provided with a lot size as small as 350 m² subject to specialist studies and community consultation.
3. Advise the NSW Department of Planning & Environment that the following studies are considered appropriate as part of the post Gateway stage of the Planning Proposal (prior to public exhibition):
 - a. Stormwater assessment including conceptual design details for the proposed drainage reserve
 - b. Stage 1 preliminary contaminated site assessment
 - c. Aboriginal cultural heritage assessment
 - d. Flood risk assessment
 - e. Traffic study
 - f. Visual impact assessment
 - g. Infrastructure study and delivery plan (including “soft” infrastructure)
 - h. Master plan including detailed urban design and built form guidelines
4. Advise the proponent of this resolution and that the proposal will be subject to fees and charges for proponent initiated Planning Proposals, including a requirement that the full cost of all specialist studies be borne by the proponent.

5. Advise the Berry Forum of this resolution.
6. Consider a report on the Planning Proposal prior to public exhibition.
7. Request a future report that provides options for a policy framework for considering Planning Proposals that accelerate consideration of an area ahead of its timing in Council's adopted strategic plans.

Options

1. Request a Gateway determination for the PP that:
 - a. Only includes the land identified in the Shoalhaven Growth Management Strategy (GMS); and
 - b. Includes a condition requiring a detailed masterplan with urban design guidelines to be prepared and incorporated into a Development Control Plan (DCP).

Implications: This will allow the investigation of the land for residential rezoning to proceed further in accordance with the area identified in the adopted GMS.

It will allow for a single community engagement process to address both the PP and DCP issues. It will also allow for LEP controls (e.g. height of buildings) to be provided in response to the urban design investigation. This option is the preferred option.

2. Request a gateway determination for the PP that:
 - a. Only includes the land identified in the GMS, and
 - b. Identifies the land as an urban release area (URA) under Part 6 of the LEP, requiring a detailed masterplan with urban design guidelines to be prepared and incorporated into a DCP after the rezoning but prior to it being developed.

Implications: This would allow the rezoning investigation to proceed ahead of the detailed urban design process, with community engagement undertaken at each stage. Release of the land would be subject to Part 6 of the LEP. There are no compelling reasons to support this staged approach in this instance. This option is not recommended, but could potentially be considered.

3. Seek a Gateway determination for the PP that includes all of the land identified in the proponent's PP.

Implications: This would commit Council to investigating additional land for urban residential zoning beyond the position adopted in the GMS. This option is not recommended given that it is inconsistent with relevant strategic planning considerations for this area as noted later in the report. Given the nature of this inconsistency with strategy, the NSW Department of Planning & Environment (DP&E) may be unlikely to issue a Gateway determination.

4. Not proceed with the PP at this point pending the review of the GMS.

Implications: This would defer the potential rezoning of the site to a later date. There is little benefit in deferring this matter when the subject land has already been identified as a long term investigation area, provided relevant matters can be considered moving forward including community engagement on urban design and built form.

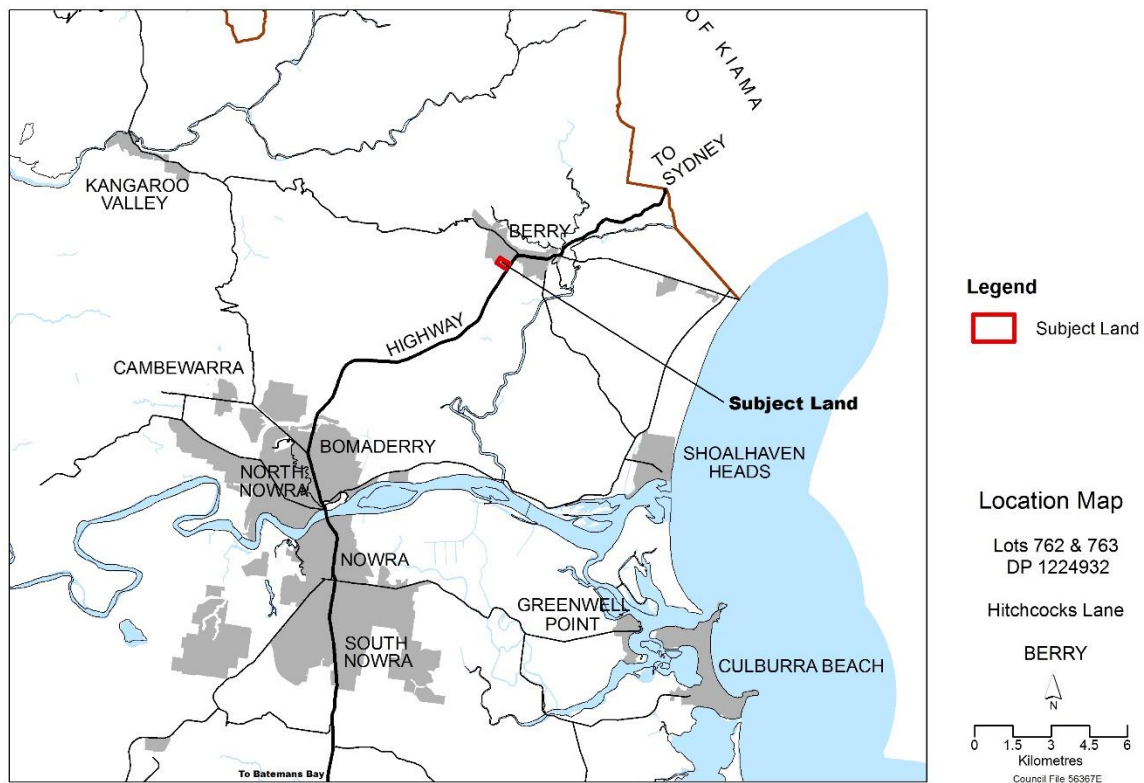
Background

The Site

The subject land to which this proponent initiated PP relates is Lots 762, 763 and part of 764 DP 1224932, located on the southern edge of the Berry Urban area. The land is adjoined to the southeast by the Princes Highway, to the north by the Huntingdale Park residential estate and to the southwest by rural land. It is crossed by two drainage lines which flow eastward. The site is largely cleared and maintained as pasture.

Maps showing the subject land and its location are provided below:

Subject Land – Location



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Subject Land - Lots 762, 763 and 764 (part of) DP 1224932



The subject land was previously part of the “Graham Park” complex that was previously owned by Council and used by the University of Wollongong (UOW) as an educational facility. The former administrative buildings were subdivided from the rest of the Graham Park site in 2016 and are currently used as a place of public worship. The subdivided land is Lot 601 DP 1188616 and is not part of the PP.

There are a number of agricultural outbuildings on the site which were previously used for livestock related uses when the facility was a stock breeding centre. Most of these buildings are concentrated along the south-western boundary of Lot 764 in an area that is not proposed under the PP for rezoning to residential use.

The Proponents PP

The proponents PP was received on 8 September 2017 from Cowman Stoddart Pty Ltd (on behalf of the owners P&P Bice) and seeks to:

- Rezone Lots 762, 763 and part of 764 from RU1 Primary production to R1 General Residential.
- Rezone areas along drainage paths and the Princes Highway to RE1 Public Recreation.
- Modify the minimum lot size map for the rezoned area to show a 350 and 500 square metre minimum lot sizes.
- Modify the maximum building height limit for the rezoned area to be 8.5 metres.

The proponent’s submission includes a draft PP and a range of supporting documentation including agricultural assessment, water and sewerage strategy, electricity supply strategy, traffic noise intrusion assessment and landscape plans.

The GMS identifies the subject land as a Long Term Investigation Area for urban development (LTIA). The proponents have argued that this area needs to be considered in

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the shorter term due to the take up of residential zoned land in Berry and its rezoning should be brought forward.

The PP seeks to include the northern part of Lot 764, using the existing watercourse and associated approved vegetated riparian corridor as a boundary between the RU1 and proposed R1 zones. This represents an expansion of the area of land shown in the GMS as a LTIA. Further comment is provided in this regard later in the report. The following table shows the anticipated yields that the PP could generate and also an overview relative to the LTIA identified in the GMS:

Lot Type/Size	Area within the LTIA	Area beyond the LTIA	% expansion beyond the LTIA
500 m ²	8.36 ha (93 lots)	2.78 ha (25-30 Lots)	29.2%
350 m ²	1.16 ha (24 lots)	Nil	
Drainage Reserve	1.48 ha	1.13 ha	76.4%
Total	11.0 ha	3.91 ha	35.5%

The proponents PP is available for viewing on Councils website at:

<https://shoalhaven.nsw.gov.au/Planning-amp-Building/Strategic-planning/Planning-Proposals>

Hard copies of the proponent's documentation will be available in the Councillors Room prior to the meeting. The executive summary and plans from the proponents PP are also provided as **Attachment 1 and 2**.

Strategic Planning Overview

The following is an overview of relevant strategic planning documents that are relevant to this proposal.

- *Shoalhaven LEP 2014*

The subject land is currently RU1 Primary Production under Shoalhaven LEP 2014. The objectives of this zone relate to conserving and maintaining prime crop and pasture land and facilitating primary industries. Parts of the subject land are also identified on the flood planning area map that forms part of the LEP. This primarily relates to the drainage lines that run through the land. The riparian and watercourses overlay also affects the south eastern corner of Lot 763.

- *Illawarra-Shoalhaven Regional Plan*

The Regional Plan was released by the NSW Government in late 2015. Under Direction 2.1 -Provide sufficient housing supply to suit the changing needs of the region, recognises the role of new releases identified under the Illawarra Urban Development Plan and the Shoalhaven GMS.

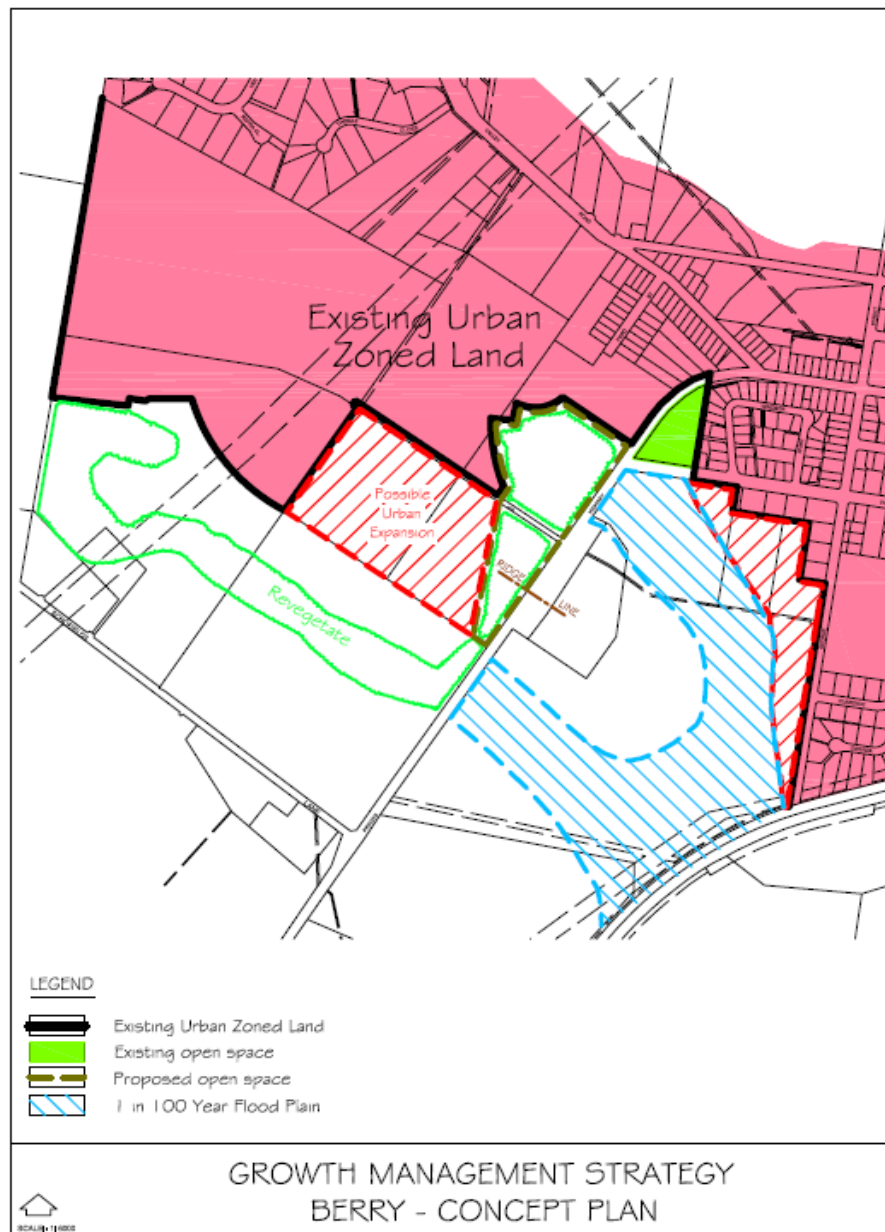
As noted above, this area is currently identified in the GMS as a LTIA. More commentary in this regard is provided below.

- *Shoalhaven Growth Management Strategy*

Council began its consideration of future urban expansion opportunities on this edge of Berry in late 2002. This related to discussions that were held with the local community in regard to the proposed sale of Graham Park by Council and interest in the future use of the land.

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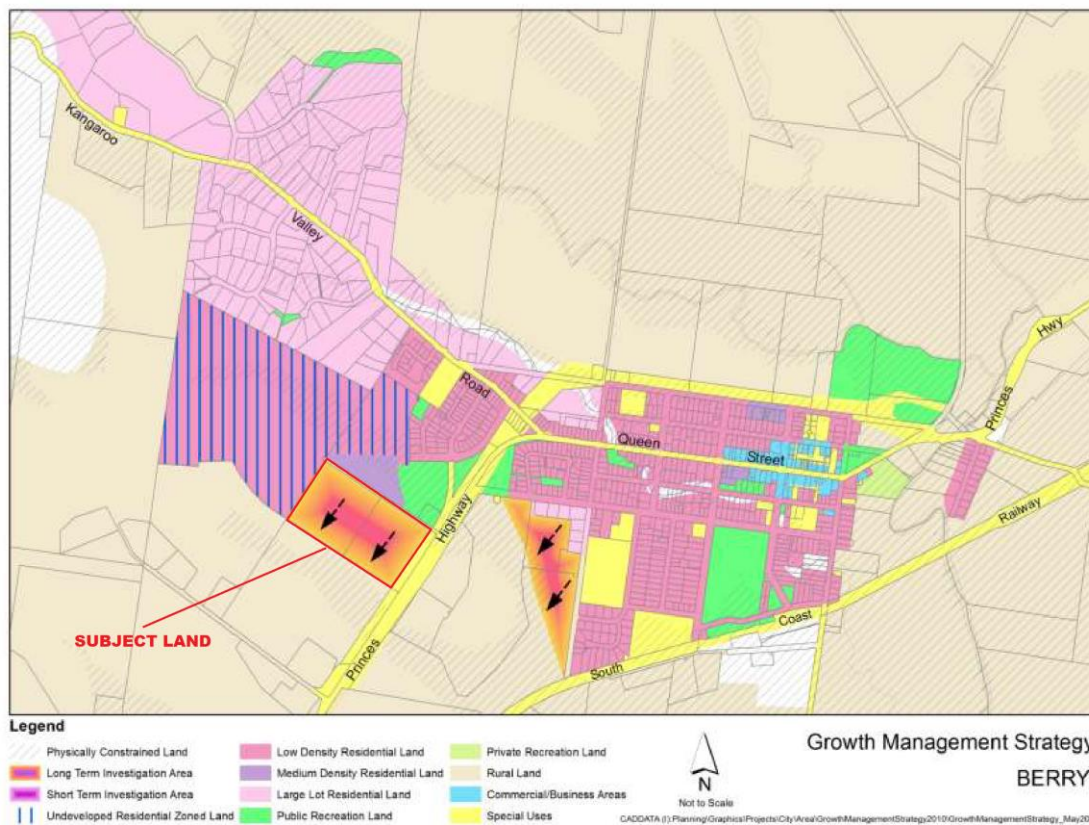
Council considered a report on this matter on 17 September 2002 and the following concept plan produced at that time identified potential urban expansion opportunities



The 2002 concept plan showed the subject land, specifically the former Lots 75 and 76 DP 4468, as 'possible urban expansion'. The plan also showed a proposed open space area to be revegetated along the Princes Highway edge. Under this plan approximately 9.5 hectares of land west of the Princes Highway was identified as 'possible urban expansion'.

This ultimately led to the inclusion of the part of the land as a LTIA in the GMS that was finalised in 2014 when it was endorsed by the NSW Government. The relevant map from the GMS is provided below:

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The south-western boundary of the LTIA shown in the GMS was set based on the adjacent residential zone boundaries that existed in the LEP. The intent was to extend the urban area in the longer term to fill a gap between the existing urban area and the Princes Highway and finish the urban edge in this location. This resulted in two of the lots that made up the former Graham Park being included and the remainder being excluded from the LTIA. It was envisaged that this would provide a south-western boundary to the urban extent of Berry.

The GMS currently identifies this area as part of the long term planning for the City. This means that it was intended that the area not be released for 15 years after the GMS was finalised. This timeframe was determined in context of the broader economic climate, uncertain development at that time of the Huntingdale Park subdivision and to also allow for community engagement as part of the development of planning controls for the site. It was intended that the desired future character for this new area would be determined in conjunction with the community following additional engagement as part of a GMS Version 2.

The Huntingdale Park subdivision is nearly half complete, with 107 of 251 lots being released. Many of the remaining lots are understood to have been purchased prior to release and two more stages (63 lots) are expected to be released in coming months. There are no other release areas in Berry to provide ongoing additional residential land supply once the Huntingdale Park subdivision is complete, which is likely to occur prior to the completion of a PP for Graham Park. This outcome was not anticipated by the GMS which appears to have assumed that Huntingdale Park would meet demand for residential land for at least a decade.

This change in circumstances provides some justification to bring forward the timing of this investigation area from that described in the GMS, the underlying aim of which would be to ensure the steady supply of housing sites in Berry but also allow for community engagement on built form and urban design controls as originally envisaged.

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The development of Huntingdale Park provides a context for the preparation of built form and urban design controls for the Graham Park site if the PP proceeds. This is an important prerequisite to conducting community engagement for a PP and DCP for the site.

- *Berry Community Strategic Plan*

The Berry Community Strategic Plan was prepared by The Berry Forum during 2016. Council resolved in December 2016 to:

Endorse the Berry Community Strategic Plan as a community plan and consider the themes and strategic priorities contained within the plan as part of Council's planning processes.

This plan contains some detail that is directly relevant to this PP and the consideration of it, specifically under Theme 4 – Town Planning. The objective of this theme is: *To maintain the history, setting and unique character of the Berry area through careful planning and development.* The following are the relevant 'strategic focus' areas and their 'priority' under this plan:

4.2 Define the edge of the town

Provide a distinct town edge that retains views to the escarpment to the north and minimises residential subdivisions and housing release at the rural interface.

Priority: high

4.3 Explore ways to improve housing affordability into the future

Examine options for promoting improved housing affordability within the town whilst retaining key attributes of the town in terms of heritage retention (Strategic Focus 4.1) and definition of the town edge (Strategic Focus 4.2).

Priority: Medium

4.4 Update planning controls

To acknowledge changes brought by the bypass and to ensure that the character both within and external to the town is retained and reinforced, review and update relevant planning controls and strategic documents to reflect the desired future of the town.

Priority: medium

There is other content within this plan that is of relevance to the PP and should be considered should Council resolve to support the matter proceeding.

- *Planning Proposal (Rezoning) Guidelines*

These guidelines detail the circumstances when a PP is likely to be supported by Council and provide a range of detail on the PP process. The guidelines were adopted by Council in 2016 and note that Council is likely to support a PP in the following circumstances:

- Proposed amendment is supported by Council or State Government strategy or plan.
- Clear zoning anomaly exists on site.
- Proposed amendment is considered to be minor in nature and has been sufficiently justified to Council.

The guidelines also note that the proponents should have pre-lodgement dialogue with Council staff before formally lodging a PP.

The guidelines make it clear that PP's that are not supported by a strategy or plan and are considered speculative will generally not be supported by Council.

Pre-lodgement engagement with the proponents in regard to this matter took place during 2015 and earlier this year and Council staff advised that there was a need to consider consistency with the GMS (specifically at that point the timing), residential demand/supply, infrastructure servicing, housing affordability, urban design/character, landscaping/setback to the highway and having a dialogue with the local community on desired outcomes for the area

Assessment of Proponent's PP

The NSW Guide to Preparing Planning Proposals provides an assessment framework for PP's. This framework requires the planning authority (Council) to answer a number of questions in determining the merit of a PP. These are considered below:

Q1. Is the Planning Proposal a result of any strategic study or report?

The PP is largely consistent with the GMS, however, there are inconsistencies with the currently adopted strategy in terms of extent and timing.

As noted earlier in the report, the proponents PP proposes a larger area for rezoning. This represents a 35.5% extension on what is nominated in the adopted GMS. This inconsistency with the GMS is not supported by any strategic study or report. This would also be contrary to the intent of finishing off this edge of the town and could lead to additional requests for rezoning on adjoining land, particularly to the west.

Thus, it is recommended that this extension not be supported.

Also as discussed above, the proposal is inconsistent with the timing for this area in the GMS (currently shown as long term). It is considered that the early consideration of this area will achieve the underlying intention of the GMS to ensure the steady supply of housing sites in Berry, but steps should still be taken to enable early community engagement on urban design controls for the area.

Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The PP process is the most appropriate mechanism to achieve the outcome of the GMS, other than waiting for the next general review of the LEP. The actual detail of the PP and its provisions are to be determined following the outcomes of specialist studies.

Q3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The Illawarra-Shoalhaven Regional Plan is the relevant regional strategy. There is no relevant sub-regional or district plan for this area.

The Regional Plan identifies Berry as a centre for *increased housing activity* in Direction 2.2. The GMS provides strategic direction on potential urban expansion in the areas not covered by an adopted structure plan or settlement strategy. The GMS is also recognised under Direction 2.1 in this Plan.

As such, proceeding with a PP to the extent identified in the GMS is consistent with the Illawarra-Shoalhaven Regional Plan, provided the inconsistent timing is accepted.

Q4. Is the Planning Proposal consistent with a Council's local strategy or other local strategic plan?

The PP is largely consistent with the adopted GMS. As noted, there is a 35.5% expansion to the area proposed that is inconsistent with the GMS and is not supported by any strategic study or report. It is recommended that this extension not be supported.

The proposal is inconsistent with the timing for the area in the GMS. However, the early consideration of this area will achieve the underlying intention of the GMS to ensure the steady supply of housing sites in Berry while allowing for community engagement on urban design controls.

Q5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

A number of technical matters will need to be further investigated to demonstrate consistency with the relevant State Environmental Planning Policies. There are however no apparent inconsistencies at this stage.

Q6. Is the Planning Proposal consistent with applicable Ministerial Directions?

There is an inconsistency with the 117 Directions on Rural Zones and Rural Lands because the PP proposes to rezone rural land to urban residential. This inconsistency can be justified by the GMS only to the extent of the LTIA adopted in this strategy. This is a further reason for recommending that the proposed extension not be supported.

A number of technical matters will need to be investigated to demonstrate consistency with other relevant Ministerial Directions.

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The site has been extensively cleared and managed as pasture. It is not identified in Council's mapping or modelling as being an area of ecological significance.

Q8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

A number of technical matters will need to be investigated to demonstrate that the PP is satisfactory with regard to a range of environmental effects.

Q9. Has the Planning Proposal adequately addressed any social and economic effects?

A number of technical matters will need to be investigated to demonstrate that the PP is satisfactory with regard to a range of social and economic effects.

Q10. Is there adequate public infrastructure for the Planning Proposal?

The required infrastructure to support the proposal will need to be investigated as part of the PP process. The proponents have provided a Water & Sewerage Strategy and Electricity Supply Strategic Review as part of their PP.

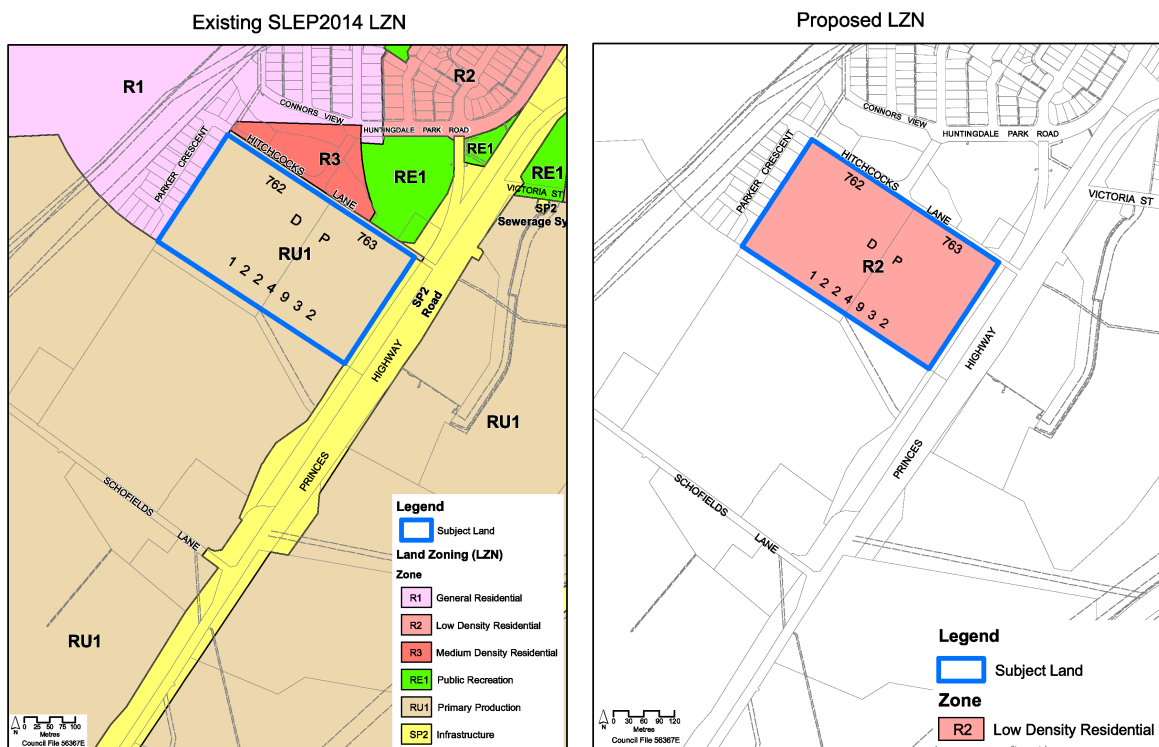
Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

The required consultation will be undertaken if the PP proceeds.

Conclusions – Revised PP

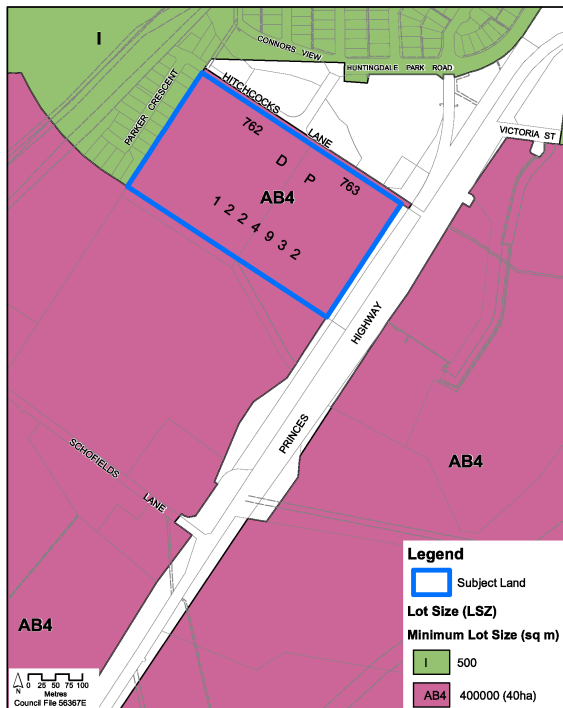
As detailed above, there is considered to be some merit in supporting this PP. However, the proponent's proposed expansion of the investigation area identified in the GMS is not supported. The inconsistency with the timing nominated in the GMS is acknowledged, but there is merit in advancing the investigation of this area now to ensure there is a continued land supply in Berry, provided there is community engagement on potential built form and urban design controls for this new area.

The following set of revised PP maps have been prepared to ensure consistency with the nominated area in the GMS. The proposed 350 m² lot size has been removed from the minimum lot size map at this point. It is considered that a smaller lot size may be appropriate on part of the site, but that this should be determined as part of the specialist studies and master planning of the site. A Gateway condition will be sought to facilitate this.

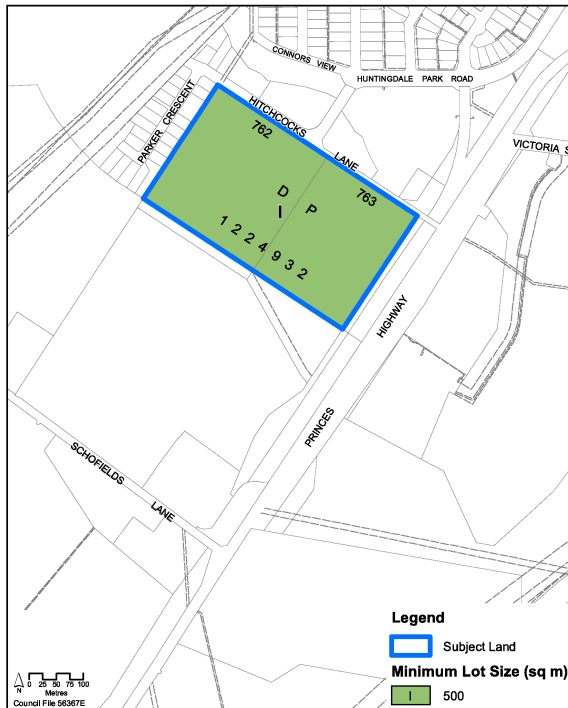


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Existing SLEP2014 LSZ



Proposed LSZ

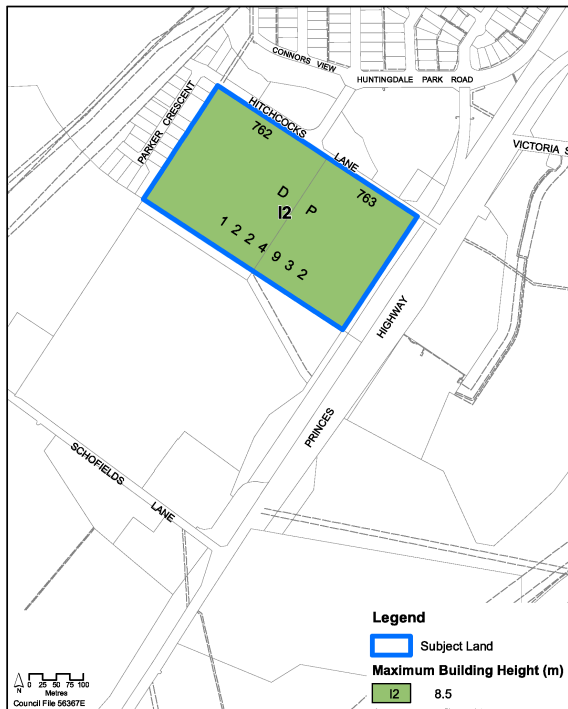


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Existing SLEP2014 HOB



Proposed HOB



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To facilitate the advancement of the PP if Council supports it advancing, it is recommended that a Gateway determination be sought requiring the following specialist studies to be prepared:

- a. Stormwater assessment, including conceptual details for the proposed drainage reserve
- b. Stage 1 preliminary contaminated site assessment
- c. Aboriginal cultural heritage assessment
- d. Flood risk assessment
- e. Traffic study
- f. Visual impact assessment
- g. Infrastructure study and delivery plan (including “soft” infrastructure)
- h. Master plan including urban design and built form guidelines, prepared in consultation with the community.

Community Engagement

The adjoining owners and The Berry Forum were notified as a courtesy in accordance with standard procedures of the receipt of this PP.

The Berry Forum Committee initially responded, contesting comments made by the proponent in their PP document that they had consulted with the Forum.

The proponent was advised of The Berry Forum Committee’s submission and provided a response and an amended version of the PP.

Both The Berry Forum Committee Submission (**Attachment 3**) and the proponent’s response (**Attachment 4**) are attached.

The Berry Forum met on 12 October 2017 and considered the PP. The forum resolved to unanimously oppose the PP for four (4) reasons which are considered below:

Reason	Comment
<i>The GMS identifies Long Term Investigation (15+ years) land for potential future development. This is the only land that should be considered for rezoning at the appropriate time.</i>	<p>The proponent’s proposed expansion of the investigation area identified in the GMS is not supported.</p> <p>The inconsistency with the timing nominated in the GMS is acknowledged, but there is merit in advancing the investigation of this area now to ensure there is a continued land supply in Berry, provided there is community engagement on potential built form and urban design controls for this new area.</p>
<i>The GMS was developed using the principles of Ecologically (Sustainable) Development, including the Precautionary Principle. We believe this requires Council not to progress this Planning Proposal until Huntingdale Park Estate is completed and the full impact of this development (HPE) on the infrastructure of Berry, including schools, is apparent.</i>	<p>There is some merit in considering this PP now ahead of the complete development of the Huntingdale Park subdivision to ensure that there is a continued land supply in Berry.</p> <p>The PP process includes an assessment of infrastructure impacts. There will also be consultation with relevant infrastructure agencies, including the Department of Education. If there is doubt over the capacity of local infrastructure to support this</p>

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	development then there are a number of mechanisms that can be investigated to meet the shortfall.
<i>Any claimed 'shortage' of land for development should be viewed in the context of the Moss Vale Road major land release.</i>	The Moss Vale Road release area is a different locality to Berry and is not comparable from a land supply perspective.
<i>There are potentially serious safety issues with an overall development containing more than 400 homes (incl. Huntingdale Park Estate) with only one entry/exit road.</i>	This concern is appreciated and will be investigated as part of the PP process. The PP includes an opportunity to investigate provision of a left-out access on to the Princes Highway Off Ramp which will increase evacuation options to the broader precinct. This will require consultation with the Roads & Maritime Service as part of the PP process.

If the PP progresses, community engagement will be specified in the Gateway determination and formal public exhibition will be required at the appropriate point in accordance with the Act.

Policy Implications

Shoalhaven Planning Proposal (Rezoning) Guidelines

Subject to the variations to the proponent's PP outlined in this report, the proponent's PP otherwise forms a satisfactory basis to proceed to request a Gateway determination.

Precinct Sequencing

The GMS identifies the investigation areas in Berry as long term, *i.e.* beyond 15 years (2029). The sequencing that could result from this proposal would result in this area being released before a number of investigation and release areas that were not identified as "long term". The GMS did not intend this precinct to be released so soon after its adoption.

In this case, it has been concluded that the early consideration of this area is justifiable given current circumstances and it will achieve the underlying intention of the GMS. It is noted, however, that Council has no adopted policy position for how this type of situation is to be addressed. Consequently, it is also recommended that Council resolve to investigate a policy document in this regard.

Financial Implications

The PP will be prepared on a 100% cost recovery basis to be funded by the proponent. Infrastructure requirements for the proposal are to be thoroughly investigated in the PP process to ensure that there are no adverse impacts on Council's adopted budget and forward estimates.

Planning Report to Support Planning Proposal
P. & P. Bice
Lots 762, 763 & Part Lot 764 DP 1224932, Princes Highway Berry

EXECUTIVE SUMMARY

This Planning Report supports a Planning Proposal that is to be made to Shoalhaven City Council on behalf of Peter and Pamela Bice and concerns Lots 762, 763 and part of 764 DP 1224932 Princes Highway (and Hitchcocks Lane) Berry. The land forms the residue of the property previously known as “Graham Park”.

The subject land comprises mainly cleared grazing land bound by the Princes Highway, Hitchcocks Lane and an intermittent drainage line that flows across Lot 764. The land associated with this Planning Proposal comprises an area of approximately 15 ha.

The Huntingdale Park Estate residential subdivision adjoins the subject land to the north and west. The Princes Highway forms the eastern boundary to the subject land. Further to the east across the Princes Highway is “The Arbour Berry” retirement village, as well as a rural residential allotment. The remainder of the “Graham Park” property not associated with this Planning Proposal is situated to the south.

The purpose of the Planning Proposal is to request that Shoalhaven City Council:

- Rezone the subject land from RU1 Primary Production to R1 Residential, consistent with the adjoining Huntingdale Park Estate.
- Modify the Minimum Lot Size Map that applies to the subject site. The minimum allotment size for subdivision under the existing zoning applying to the subject land is 40 hectares. This Planning Proposal seeks to reduce the minimum lot mapping for the subject land to 500 m², consistent with the adjoining Huntingdale Park Estate.
- Modify the maximum building height limit that applies to the subject land to 8.5 m consistent with the adjoining R1 zoned land.

The Shoalhaven Growth Management Strategy (GMS) identifies the subject land for further long term investigation for urban development.

This Planning Proposal therefore is generally consistent with this Council adopted planning strategy, other than the anticipated timeframe by which such investigation will be undertaken. The basis for the Shoalhaven GMS specifying a long term timeframe for investigation of the subject land is based upon a perception that there is ample land availability in the adjoining Huntingdale Park Estate residential development. This report will demonstrate that the rate of development of this adjoining estate is such that available land supply will be exhausted in the very near future which justifies bringing forward of the investigation of the subject land for urban development.

Planning Report to Support Planning Proposal

P. & P. Bice

Lots 762, 763 & Part Lot 764 DP 1224932, Princes Highway Berry

It is our view that this Planning Proposal is also consistent with the identified “Housing Settlement” actions outlined in the South Coast Regional Strategy. In particular the proposal provides an opportunity for a broader range and greater affordability of residential accommodation within Berry than currently exists.

The formulation of this Planning Proposal has been the subject of consultation between the land owner and Council. The land owners have also consulted with the Berry Community Consultative Body (CCB). This report has been prepared having regard to issues arising from this consultation.

The proposal is consistent with relevant state, regional and sub-regional planning strategies and policies, and is generally consistent with the thrust of the Shoalhaven Growth Management Strategy.

Overall, the subject land is considered to be eminently suitable for residential development and will ensure an on-going supply of residential land. Furthermore the Planning Proposal will assist in providing a more diverse housing supply and improve affordability of residential accommodation within Berry. The proposal will not have any significant adverse environmental or social impacts, and indeed will potentially improve habitat values of the riparian corridors associated with the site.

ANNEXURE 2

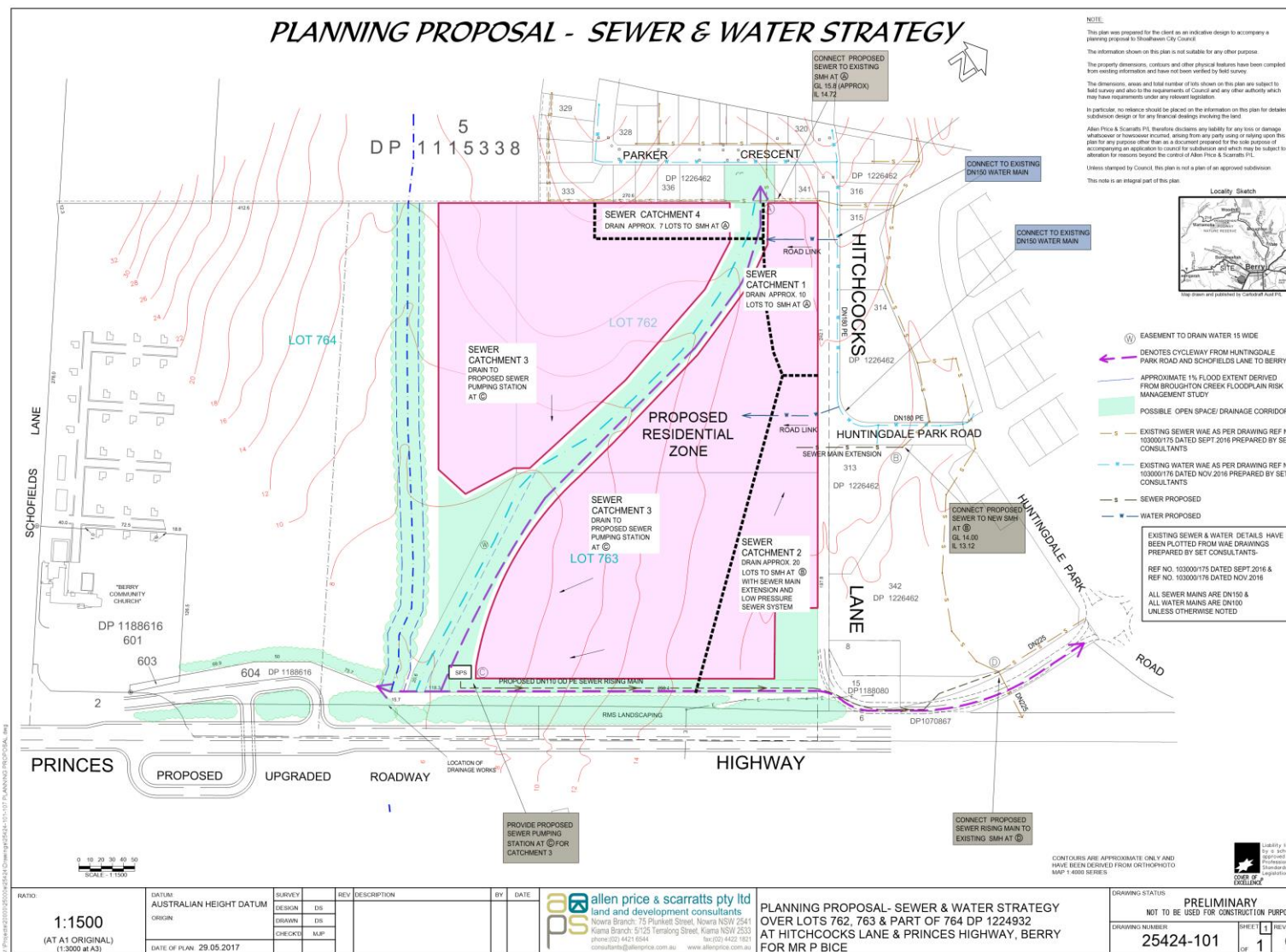
Plans of Proposal

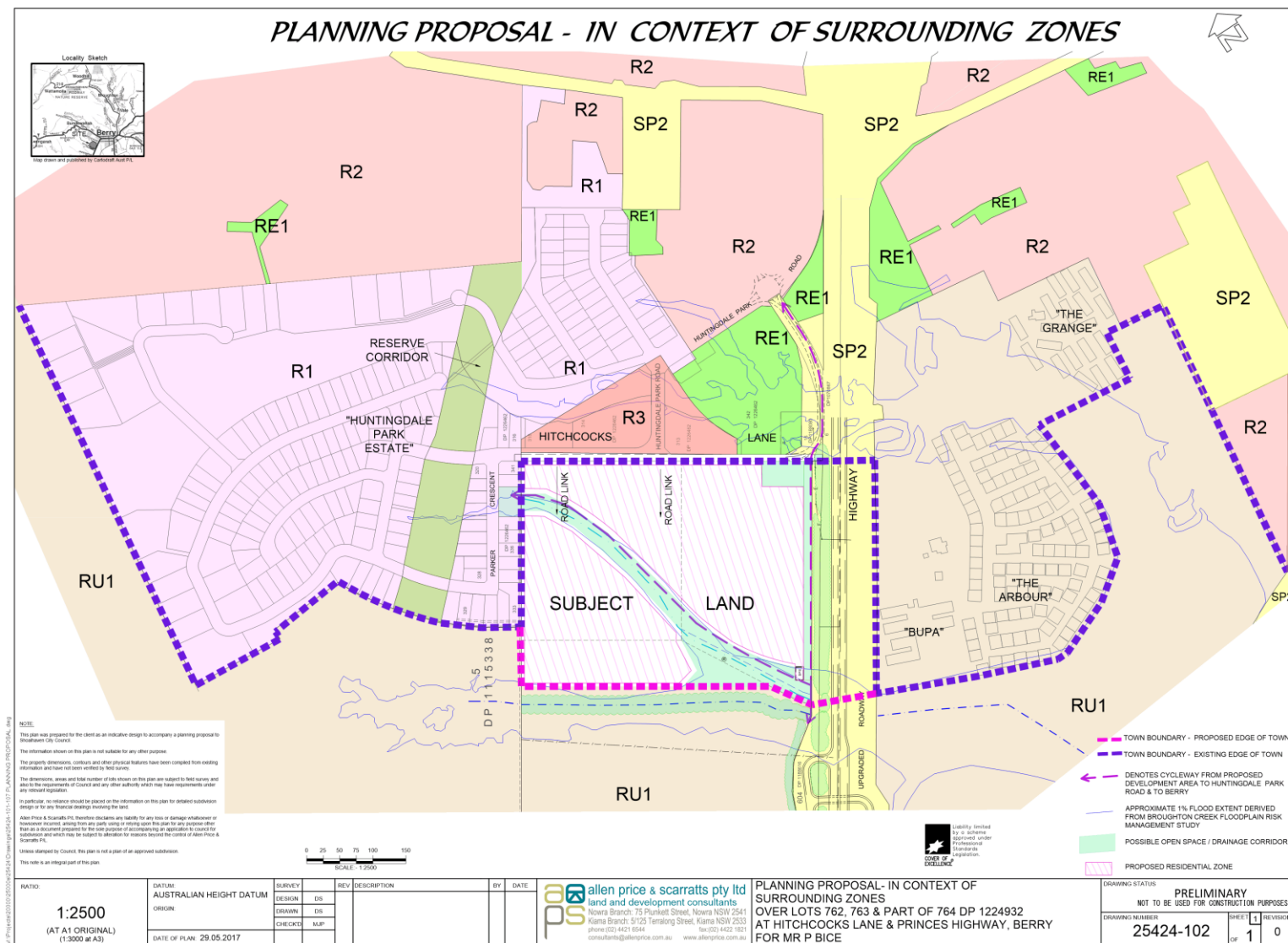
**prepared by
Allen Price & Scarratts**

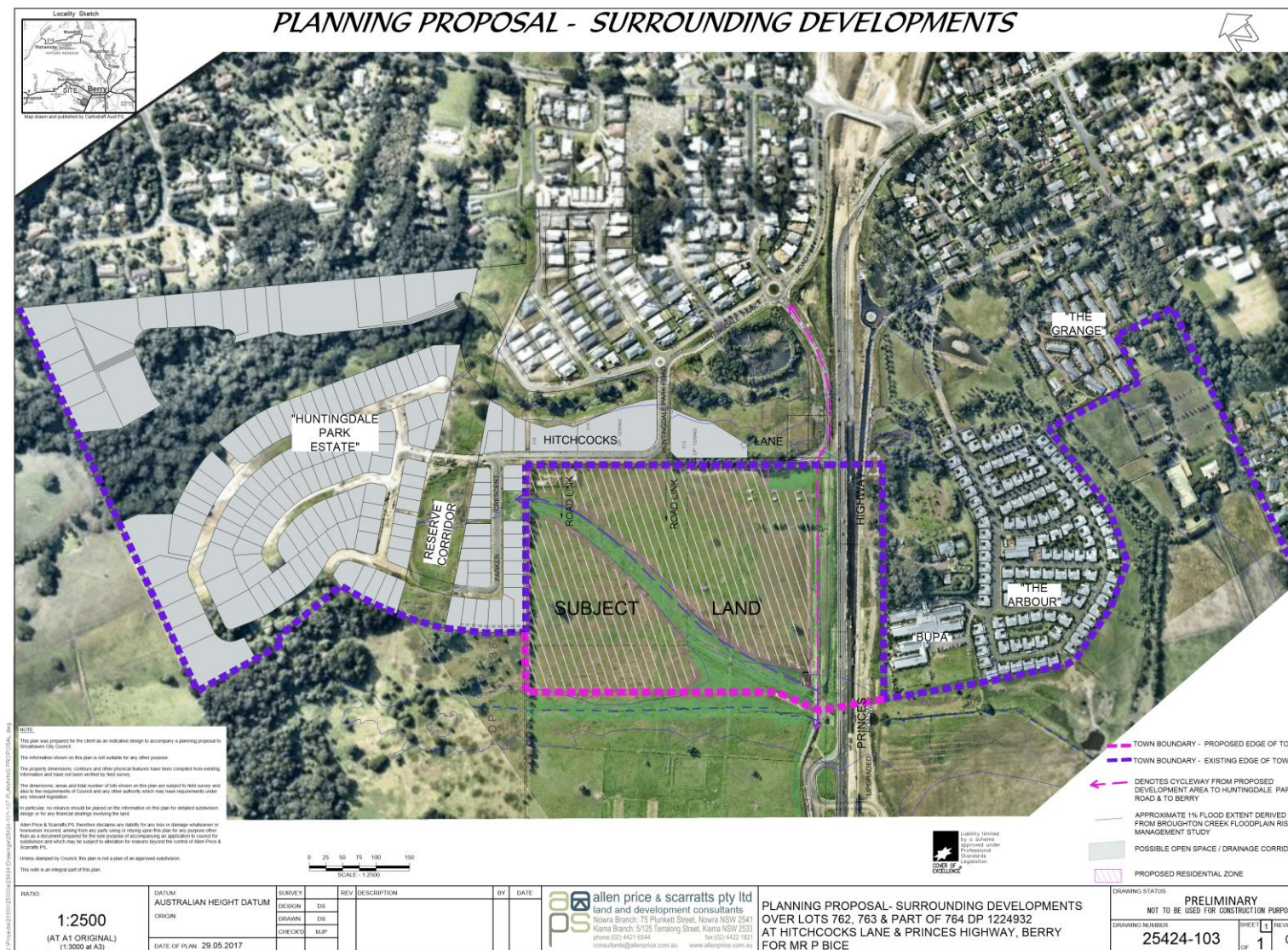
**Lots 762, 763 and part of 764 DP 1224932
Princes Highway, Berry**

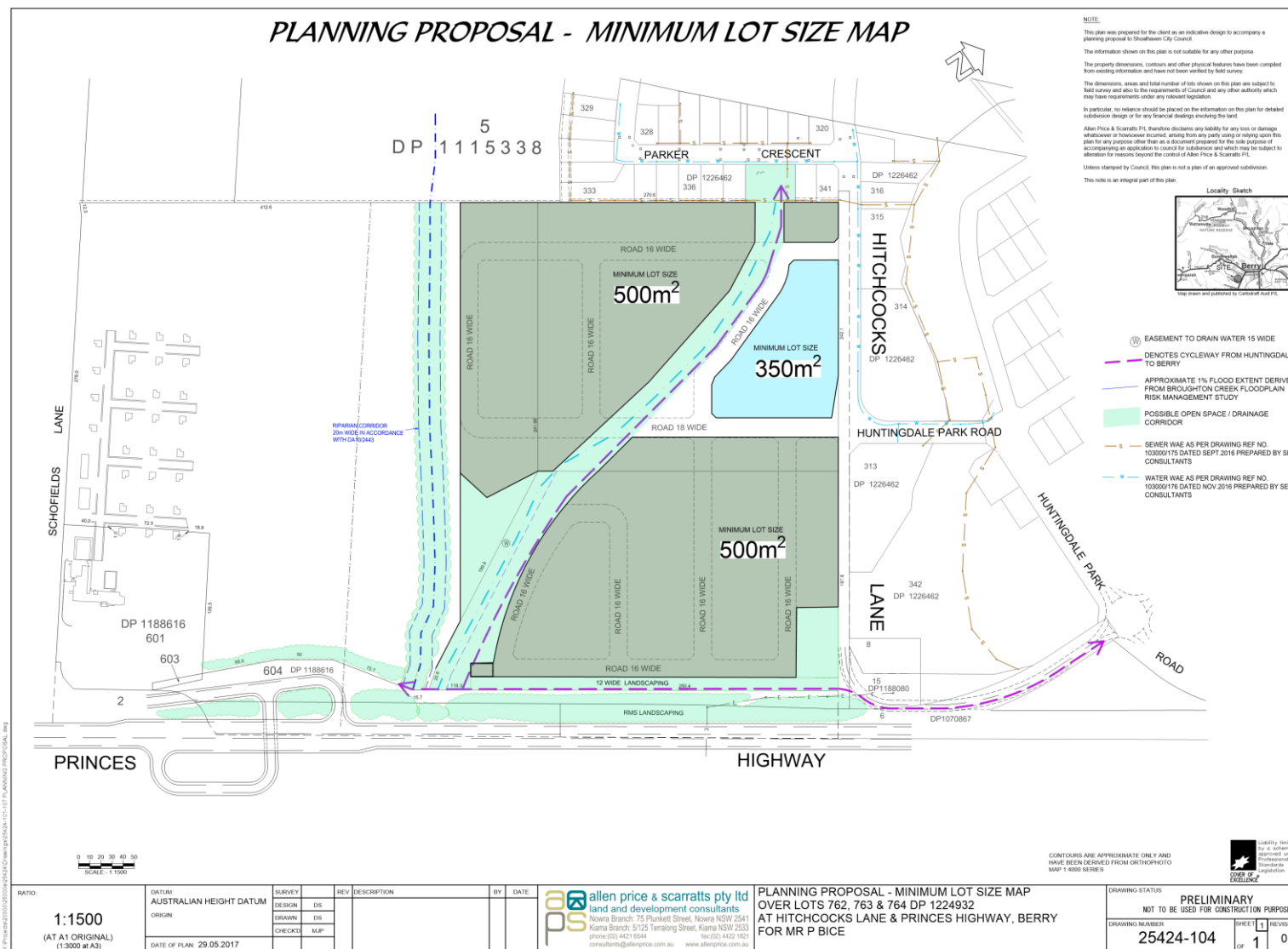
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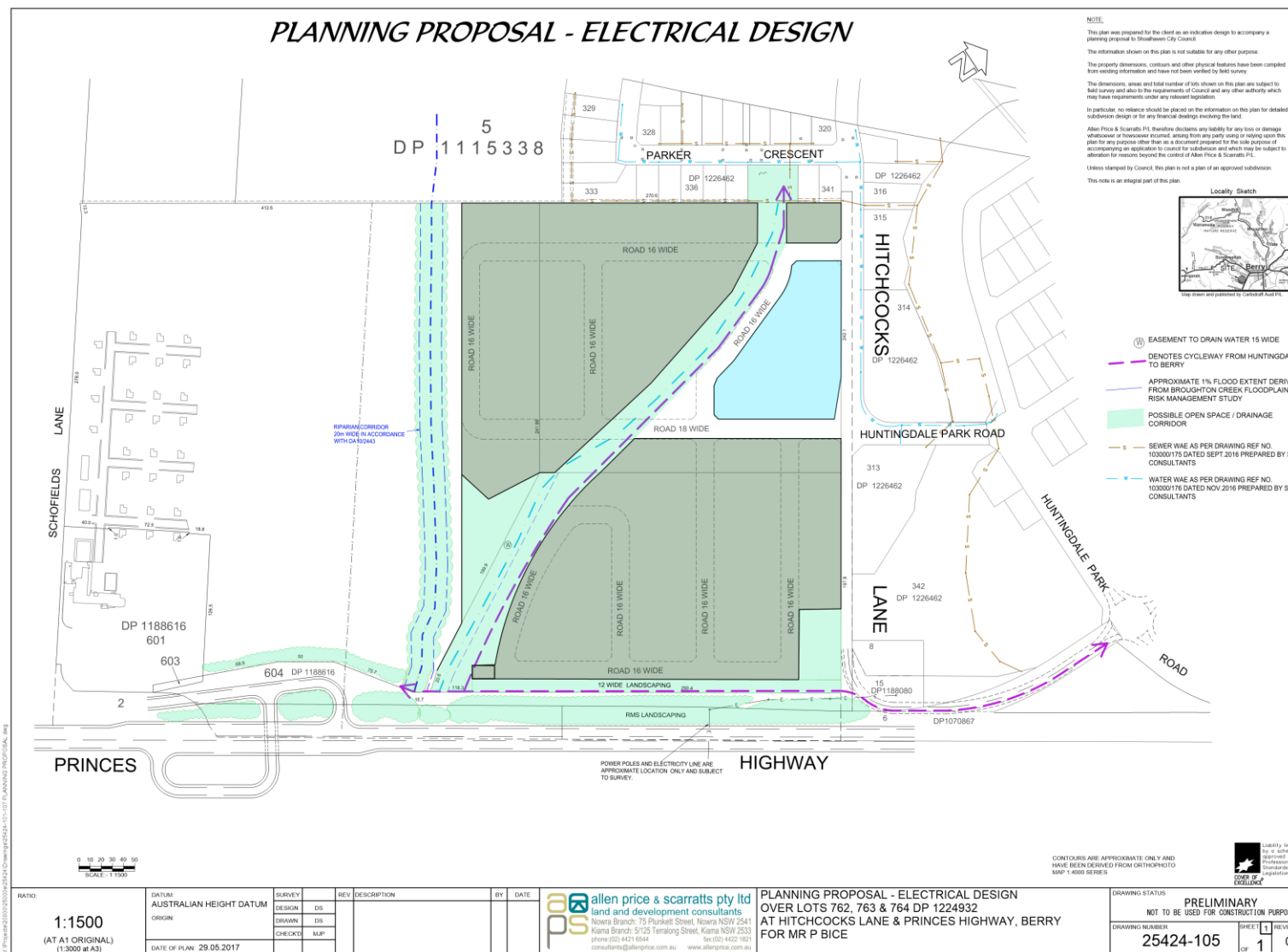
DE17.77 - Attachment 2

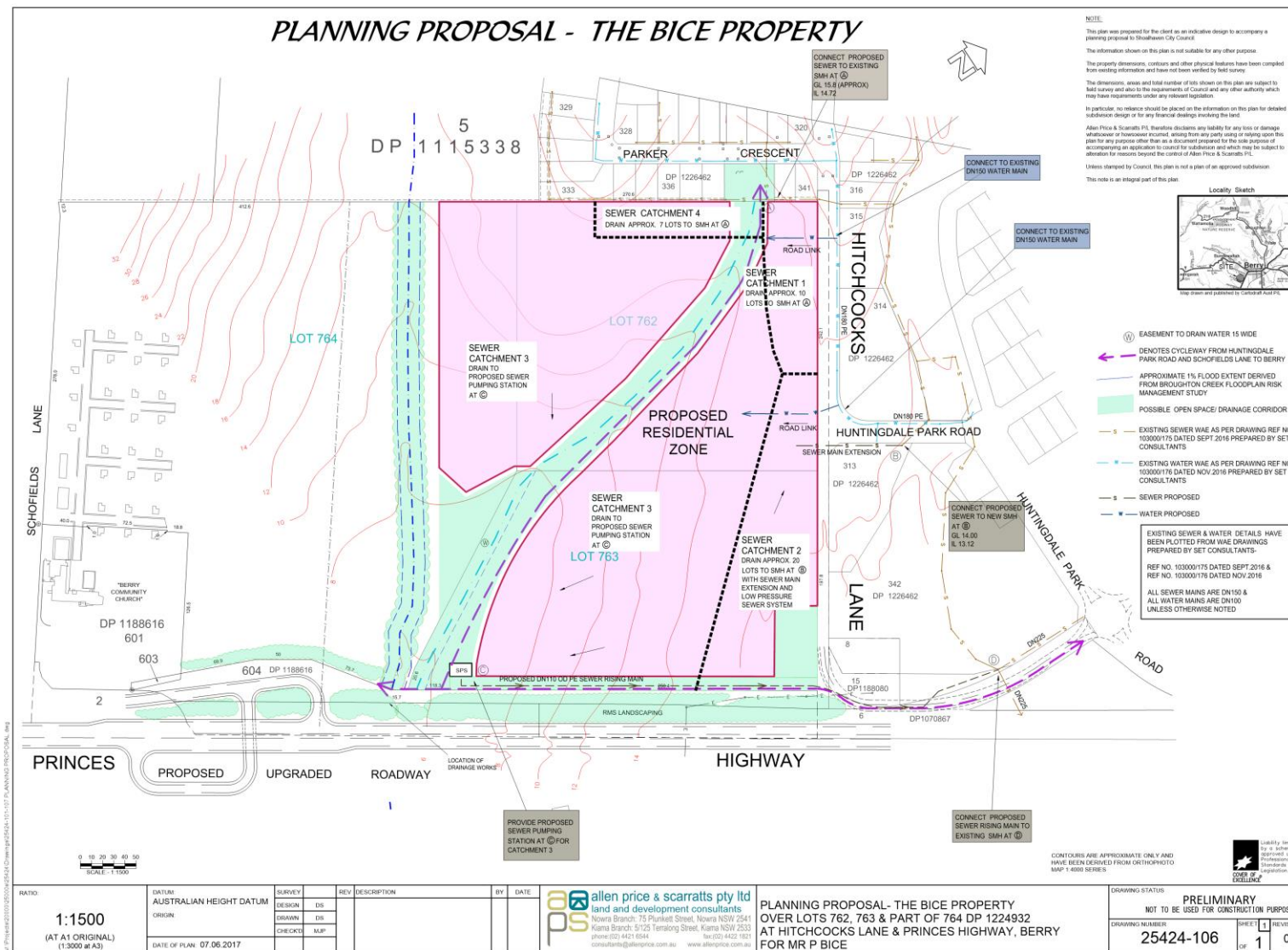












The Berry Forum

The Forum Committee is seriously concerned about the following statements in the Planning Proposal -

Executive Summary

"The land owners have also consulted with the Berry Community Consultative Body (CCB). This report has been prepared having regard to issues arising from this consultation."

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"The land owners have also consulted with the Berry Forum (the formal Community Consultative Body for Berry) with respect to this Planning Proposal in a meeting on the 1st May 2017. Prior to the meeting the land owners supplied the Forum a concept plan detailing the Planning Proposal."

- The land owners met with the Forum Committee, not the Forum. We informed the land owners that they would need to present to the Forum and that the Committee had no authority or role to provide an opinion. We explained that the role of the Committee is to inform the Berry community, seek its views and advise Council.
- The land owners did not consult - they provided no information and stated they were only thinking about a Planning Proposal some time in the future.
- No concept plan was provided and no detail of a Planning Proposal was supplied. Only a one page map with the subject land shaded was given to the Committee.

The Planning Proposal must be amended by the land owners to reflect the genuine nature and form of the meeting that they requested.

The Berry Forum Committee

Town Planning, Agricultural & Environmental Consultants



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12 October, 2017

Our ref: 15/37

The General Manager
Shoalhaven City Council
PO BOX 42
NOWRA NSW 2541

Attention: Grant Rokobauer

Dear Sir

**RE: REQUEST FOR ADDITIONAL INFORMATION
PLANNING PROPOSAL
PRINCES HIGHWAY AND HITCHCOCKS LANE, BERRY**

I refer to the emails from Council's Grant Rokobauer dated 14th and 18th September 2017 in relation to the above Planning Proposal. This submission has been prepared in response to the issues raised in these emails.

Email dated 14th September 2017

Council's email dated 14th September 2017 requested further information as follows (with our respective responses):

- 1) *What is the area of the proposed 500sqm minimum lot size zones*
 - a) *Within the area that is identified in the GMS?*
Response: 8.3618 ha
 - b) *In the area that is additional to that identified in the GMS?*
Response: 2.7812 ha
- 2) *What is the area of the proposed 350sqm minimum lot size zones?*
Response: 1.155 ha

Planning Proposal
Princes Highway & Hitchcock's Lane
Berry

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3) *What is the area of the proposed public reserves:*

a) *Within the area that is identified in the GMS?*

Response: 1.4788 ha

b) *In the area that is additional to that identified in the GMS?*

Response: 1.1283 ha

4) *Approximately how many lots are anticipated to result:*

a) *Within the area that is identified in the GMS?*

Response: 117 lots (including 24 x 350 m² lots)

b) *In the area that is additional to that identified in the GMS?*

Response: 36 lots

5) *What built form is anticipated for the 350sqm land? Will it be rear lane serviced lots or some other arrangement?*

Response: It is anticipated that this area of the site would be developed as an integrated smaller lot subdivision. Conceptually this area could be developed with lots fronting Hitchcock's Lane with a rear service lane to the south; with smaller cul-de-sacs providing access to lots to the southern portion of this area of the site. It is anticipated that this portion of the site could accommodate about 24 lots with a minimum area of 350 m².

Attached to this submission is a sketch plan prepared by Allen Price & Scarrats depicting the respective areas of the site and upon which the above responses are based.

Email dated 18th September 2017

Council's email dated 18th September 2017 included an email submission from the Berry Forum raising concerns about statements in the planning report in support of this Planning Proposal. The concerns were to the effect that consultation that was undertaken by the land owners before the submission of the Planning Proposal was undertaken with the Berry Forum Committee and not the Berry Forum.

In response to this email the planning report has now been modified to reflect that the land owners met with the Berry Forum Committee instead of the Berry Forum. Attached to this submission is the revised version of the planning report in support of the Planning Proposal incorporating these changes.

The email from the Berry Forum also indicates that the Forum were not supplied with any information or concept plan in relation to the Planning Proposal. Our client's however disagree with this assertion. They advise that a concept plan was supplied to the Forum Committee which detailed:

- The Location of the subject land;
- The area of the land affected by the Planning Proposal
- The edge of the existing urban area was also depicted.
- Opportunities for connectivity between the subject land and surrounding locality.

Planning Proposal
Princes Highway & Hitchcock's Lane
Berry

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- Proposed open space networks.
- Location of landscaping to be undertaken by the RMS as part of the Princes Highway upgrade.

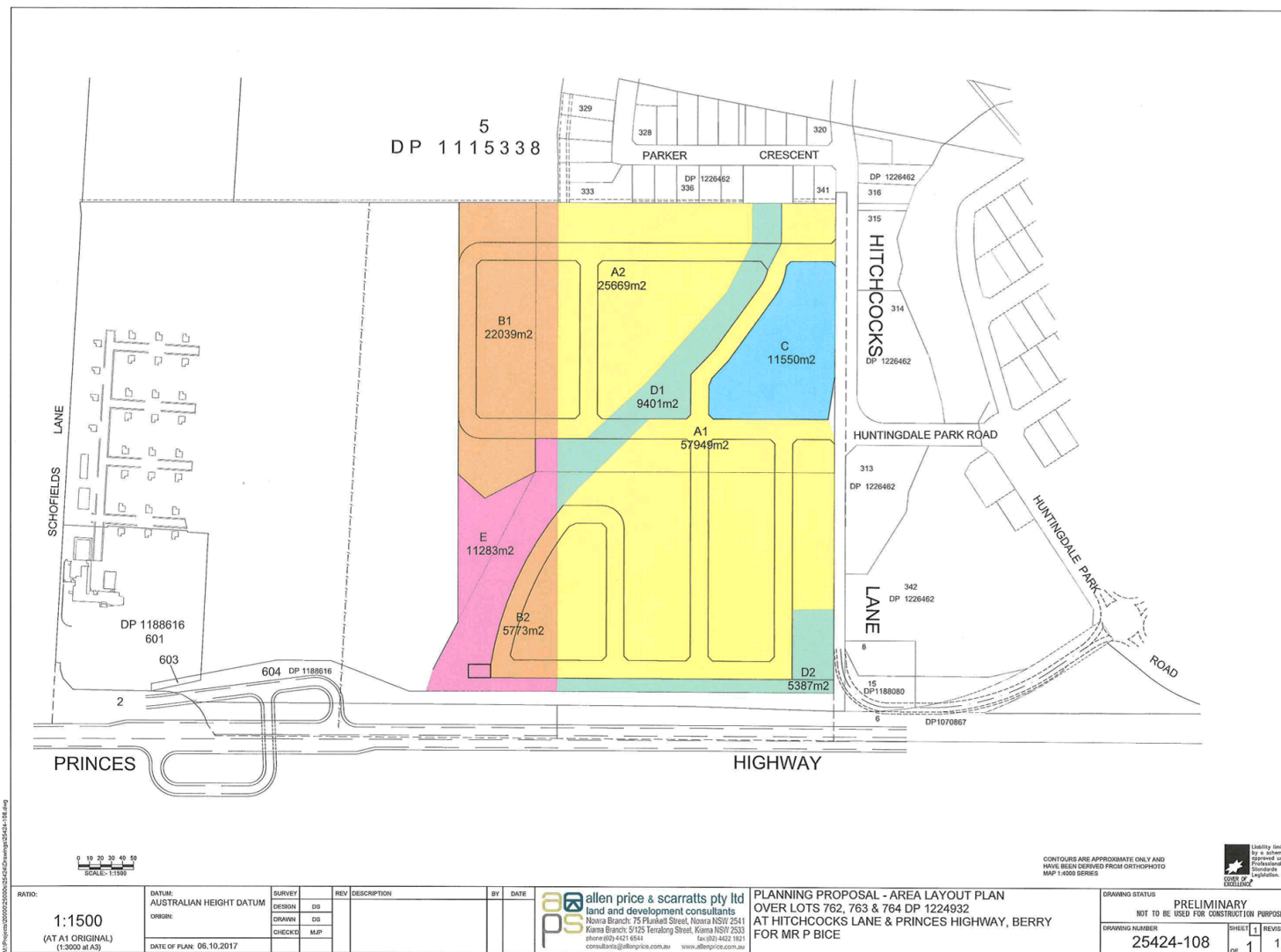
I trust that the above and attached will be of assistance to Council's consideration of this application. If you require any further assistance in connection with this matter please do not hesitate to contact me.

Yours faithfully



Stephen Richardson
COWMAN STODDART PTY LTD

Enc.



DE17.78 Draft Chapter G18 Streetscape Design for Town and Village Centres - Shoalhaven Development Control Plan 2014 - Preparation and Public Exhibition

HPERM Ref: D17/330934

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments:

1. Draft Development Control Plan Chapter G18 Streetscape Design of Town and Village Centres (under separate cover) [⇒](#)
2. Draft Streetscape Technical Manual (under separate cover) [⇒](#)
3. Subject Streets Map (under separate cover) [⇒](#)
4. Draft Development Control Plan Dictionary (under separate cover) [⇒](#)

Purpose / Summary

Seek endorsement to prepare and public exhibit Draft Chapter G18 Streetscape Design for Town and Village Centres (Draft Chapter), Shoalhaven Development Control Plan (DCP) 2014.

The Draft Chapter will introduce streetscape design controls for nominated town and village centre streetscapes and certain development types. The provisions build on the controls that previously existed in now rescinded DCP No. 80 Streetscape Guidelines for Paving and Tree Planting in the Nowra CBD.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Prepare and publicly exhibit Draft Chapter G18 Streetscape Design for Town and Village Centres and Dictionary of Shoalhaven DCP 2014 for a six (6) week period and in accordance with the *Environmental Planning & Assessment Regulation 2000*.
2. Advise relevant Community Consultative Bodies of the public exhibition.
3. Receive a further report on the draft Chapter G18 Streetscape Design for Town and Village Centres following the conclusion of the public exhibition period.

Options

1. Adopt the recommendation.

Implications: The preparation and public exhibition of the Draft Chapter will allow Council staff to enact a previous position of Council, which sought to review the now rescinded DCP No. 80 and insert a new chapter covering streetscape design controls into Shoalhaven DCP 2014.

The Draft Chapter will provide an endorsed policy direction for streetscape upgrades when required by a Development Application (DA). The Draft Chapter will ensure a coordinated approach to streetscape design and construction that is sympathetic to the character of the relevant nominated town and village centre. The Streetscape Technical

DE17.78

Manual will also have the ability to be used by Council staff or contractors working on behalf of Council in undertaking work within the public domain.

2. Adopt an alternative recommendation.

Implications: This may significantly delay the preparation and exhibition of the Draft Chapter and the ability to provide streetscape upgrades in nominated town and village centres in a coordinated manner.

Background

Following the notification of Shoalhaven Local Environmental Plan (LEP) 2014 on 22 April 2014, Council had six months to exhibit and finalise the Shoalhaven DCP 2014. Due to the limited time available to review and consolidate over 100 DCPs, a number of DCP's were unable to be reviewed and amended as necessary, including the now rescinded DCP No. 80 Streetscape Guidelines for Paving and Tree Planting in the Nowra Central Business District (CBD).

Prior to the LEP being made, the Nowra CBD Action Committee at its meeting on 8 April 2013 considered a report from the General Manager relating to the review of DCP No. 80. The report provided an update on the progress of reviewing DCP No. 80 and noted that it would have to complement the Citywide DCP which was underway at the time. The report also noted that whilst DCP No. 80 applied only to Nowra CBD, the new Chapter would need to consider other towns and villages across the City.

Following consideration of the report, the Nowra CBD Action Committee resolved that:

- a) *The report of the General Manager (Strategic Planning & Infrastructure) regarding the review of DCP 80 be received for information;*
- b) *It be noted that the approach for the design of new paving in the City is being undertaken consistent with Council's resolution; and*
- c) *The approach for the maintenance/repair of existing paving be undertaken as outlined in the report.*

On 6 August 2014, Nowra CBD Action Committee considered a report relating to ongoing civic improvements and resolved to receive it for information. The report noted that due to the age of DCP No. 80 it required a significant review in order to prepare a new DCP Chapter in the Citywide DCP. The report also noted that the new DCP Chapter would address the following points:

- Apply in both a citywide context as well as reference treatments / themes for specific towns and villages areas.
- Define streetscape character with general guiding principles.
- Provide guidance for the provision of the following main items / elements (as a minimum) in the CBD streetscape environment:
 - Entry treatments;
 - Trees (including root barriers and structural soils);
 - Public artwork (within streetscape infrastructure and standalone artwork);
 - Footpath surface / delineation / hierarchy (which recognises "Council's preference for attractive concrete designs rather than pavers");
 - Street amenities (furniture, bins, tree guards, planter boxes, lighting, etc.);
 - Embellishment of civic spaces.
- Consideration of:
 - existing CBD attributes / view lines;

- integration of the public / private domains (i.e. boundary of public / private land);
- existing infrastructure within the streetscape (i.e. car parks, vehicle lanes, drains, pit covers, multi utilities, etc.) and how to transition such infrastructure in a streetscape improvement program;
- accessibility / pedestrian / cycling needs;
- priority items to upgrade streetscapes;
- the economics of lifecycle infrastructure (maintenance) costs.

The review of the DCP 80 is now complete and the new Draft DCP Chapter and supporting Streetscape Technical Manual (Manual) has been prepared and is attached to this report (**Attachment 1 and 2**).

Draft DCP Chapter G18 Streetscape Design for Town and Village Centres

The draft Chapter proposes to introduce streetscape design controls for subject streets in thirteen (13) nominated town and village centres that have a defined centre and commercial presence, these include:

- Berry;
- Shoalhaven Heads;
- Kangaroo Valley;
- Bomaderry;
- Nowra;
- Culburra Beach;
- Huskisson;
- Vincentia;
- Sanctuary Point;
- St Georges Basin;
- Sussex Inlet;
- Milton; and
- Ulladulla.

In addition to the nominated centres, the Draft Chapter will also apply to other streetscapes where a development application (DA) is received for a commercial premises, mixed use development, multi-dwelling housing, attached dwelling, residential flat building, shop top housing or seniors housing development. This is to ensure that appropriate streetscape upgrades are provided as development is conditioned and occurs.

The Draft Chapter builds on the development controls contained in the former DCP No. 80 and includes controls relating to streetscape, character and function, streetscape components, and unique town and village centre features. These controls are generic in nature and will apply to specific streets within the nominated centres and to specific land use types. The Draft Chapter is supplemented by a supporting 'Subject Streets Map' which identifies the streets subject to the application of the DCP chapter. The supporting Subject Streets Map is provided as **Attachment 3**.

The development controls contained within the Draft Chapter refer to the Manual, which is a new document proposed to supplement the Draft Chapter. The Manual has been prepared by Council's City Design Team and contains individual design and construction technical detail to guide the provision of footpaths, planting palette, colour palette, street furniture and unique features for each of the nominated centres, as per the report to Nowra CBD Action Committee in August 2014. A generic design has also been prepared for use in other localities.

The palettes for each centre have been designed to represent the unique character of each centre and acknowledge the preference for use of aggregate concrete over pavers in footpaths. Use of pavers has been restricted to decorative borders, except for in Berry, Kangaroo Valley and Milton where the use of pavers in footpath design has been retained to reflect the heritage character of the centres. In addition, the use of pavers in the design of footpaths in Sussex Inlet has also been retained as a result of a recent community consultation exercise on the streetscape design.

In response to the issues faced with the previous DCP No. 80 regarding products changing and the availability of materials, the Manual has been prepared to be used as a technical guide to ensure that updates to proprietary products can be easily made where products are discontinued without the need for a formal DCP amendment. Compliance with the Manual is required through development controls contained in the Draft Chapter and can be used to condition Development Consents and as a reference for Council when undertaking works in the streetscapes of nominated town and village centres.

Internal Engagement

The Draft DCP Chapter and Manual have been reviewed by Council's Works and Services, and Development Services areas. Feedback received during this process has been considered and incorporated where deemed appropriate.

Other Amendments Required

As a result of the Draft Chapter, the Dictionary of Shoalhaven DCP 2014 will also require a minor amendment to insert two new definitions that are referred to in the Draft Chapter. The two new definitions relate to footpaths and pathways. The Draft Dictionary is provided as **Attachment 4**.

Community Engagement

The Draft Chapter, Dictionary and Manual will be publicly exhibited for a six (6) week period and in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2000*. Given that the public exhibition of the Draft Chapter is likely to go over the holiday period, Council will run an extended exhibition period.

The Community Consultative Bodies from the nominated town and village centres will also be advised of the public exhibition and if necessary staff will arrange to meet with these bodies (as required) to explain and discuss the proposals.

Policy Implications

The Draft Chapter is proposed to be a new chapter within Shoalhaven DCP 2014. The Draft Chapter enacts a previous position of Council to undertake a review of DCP 80 and replace it with a new DCP Chapter that applies to the City. As part of the preparation of the Citywide DCP 2014, Chapter G18 was reserved for the Draft Chapter.

Financial Implications

Preparation and finalisation of the Draft Chapter is being undertaken within the existing Strategic Planning budget.

Risk Implications

If the Draft Chapter is not implemented, there is a risk that streetscape design will not be adequately considered in future DA's which may result in a haphazard approach to streetscape design and the eventual deterioration of the unique streetscape character within nominated town and village centres in Shoalhaven. The Draft Chapter is expected to mitigate against these risk implications.

DE17.79 Outcomes - Building Height Review - Southern Part of Ulladulla CBD

HPERM Ref: D17/333579

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Review of Building Heights Report (Part Ulladulla CBD) (under separate cover) [⇒](#)
2. PP025 Gateway Determination 29 August 2017 (under separate cover) [⇒](#)

Purpose / Summary

To present the outcomes of the Building Heights Review relating to the southern part of the Ulladulla CBD as per MIN17.218.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Prepare a Planning Proposal to amend Shoalhaven Local Environmental Plan 2014 to increase the height across the Study Area (excluding land subject to PP025) to part 11 metres and part 14 metres as per the Review of Building Heights Report.
2. Prepare an amendment to Chapter S8: Ulladulla Town Centre of Shoalhaven Development Control Plan 2014 to reflect proposed height modifications and address resulting implications across the Study Area, including land subject to PP025.
3. Consider a further report/s that contains the detail of the Planning Proposal for submission to the NSW Department and Planning and Environment for Gateway determination and the associated amendments to Chapter S8: Ulladulla Town Centre of Shoalhaven Development Control Plan 2014.
4. Notify Ulladulla & Districts Community Forum, affected landowners and workshop attendees of this decision and of further opportunities to be involved as this matter progresses.

Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will commence the process to amend the heights in Shoalhaven Local Environmental Plan (LEP) 2014 relating to the Study Area (excluding land subject to PP025) to reflect the outcomes of the review. It will also facilitate the required amendments to Shoalhaven Development Control Plan (DCP) 2014 to reflect the proposed change in height across the Study area and enable good design and built form outcomes.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could delay the revision and updating of height provisions in Shoalhaven LEP 2014 and could result in

provisions that do not facilitate appropriate development outcomes within the Study Area.

3. Not amend the height of building provisions in Shoalhaven LEP 2014 across the Study Area.

Implications: Given the review that has been undertaken and its recommendations, this is not a preferred option as the existing height provisions in Shoalhaven LEP 2014 will not be amended and it will be difficult to stimulate and facilitate development consistent with a CBD location.

Background

On 14 March 2017, Council's Development Committee considered a development application (DA16/2412) for a three (3) storey office building at proposed Lot 15 Parson Street, Ulladulla.

The proposal sought a 46% (3.5 metre) variation to the 7.5 metre height prescribed in the Shoalhaven LEP 2014 for the land. Although the Committee originally resolved to support the variation (MIN17.183), a rescission motion was considered at the 28 March 2017 Ordinary Meeting (MIN17.217) and it was resolved to not support the proposed variation (MIN17.218). As part of this resolution, Council also resolved (part 2) to:

Undertake a review of the 7.5 metre 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.

It is noted that the area of the review was expanded beyond that of the Council resolution to ensure a holistic review of land in this vicinity with a building height of 7.5 metres in the LEP.

The Study Area (Figure 1) is located within the southern precinct of the Ulladulla CBD and is generally bounded by St Vincent Street, Parson Street, Burrill Street South, Jubilee Avenue, Deering Street and the Princes Highway, Ulladulla. The Study Area includes all land with a building height currently mapped at 7.5 metres (Figure 2) as indicated in Shoalhaven LEP 2014 and is zoned B4 Mixed Use, B5 Business Development and R3 Medium Density Residential.



Figure 1: Study Area

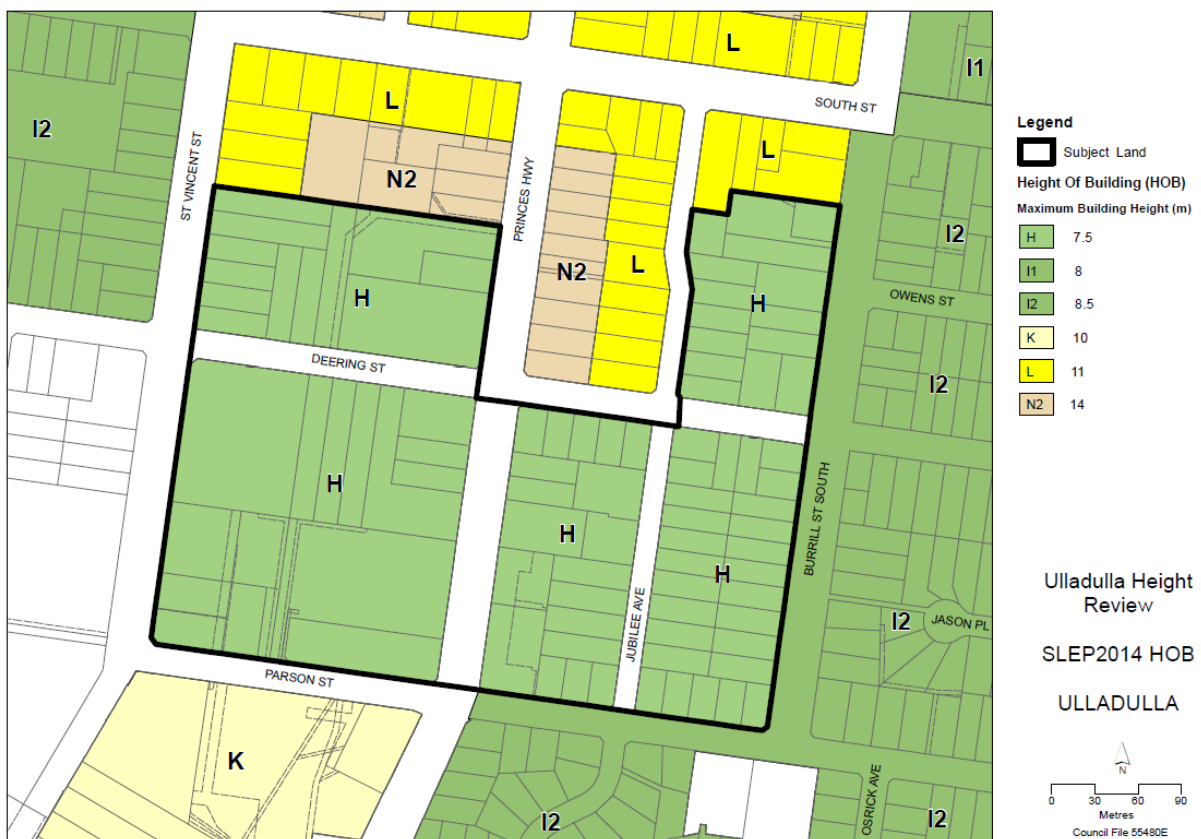


Figure 2: Existing Height of Buildings

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Consultants, City Plan Services and Atlas Urban were engaged in June 2017 to undertake a Building Height Review as an urban design and strategic planning exercise to investigate and reconsider the urban form height controls for the Study Area. The Review is based on a detailed analysis of the Study Area and context, as well as targeted consultation with the Ulladulla & Districts Community Forum, community and Council representatives.

Community Consultation

On 31 July 2017, two consultation workshop sessions were held; one with the Ulladulla & Districts Community Forum and community (approximately 30 attendees), and another with Councillors. The purpose of the workshops was to enable stakeholders to provide feedback on the height strategy proposed by the consultants. Generally, there were varying opinions as to what the planned heights should be, from no change to up to 17 metres. Other key themes included relationship to the existing neighbourhood character and height, preservation of views, affordable housing opportunities and the ability to stimulate economic growth and job opportunities.

It was identified during the CCB/community workshop that certain members of the community were unable to attend the workshop due to work commitments, and as a result, the consultant's workshop presentation was made available for public review for a period of one week between 2 and 9 August 2017. As a result of this, seven (7) submissions were received:

- Three (3) were in support of an increase in height, two (2) specifying a height of 17m.
- Three (3) did not support any increase in height.
- One (1) considered a height increase appropriate only where existing amenity and character is maintained and quality design controls are provided.

Refer to the Review of Building Heights Report at **Attachment 1** for more detail.

Outcomes of the Building Height Review

Balancing the outcomes of the targeted consultation and the strategic, statutory and physical parameters of the Study Area, the Review of Building Heights Report prepared by the consultants (**Attachment 1**) recommends considering an increase in height across the Study Area from 7.5 metres to part 11 metres and part 14 metres as shown in Figure 3 below.

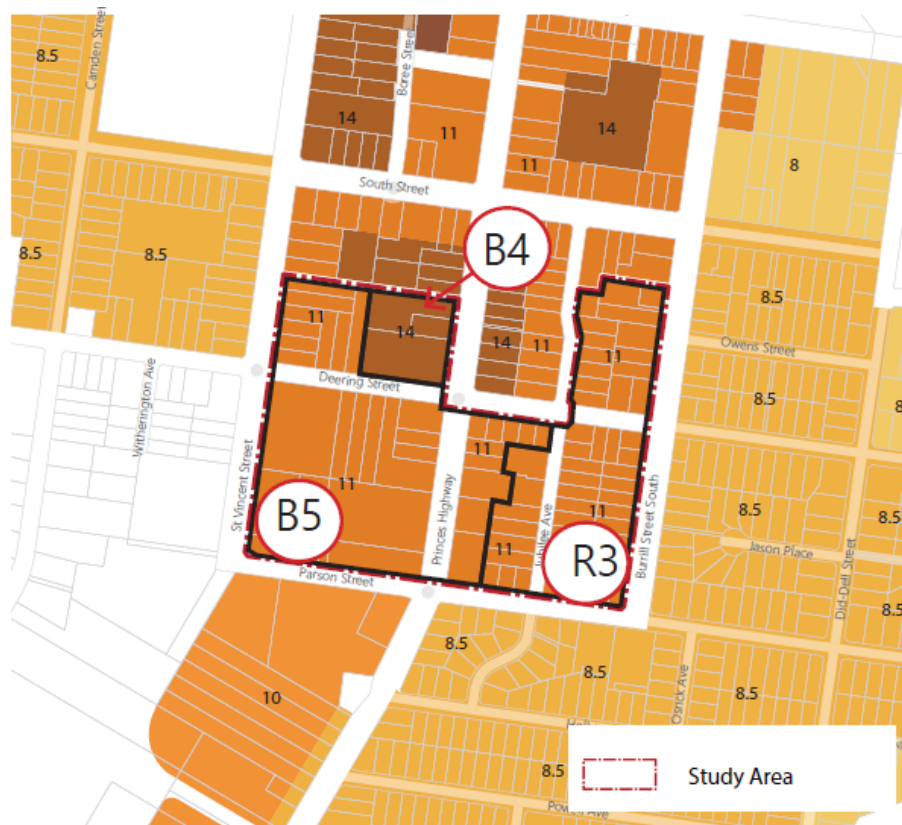


Figure 3: Proposed Height of Buildings

The recommended change in height enables a modest transition to lower density development to the south, east and west and reflects the height of the Ulladulla CBD core to the north of the Study Area. It also will enable the stimulation and facilitation of development consistent with the vision and strategic direction of the:

- Milton-Ulladulla Structure Plan; and
- General future desired character and amenity expectations as outlined in Chapter S8: Ulladulla Town Centre of Shoalhaven DCP 2014.

Proposed approach

Should Council be comfortable with the changes recommended by the consults, to enable the change in building height across the Study Area, a formal amendment to Shoalhaven LEP 2014 will be required. This would be facilitated via a Planning Proposal (PP).

In this regard, on 5 June 2017, the Development Committee resolved (MIN17.476) to give in principle support for a proposed rezoning and building height review for a site located within the Study Area (Figure 4), known as Lots 1-7, 9 DP 21597 and Lot CP SP 42583, St Vincent and Deering Streets, Ulladulla.

The Gateway determination (**Attachment 2**) for this Planning Proposal (PP025) included a condition requiring the final height for the site to be shaped by the outcomes of the Review of Building Heights Report. PP025 is proponent initiated and it is considered, in the interest of clarity and transparency, that:

- The land subject to the proponent PP (identified as pink in Figure 4) be excluded from the Building Height Review Planning Proposal; and
- The proponent PP should continue to progress independently to any future PP relating to the Review of Building Heights Report.

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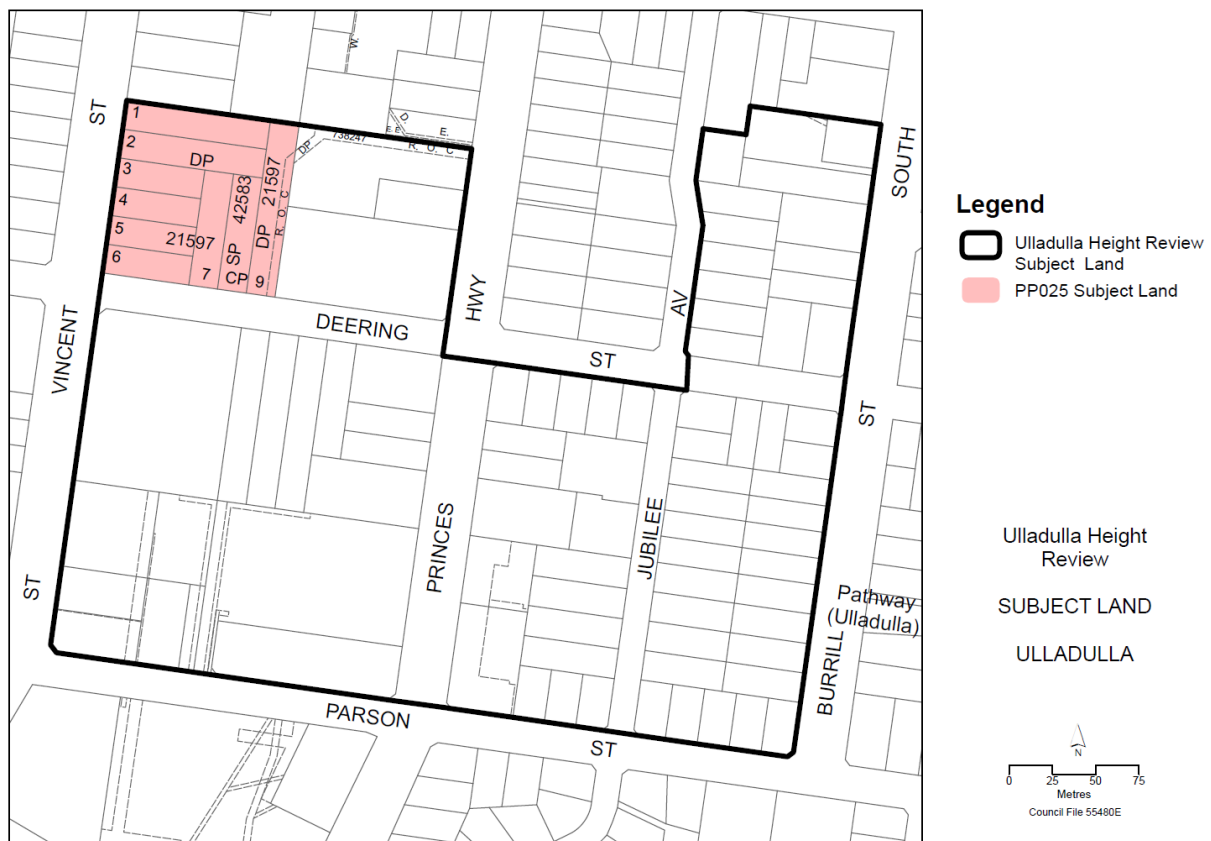


Figure 4: Study Area and PP025 Area

The Review of Building Heights Report recommends that Chapter S8: Ulladulla Town Centre of Shoalhaven DCP 2014 also be amended to reflect the proposed change in height across the overall Study Area (including PP025 area). This would facilitate good design and built form outcomes and would relate (not exclusively) to the general context, built form and character, views and vistas, setbacks and height references in the area.

Any associated amendments to the Shoalhaven DCP 2014 would be exhibited concurrently with the PP and PP025 to ensure a strategic approach to planning provisions across the broader Study Area.

Conclusion

The Review of Building Heights Report discussed in this report recommends an increase in height across the Study Area from 7.5 metres to part 11 metres and part 14 metres. It is considered that an amendment to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 would effectively facilitate this increase in height.

Community Engagement

The community engagement undertaken as part of the Review of Building Heights Report is outlined above.

Any future PP would be subject to the exhibition requirements set out in the Gateway determination in accordance with the relevant legislation. This will involve notifying all affected landowners, adjoining landowners, relevant community groups and other interested parties.

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Any amendments to Shoalhaven DCP 2014 would be exhibited concurrently with the PP's, in accordance with the relevant legislation.

Policy Implications

The existing height provisions in Shoalhaven LEP 2014 are dated and somewhat inconsistent with the proposed direction of the Milton-Ulladulla Structure Plan and general future desired character and amenity expectations outlined in Chapter S8: Ulladulla Town Centre of Shoalhaven DCP 2014.

The proposed height increase would assist in facilitating development and resolve the current inequitable and inconsistent building height controls that exist - the adjacent lower density residential areas currently has a greater height limit (8.5 metres) than the Subject Area (7.5 metres).

Should a PP be prepared to amend the height, then amendments will also be required to Shoalhaven DCP 2014 to reflect new heights and to resolve any inconsistencies resulting from the modifications.

Financial Implications

As per MIN17.476, the funding for the Building Heights Review is based on a pro rata arrangement between the Strategic Planning budget and the proponent of PP025.

Any future amendments to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 would be managed within the existing Strategic Planning budget.

Fees for the remaining stages of PP025 will be charged in accordance with Council's Fees and Charges.

DE17.80 Submissions Consideration - Planning Proposal (PP022) - LEP Housekeeping Amendment 2016 - Minor Mapping & Instrument Changes

HPERM Ref: D17/334914

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Explanatory Statement - Shoalhaven LEP 2014 - Housekeeping Amendment 2016 [↓](#)

Purpose / Summary

The purpose of this report is to:

- Consider the submissions received during the exhibition of this Planning Proposal (PP) and consider recommend changes;
- Adopt the revised PP; and
- Progress the finalisation of the proposed amendment to Shoalhaven LEP 2014 in conjunction with Parliamentary Counsel Office.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Planning Proposal (PP022) with the minor amendment outlined in this report;
2. Forward Planning Proposal (PP022) to NSW Parliamentary Counsel Office to draft the requirement amendment to Shoalhaven Local Environmental Plan 2014; and
3. Make the resulting amendment to the Local Environmental Plan using the delegations issued under Section 23 of the NSW Environmental Planning and Assessment Act 1979 related to plan making.

Options

1. Consider the submissions made during the exhibition period, adopt the PP (with the change outlined in this report) for finalisation and progress the resulting amendment to Shoalhaven LEP 2014.

Implications: This is the preferred option as it will ensure that the relevant housekeeping matters in Shoalhaven LEP 2014 are addressed to ensure the LEP operates as intended.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, this could delay the progress of the PP and the resulting amendment of Shoalhaven LEP 2014.

Background

Council continuously reviews Shoalhaven LEP 2014 to ensure it aligns with strategic documents, is improved where necessary and delivers positive outcomes for the community. As a result, Council has an ongoing process of housekeeping amendments to improve the operation and maintain the accuracy of the plan.

This housekeeping amendment PP (PP022) addresses those non-urgent matters that were identified during the course of 2016 and early 2017.

The intended outcome of this PP is to:

- Add or amend provisions to the instrument and maps to improve the operation of the LEP and address issues that have arisen through registration of new land titles, landowner requests, staff identified anomalies, development assessment and as resolved by Council; and
- Amend a number of LEP maps to correct identified anomalies or inconsistencies.

A list of the proposed changes covered by this PP can be viewed in the Explanatory Statement which is included as **Attachment 1**.

The PP was granted Gateway determination by the NSW Department of Planning and Environment (DP&E) on 13 June 2017. A revised Gateway determination was then received on 25 August 2017 (one matter that was delaying things was removed to allow for further investigation and possible inclusion in a future housekeeping PP).

DP&E also granted delegated authority to Council for this PP. Accordingly, Council will liaise directly with the NSW Parliamentary Counsel Office (PCO) to prepare and finalise the LEP amendment for commencement.

Public Exhibition

The PP was publicly exhibited for a period of 30 days from Wednesday 6 September to Friday 6 October 2017 (inclusive). The public exhibition included the display of the PP, the Gateway determination and an explanatory statement at the City Administration Building, Nowra and on Council's website.

The PP was referred to the NSW Office of Environment and Heritage and the NSW Rural Fire Service as required by the Gateway determination. NSW Roads & Maritime Services (RMS) were also advised of the exhibition. Affected landowners were directly notified by mail.

The exhibition document can be viewed at the following link:

<http://leptracking.planning.nsw.gov.au/PublicDetails.aspx?Id=4933>

Submissions:

A total of three (3) written submissions were received from:

- Two Landowners
- RMS

The two landowner submissions relate to Map Change 18 – these submissions are summarised and discussed below, copies will also be available in the Councillors Room prior to the meeting. The RMS submission noted that they had no objections to the PP.

Map Change 18 - Lot 159 Highview Drive, Dolphin Point

The two submissions from landowners related to the same issue, the proposal to rezone Lot 159 DP 755972 (Portion 159) Highway Drive, Dolphin Point from E3 Environmental Management to E2 Environmental Conservation to ensure consistency with the previous Shoalhaven LEP 1985 zone of Environment Protection 7(f2) (Coastal Reservation) and to ensure Clause 5.1 Relevant Acquisition Authority of the LEP clearly applies (with the Minister administering the Environmental Planning and Assessment Act 1979 as acquisition authority).

Summary of submissions

- There are more lots zoned E3 Environmental Management in this location than there are E2 Environmental Conservation and as such there is better argument for consistency to zone the E2 lots to E3 and not the other way around.
- If DP&E were interested in acquiring these lots it would not have allowed substantial development to occur on them.
- Map Change 18 should be removed from the PP i.e. subject lot retain its E3 zone.
- The other E2 zoned lots in the locality should be rezoned to E3.

Staff comment:

Whilst there is merit in the proposed rezoning, there is also no urgency for the rezoning to occur now. DP&E has indicated that resolving the issue of acquisition may take some time. In order not to slow down this PP, there are no concerns with removing Map Change 18 from the PP and revisiting the issue through a later housekeeping amendment PP.

Conclusion - Proposed changes to PP

It is recommended that the PP be adopted as exhibited, with a minor amended to remove proposed Map Change 18 as discussed above. This matter will be reconsidered in a future housekeeping amendment PP.

Financial Implications

The PP is being resourced within the existing Strategic Planning budget.



EXPLANATORY STATEMENT PLANNING PROPOSAL - SHOALHAVEN LOCAL ENVIRONMENTAL PLAN 2014 - HOUSEKEEPING 2016 (PP022)

Public Exhibition: 6 September to 6 October 2017 (inclusive)

Overview

Background

Shoalhaven Local Environmental Plan (LEP) 2014 commenced on 22 April 2014. The LEP consolidated planning controls into the one LEP and also transitioned existing controls into the NSW Government's Standard Instrument Local Environment Plan format.

As part of the completion, and also since Shoalhaven LEP 2014 has been in force, Council has undertaken a number of "housekeeping amendments" to improve the operation and accuracy of the plan. Council continuously reviews Shoalhaven LEP 2014 to ensure it aligns with strategic documents, is improved where necessary and delivers positive outcomes for the community.

In May 2017 Council resolved to submit the Planning Proposal (PP) to the NSW Department of Planning and Environment for initial Gateway determination. The Gateway determination was received in June 2017 to enable the progression of the following:

The PP intends to amend the LEP instrument as follows:

1. Add "Landscape Material Supplies" as a permissible use in the IN1 General Industrial & IN2 Light Industrial zones;
2. Update LEP Schedule 5 – Heritage Inventory to change the property description of 91 Osborne Street, Nowra to read Lot 1001 DP 1220696;
3. Update LEP Schedule 5 – Heritage Inventory to change the property description of 122 Queen Street, Berry to read CP SP 93194;
4. Change wording attached to heritage item No. 437 in Schedule 5 – Heritage Items to correct the spelling of "Jerringa" to "Jerrinja".

The PP intends to make the following changes to the LEP maps:

1. Change the zoning of Lot 1 DP 1026902 – 115F Brogers Creek Road, Brogers Creek from E1 National Parks and Nature Reserves to E2 Environmental Conservation and apply a minimum lot size of AB4 – 40ha and change the zoning of Lot 251 DP 751292 (Por 251) from E2 Environmental Conservation to E1 National Parks and Nature Reserves and remove the minimum lot size layer. ;
2. Update the Heritage layer to cover the whole of Lot 1001 DP 1220696 - 91 Osborne Street, Nowra;
3. Rezone Lot R2 DP 1182358, The Wool Road, Vincentia from B2 Local Centre to SP2 Infrastructure (Road) as the road is now Council owned;
4. Extend the Heritage layer over Lot 103 DP 1213873 – 27A Millbank Rd, Terara to match the lot boundary;

5. Remove the Land Reservation Acquisition (LRA) layer from Lot 7324 DP 1166433 and Lot 5 DP 875956, Yalwal Road, West Nowra;
6. Remove the Terrestrial Bio-diversity Layer over Lot 1 DP 1218456 – 245 Tindalls Lane, Broughton Vale and the hatching that covers Tindalls Lane adjoining this lot;
7. Remove the LRA layer affecting various (88) lots now owned by NSW Roads and Maritime Services (RMS) in the Berry Bypass. See mapping in Part 2 Explanation of Provisions to identify affected lots;
8. Rezone a portion of Crown Land Lots 1011 & 1012 DP 1228466, Forest Road, Comberton and Myola Road, Myola from SP2 Water Treatment Facility to RU2 Rural Landscape to be consistent with the surrounding zone as the pipeline is no longer required;
9. Lot 2 DP 436644, Colloden Avenue, Vincentia currently zoned E2 Environmental Conservation is now under ownership of National Parks and Wildlife Services. Rezone to E1 National Parks and Nature Reserve and remove the minimum lot size layer;
10. Lot 232 DP 1040152 – 7 Lebene Grove, Cambewarra – rezone a small portion of R2 Low Density Residential zoned land to RU1 Primary Production as per development consent - as building envelope has been approved in RU1 zoned land;
11. Lot 31 DP 1198692 – 58 Jonsson Road, Mundamia - rezone R2 portion of the land to E2 as per remainder of the lot. Remove Urban Release Area (URA) layer and Clause (Sch 1.5) layer from the property;
12. Lot 12 DP 286581 – Illaroo Road, North Nowra - rezone from R3 Medium Density Residential to RE1 Public Recreation as the lot has now been dedicated to Council as a public reserve;
13. Lot 369 DP 15648 – 122 Princes Highway, Burrill Lake - remove LRA layer as this lot is already under NSW Roads Maritime Services (RMS) ownership;
14. Lot 2 DP 1204108, Gerroa Road, Coolangatta has been acquired by Council for road widening – rezone E2 Environmental Conservation and RU1 Primary Production portions to SP2 Infrastructure (Road);
15. Remove LRA layer from Lot 102 DP 1176270, Plunkett Street, Nowra as the land has been acquired by Council;
16. Remove the significant vegetation hatching from Lot 18 DP 703426 and Lot 20 DP 251554 – 19 Stewart Street, Conjola Park and the adjoining roadways of Stewart Street and Havilland Street as there are no biodiversity values on the road. Change the 'significant vegetation' hatching shown on to 'Biodiversity corridor';
17. Lot CP SP 93194 – 122 Queen Street, Berry – Lots have been consolidated. Amend Heritage layer to extend to the map full property and amend Heritage schedule with updated property description;
18. Rezone Lot 159 DP 755972 (Por 159) Highway Drive, Dolphin Point from E3 Environmental Management to E2 Environmental Conservation to ensure consistency with the previous Shoalhaven LEP 1985 zone of Environment Protection 7(f2) (Coastal Reservation) and to ensure Clause 5.1 Relevant Acquisition Authority clearly applies.
19. Remove LRA layer from Lot 31 DP 35634 & Lot 29 DP 35634, Bainbrigge Crescent, Nowra as they are already in Council ownership;
20. Remove LRA layer from road in front of Lot 100 DP 1196566 – 11 Lawrence Avenue, Nowra - as the road widening has already occurred;
21. Remove LRA from Lot 1 DP 181400, Lot 1 DP 334547, Lot B DP 335109 – 2 Moss Street, Nowra; Lot A DP 335109 – 6 Moss Street; Lot 2 DP 1607 Sec 2 – 10 Moss Street, Nowra as these are already in Council ownership;
22. Change Height of Building layer from maximum height 7.5m to maximum height 8.5m on Lot 3 DP 1224170, 6B Burrill St North, Ulladulla to reflect registered subdivision;
23. Remove Coastal Risk Layer from Lot 3 DP 1224170, 6B Burrill Street North, Ulladulla as following the subdivision of this land, only the front lots are now affected by the coastal risk overlay;

24. Remove LRA layer from Lot 1 DP 209665 – 77 Princess Street, Berry - as the lot is already in Council ownership;
25. Rezone Lot 1 DP 557669 – 66 Princes Highway, Milton – from SP2 Public Admin Buildings to B2 Local Centre & rezone SP2 portion of Lot 21 DP 1103418 – 23 Wason Street, Milton to B2 for consistency with surrounding lots;

Public exhibition

The Planning Proposal and supporting material will be on public exhibition from Wednesday 6 September to Friday 6 October 2017 at Council's Administrative Centre, Bridge Road, Nowra during business hours, 9am – 5pm.

The documents can also be viewed on Council's website at:

www.shoalhaven.nsw.gov.au/My-Council/Public-exhibition/Documents-on-exhibition and at the Ulladulla Administration building in Deering Street, Ulladulla.

How to make a submission

Written comments are invited and should be addressed to the General Manager, Shoalhaven City Council, PO Box 42, Nowra 2541 or emailed to:

council@shoalhaven.nsw.gov.au by **5pm, Friday 6 October 2017**. Please quote Council reference 54634E in any correspondence.

Please note that correspondence submitted to Council on this matter may be open to public inspection without notifying the correspondents. Pre-printed form letters, which have been individually signed will be considered but not formally acknowledged. All persons who lodge a submission are required to declare any relevant political, donations and/or gifts in accordance with Section 147(5) of the Environmental Planning and Assessment Act 1979.

Further Information

For further information, contact Patrick Connor of Council's Planning Environment and Development Group on (02) 4429 3213.

DE17.81 Proposed Submission - Issues Paper: Review of Environmental Planning and Assessment Regulation 2000

HPERM Ref: D17/350165

Group: Planning Environment & Development Group
Section: Development Services

Attachments: 1. Proposed Submission Issues - EP&A Regulation Review [↓](#)

Purpose / Summary

The purpose of this report is to advise Council of the release by the NSW Department of Planning & Environment (DP&E) of an Issues Paper dealing with the *Review of the Environmental Planning and Assessment Regulation 2000* and obtain endorsement to make a submission based on the issues outlined in **Attachment 1**.

Recommendation (Item to be determined under delegated authority)

That Council make a submission to the NSW Department of Planning and Environment on *Review of the Environmental Planning and Assessment Regulation 2000 Issues Paper* based on the issues outlined in **Attachment 1**.

Options

1. Adopt the resolution and make a submission based on **Attachment 1** to the NSW Department of Planning and Environment (DP&E).

Implications: This is the preferred option as it enables Council the opportunity to identify the key areas of the Regulation that could benefit from review, and make suggestions for updating and improving the functionality and efficiency of the Regulation.

2. Make changes to the issues outlined in **Attachment 1** and submit to DP&E for consideration.

Implications: This option will still enable Council the opportunity to identify areas of the Regulation that could benefit from review; however, the implications of any possible changes are unknown and may require closer consideration or refinement.

3. Not make a submission.

Implications: This action is not recommended as it will mean that Council will not provide any input or suggestions into the preliminary review of the Regulation and the opportunity to identify issues for consideration or resolution will be missed.

Background

The *NSW Environmental Planning and Assessment Act 1979* (EP&A Act) is the primary piece of planning legislation in NSW. It first came into effect on 1 September 1980 and has been in force for almost four decades. The EP&A Act is supported by the *NSW*

DE17.81

Environmental Planning and Assessment Regulation 2000 (the Regulation), which is the primary subordinate legislation containing key operational provisions for the NSW planning system.

As part of the NSW Government's ongoing planning reforms, DP&E commenced consultation in 2016 with the aim of improving the EP&A Act, to which Council made a detailed submission. As a result of this consultation, a number of amendments have now been proposed, including:

- Enhancing community participation: establishing a new part of the Act that consolidates community consultation provisions, and requiring decision-makers to give reasons for their decisions
- Completing the strategic planning framework: through local strategic planning statements, up to date Local Environment Plans and more consistent and workable Development Control Plans
- Development pathways: improvements to the various development pathways and preventing the misuse of modifications
- State significant development: better environmental impact assessment and more effective conditions of consent
- Clearer building provisions: simplified and consolidated building provisions, allowing conditions on construction certificates and ensuring consistency with development approvals
- Elevating the role of design: through a new design object in the act, and a Design-Led Planning Strategy
- Improving enforcement: with the introduction of enforceable undertakings in compliance actions.

The NSW Environmental Planning and Assessment Amendment Bill 2017 was introduced into NSW Parliament in October 2017 and will be considered again when Parliament sits in mid-November.

The review of the Regulation follows on from the review of the EP&A Act. As a first step, DP&E have prepared an Issues Paper outlining the key operational provisions of the Regulation and are seeking feedback from stakeholders with regard to known issues and suggestions for updating and improving the functionality of existing provisions.

The Issues Paper is currently on exhibition for eight (8) weeks until 24th November 2017 and can be viewed at:

<http://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/EPA-Regulation-review>

DP&E is seeking feedback on the current Regulation to identify specific areas that are considered to be outdated, overly complex, or inefficient.

Proposed Submission

The Issues Paper was circulated internally to all Groups of Council for comment. The feedback received has identified a number of key areas where the Regulation may be improved, as detailed in **Attachment 1**.

A number of issues are proposed to be raised and covered within Council's submission, including:

- Proposed technology updates
- Proposed changes to public exhibition requirements
- Standardisation of conditions of consent

- Development contributions
- Planning certificates

Further detail on these issues is contained in **Attachment 1**.

Community Engagement

The Issues Paper is currently open for public comment until 24 November 2017.

The feedback received during this period will be used to inform the preparation of a draft Regulation, which is intended to be released for formal public consultation in 2018. As such there will be a further opportunity to review and comment on the detail of the proposed changes to the Regulation.

Policy Implications

There are no immediate policy implications for Council in providing feedback and making a submission on the Issues Paper. However, depending on the outcome of the proposed changes in the draft Regulation review, the potential policy implications for Council could be significant and wide ranging. The policy implications will become clearer once DP&E releases the draft Regulation for review in 2018.

Financial Implications

There are no immediate financial implications for Council in making a submission on the issues paper for the Regulation review, this is being managed within the Strategic Planning budget.

Risk Implications

Should Council resolve not to make a submission on the preliminary consultation phase of the Regulation review, there is a risk that some of the issues outlined in **Attachment 1** may be overlooked and subsequently excluded from the draft Regulation when it released for formal public consultation.

**PROPOSED SUBMISSION – ISSUES PAPER AND PRELIMINARY
CONSULTATION – ENVIRONMENTAL PLANNING AND ASSESSMENT
REGULATION REVIEW**

GENERAL COMMENTS FOR CONSIDERATION.

Council supports the promotion of consistency across the state with regard to the use of standard templates for all Development Control Plans (DCPs), forms and processes, and considers this to be the role of the Department to initiate this process to ensure such consistency is achieved.

Council would like to reiterate the importance of consulting with Local Government with regard to any proposed changes and the implementation thereof, including lead in times, as there is a potential for this to significantly impact on operational productivity and efficiency.

TEMPLATES AND CONSISTENCY

As noted above, the promotion of state-wide consistency in the planning system is supported. In addition to standardised DCPs and State Significant Development/Infrastructure (SSD/SSI) project approvals, it may be prudent to consider broadening the scope to include standardised templates and agreed benchmarks for the following:

- Community Consultation Plans – a draft template and guideline should be provided for review and comment as part of the draft Regulation package.
- Pre-Lodgement Meeting requirements, for example, specified type, size and capital investment value of development, and acceptable standards of plans and documentation required to book a pre-lodgement meeting.

Similarly, it may be beneficial to adopt a standardised approach in the availability of online information for applications under assessment to ensure transparency within the planning system (e.g. standardising the type and availability of documentation made publicly viewable via each local council's Development Application Tracking website).

NOTIFICATION AND FEES

Notification requirements should be reconsidered. Newspaper advertisements are costly and overall readership is declining. Advancements in technology and digital communication now present a wider range of opportunities for online methods of notification that should be able to be utilised and meet legislative provisions.

It is also noted that public exhibition requirements with respect to development assessment will be included in the EP&A Act itself, rather than the Regulation. Currently, these provisions sit within the Regulation, and it is unclear why they are now proposed to be included in the Act.

It may also be prudent to re-evaluate Development Application fees within the current review to reflect actual cost recovery in the current planning environment.

TECHNOLOGY

Council concurs that the provisions need to be updated to reflect advancements in technology, innovation and communication methods, and specifically the implementation of the NSW Planning Portal.

New technologies mean that the majority of communication and information is now digital, and the Regulation needs to reflect this, particularly with regards to electronic lodgement of development applications (which should be mandated to ensure consistency and quality, with a clear set of standards for applicants), distribution of information, correspondence, and so on. Similarly, Part 16 of the Regulation prescribes specific requirements for the maintenance of registers. The mostly digital nature these registers should be recognised, and accommodated within the NSW Planning Portal.

However, it should be acknowledged that not all customers or community members have access to digital technology and there will continue to be a need for traditional correspondence. This is relevant for example, to some sectors of the community that do not have internet access in remote/blackspot locations or due to demographics such as age or computer/internet availability.

CONDITIONS OF CONSENT

The Issues Paper discusses the need for consistency and standardisation across the planning system with regards to SSD/SSI project approvals and the format of DCPs. It is also noted that prescribed conditions already apply with regard to complying development. It may be prudent to also consider a standardised approach to determination notices, format of development consents, and conditions of consent, specifically for other development classes (for example, local development).

Such an approach would promote consistency across local government areas, and reduce complexity and confusion for applicants and developers. Flexibility would still be required, as special conditions will always be needed to address particular circumstances and unique situations relating to localities or more complex applications.

REASONS FOR APPROVAL

The proposal to provide reasons for determination outcomes ensures transparency and will assist with community confidence in planning decisions and in the planning system. In the context of the planning system, this means that applicants or objectors should have a better understanding of how and why a decision was made (e.g. why a development application was approved even though many objections were lodged against it), and how an objector's opinions or views were taken into account or balanced in making a determination.

Under the existing planning legislation, local councils are already obliged to produce a "notice of determination" when a development application is determined (i.e. approved or refused). This notice is given to the applicant and must meet the specific requirements of clause 100 of

the Regulation. This includes detailing the reasons for the refusal (if the application is refused) or reasons for imposing conditions (if the application is approved subject to conditions).

If the legislation change proceeds, there will presumably be specific requirements for the “statement of reasons”. Depending on what is ultimately rolled out, it could be that the statement will need to be tailored to each decision, providing more detail if the development application does not comply with the planning controls or objections have been raised regarding the proposal. Other factors that may influence the detail and length of the statement may include the duration or length of assessment, whether or not expert advice has been obtained about particular issues, and whether there are a number of key facts to be weighed up in making the decision. It is likely that most Councils will have a suite of standard reasons to assist in this regard.

Clarification is required as to what will occur when an officer recommends refusal of a development application, but subsequently the application is approved by the elected Council. The legislation needs to recognise how the ultimate decision of Council was reached and not necessarily how the decision was arrived at.

SPECIFIC PROVISIONS FOR REVIEW

PART 2 ENVIRONMENTAL PLANNING INSTRUMENTS

Council strongly recommends the inclusion of a provision to enable maps associated with EPIs to be updated without necessarily always having to undertake a Planning Proposal (PP) process where they have already been through some form of public consultation process, or are a minor change relating to cadastral updates or land acquisition for infrastructure projects.

An example is the Flood Planning Area Map in the LEP. Council has an ongoing program of preparing floodplain risk management studies and plans for the large number of catchments within the City. These are prepared in accordance with the NSW Government’s Floodplain Management Manual. This process includes comprehensive public consultation with affected landowners. Updating the LEP Flood Planning Area Map then requires the preparation of a PP which results in a significant time delay in updating the maps and takes planning staff away from other more strategic projects. Council is currently preparing PPs to remove the flood planning area and coastal risk planning maps from the LEP to address this issue but it would be preferable to retain these maps within the LEP if there were a simpler and faster process for updating them.

Council requests that a clause similar to 32(3) be included to allow for minor amendments to an LEP such as typographical corrections, updating property descriptions or item descriptions in Schedule 5 Environmental heritage, or other minor changes that do not change the content or interpretation of the LEP.

PART 3 DEVELOPMENT CONTROL PLANS

Consideration should be given to including a clause similar to 32(3) to allow for minor amendments to a DCP such as typographical corrections, updating diagrams, or other minor changes that do not change the content or interpretation of the DCP.

Council would like significant involvement in the process of preparing provisions relating to the proposed standardisation of DCPs through the proposed amendments to the Act. Whilst the Standard format for DCP's would generally be supported, Council would be extremely concerned if standardised provisions were required and there was an attempt made to mandate content.

Council supports notification of DCPs through the Planning Portal. It would also be helpful if members of the public can subscribe to notification of possible changes so they can keep updated.

PART 4 DEVELOPMENT CONTRIBUTIONS

Council would like to see greater flexibility to create a pool of funds to provide infrastructure and facilities as this will enable adjustment of priorities and demand for particular services to respond to changing needs.

Council supports the requirement to have a policy on VPAs outlining standards and procedures as it would increase accountability and transparency. It would also be helpful if guidelines were provided on what could be contained within such a policy to ensure policies are clear and easy to understand.

The indexation of contributions by the Consumer Price Index (CPI) has been severely deficient in keeping up with the actual cost of infrastructure construction and land value. This leaves Council with a large "hole" when budgeting for costs associated with providing essential infrastructure in line with the Contributions Plan. A more appropriate system of indexing would ensure there are no cost overruns and allow for the provision of infrastructure.

The regulations should expand on what forms an "administrative change" that can be made to the Contributions Plan without requiring public exhibition. For example, in Shoalhaven, the Contributions Plan includes a list of properties, including their address and Lot and DP, which are required to pay the full rate of contributions payable at the building approval stage as they did not pay contributions when the subdivision occurred. As such the list of properties needs to be amended regularly, with properties needing to be removed from the list when contributions have been paid. If such a change is required to be exhibited, it adds no real benefit to Council and the wider community, and in fact slows down processes and the Plan contains incorrect information until such times as it is changed.

PART 16C PAPER SUBDIVISIONS (CLAUSES 268Y – 268ZP)

GENERAL COMMENTS - PAPER SUBDIVISIONS

The requirements involved in the process of running a ballot and adopting a development plan are too onerous and act as a major disincentive.

NEWSPAPER NOTICES - PAPER SUBDIVISIONS

Newspaper notices are expensive. An alternative option should be given to write to all directly affected and adjoining landowners and to place an online notice. It should not be necessary

to place a notice in both a local newspaper and a daily newspaper, particularly given the amount of consultation that will be required to secure the requisite level of landowner support. Additionally, Council's now have far more 'reach' through community engagement officers and Facebook profiles. Whilst it is acknowledged that notices could not necessarily be placed on Facebook, current developments could be shared through this medium with links back to the Council's website.

See also specific comments below.

AMENDMENTS TO DEVELOPMENT PLANS - PAPER SUBDIVISIONS

The definition of a 'minor amendment' is too narrow and the definition of a 'major amendment' is too broad. Any amendment deemed to be a major amendment would result in significant delay and expense. This acts as a major disincentive to any organisation considering taking on the role as relevant authority in terms of the paper subdivision provisions. Further specific comments are provided below.

SPECIFIC COMMENTS - PAPER SUBDIVISIONS

Clause	Comments
<p>268ZB Notice of proposed development plans and consent ballots</p> <p>(1) An authority that proposes to adopt a development plan must:</p> <p>(a) not less than 14 days before the ballot papers are issued for the consent ballot, publish a notice that complies with this clause in a local newspaper and a daily newspaper circulating generally in New South Wales, and</p>	<p>This requirement is costly has not demonstrated to add any additional value to the process.</p>
<p>268ZD Voting roll and ballot papers</p> <p>(5) The returning officer must, at least 28 days before the date fixed for the closing of the ballot, send by post or otherwise deliver to every owner entitled to a ballot paper one set of the following material:</p> <p>(a) one ballot paper,</p> <p>(b) a statement as to the place, date and time ...</p> <p>(c) an envelope (the outer envelope) addressed to the returning officer and the reverse side of which is noted or printed with the name and address of the owner and the lots and deposited plan numbers of the land to which the ballot paper relates</p>	<p>Why is it necessary to place the name and address of the owner and the lots and deposited plan numbers on the rear of the outer envelope? Not only does this add complication, it may discourage some people from sending it (e.g. if they have privacy concerns).</p>

Clause	Comments
<p>268ZJ Adoption of development plans</p> <p>(1) A development plan is adopted by an authority if:</p> <p>(a) ...</p> <p>(b) the authority causes a notice of the adoption of the plan to be published in a local newspaper and a daily newspaper circulating generally in New South Wales within 28 days after the decision of the authority to adopt the plan.</p>	<p>This requirement is excessive. At most, it should be sufficient to place a notice in a local newspaper, as is the case for DCPs.</p>
<p>(3) A development plan that is adopted by an authority is taken to be in force in relation to the subdivision land for the purposes of clause 4 (5) of Schedule 5 to the Act.</p>	<p>Should it commence from the date the notice is placed in the newspaper as per DCPs, i.e. <i>on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice?</i></p>
<p>268ZL Additional requirements for amendments other than minor amendments</p> <p>(1) An authority that proposes to adopt a major amendment to a development plan:</p> <p>(a) ...</p> <p>(b) must not adopt the proposed amendment unless at least 60% of the total owners of the land subject to the development plan, and the owners of at least 60% of the total area of that land, have consented to the amendment.</p>	<p>Insert "number of" total owners</p>
<p>(3) An authority that proposes to adopt an amendment to a development plan that is not a major amendment or a minor amendment must:</p> <p>(a) publish a notice that complies with subclause (4) in a local newspaper and a daily newspaper circulating generally in New South Wales, and</p>	<p>See comments on 268ZJ (1).</p>
<p>(5) In this clause:</p> <p>minor amendment means an amendment to a development plan that:</p> <p>(a) corrects an error or misdescription, or</p> <p>(b) consists of a minor realignment of the boundaries of lots in the proposed plan of subdivision that will not create additional lots or the opportunity for additional dwellings, or</p> <p>(c) alters to a minor extent the location of roads or services to be provided, or</p>	<p>(5)(d) makes this definition of minor amendment very narrow, which in turn means the definition of a major amendment is very broad. Given that any major amendment essentially requires the ballot process to be repeated, there is a high level of risk. Either the requirements for a major amendment should be reduced or the definition of a minor amendment should be broadened. The 5% threshold is too low and could potentially be exceeded as a result of inflation alone. This should be expressed in terms of real dollars to negate the effect of inflation, and be increased to at least 10%.</p>

Clause	Comments
(d) varies the proportion of costs to be borne by one or more owners of the land by not more than 5% in any particular case.	

SCHEDULE 4 PLANNING CERTIFICATES

Council has consistently suggested that there should only be a single planning certificate containing all relevant information relating to a property rather than a Part 2 certificate with an optional Part 5. Often information of interest, e.g. road proposals, strategic plans, DCP amendments, and the like are located in Part 5, but the majority of prospective purchasers only obtain a Part 2 as this part is the only legally required part for a contract of sale and purchase.

To date during 2017, Council has prepared 3447 Part 2 certificates and only 717 full certificates (Part 2 and Part 5) certificates. Prior to 2015, rural dwelling entitlement information was included in part 5. From 2015 onwards, Council created a separate dwelling entitlement certificate. As demonstrated in the table below, the removal of this information resulted in a reduction of full certificates.

Year	Part 2 Certificates	Full Certificates
2014	3970	3850
2016	1237	945

A single certificate could contain a mandated part and a non-mandated part for discretionary information.

A standard template and formatting would be beneficial so that all certificates look and read the same wherever you are in the State. Such a template should include explanatory information so they can be easily interpreted by the community.

Council for the most part provides electronic certificates which are currently emailed to the applicant and is supportive of providing certificates electronically via the NSW Planning Portal, subject to system's compatibility etc. However, Council would still need the ability to check certificates for accuracy as Council has issues with data integrity in our system.

DE17.82 **Woncor Avenue Nowra Hill - Proponent Initiated Planning Proposal**

HPERM Ref: D17/340215

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Proponent's Concept Plan for a Highway Service Centre [↓](#)
 2. Preliminary Advice from Roads and Maritime Services [↓](#)

Purpose / Summary

Detail a proponent initiated Planning Proposal (PP) that has been received to permit a proposed highway service centre on a site adjacent to the Princes Highway at Nowra Hill and obtain direction in this regard.

Recommendation (Item to be determined under delegated authority)

That:

1. Council resolve not to proceed with a Planning Proposal to permit a highway service centre at Lot 2 DP 1154597, Woncor Avenue Nowra Hill, for the following reasons:
 - a. The proposal is not the result of any local, regional or state strategic plan or study; and
 - b. The proposal will draw commercial activity and investment away from existing employment lands precincts and is inconsistent with the Nowra-Bomaderry Structure Plan; and
 - c. The proponent has not satisfactorily demonstrated the need for the facility in this location; and
 - d. The proposal is inconsistent with part 4 of Council's Planning Proposal (Rezoning) Guidelines and would set an adverse precedent if supported; and
 - e. The RMS has raised a number of significant concerns including that this proposal is not compatible with the grade-separated interchange required for the Shaolin Temple tourist development; and that the proposal would result in significant delays and road safety issues, particularly for the right turn out of BTU Road.
2. Council advise the proponent and those who were notified of the proposal of this resolution.

Options

1. Resolve not to proceed with the PP.

Implications: The PP would not be supported by Council. This is the preferred option and would be consistent with the Nowra-Bomaderry Structure Plan (NBSP) and other relevant considerations that are detailed in the report.

The proponent would however have the option of pursuing a Pre-Gateway review and having the decision reviewed by the Joint Regional Planning Proposal (JRPP). Should

this occur Council Staff would detail Councils reasons for rejection of the proposal before the JRPP if this were to occur.

2. Resolve to proceed with the PP as submitted.

Implications: The PP would be sent to the NSW Department of Planning & Environment (DP&E) with a request for a Gateway determination. If DP&E were to support the proposal, Council would be committed to undertake the PP process and may find it difficult to abandon the proposal at a later stage. The ultimate outcome could be an inappropriate development on the site that would divert economic activity and investment from other centres. This option is not recommended.

3. Resolve to proceed with the PP with amendments.

Implications: Council staff have considered possible amendments to the proposal to achieve a satisfactory planning outcome. It has been concluded that the site is fundamentally unsuitable for commercial development because of its isolation from existing commercial centres and the complication of the BTU Road and Forest Road intersections with the Princes Highway. Consequently, no alternative version of the PP is recommended.

Background

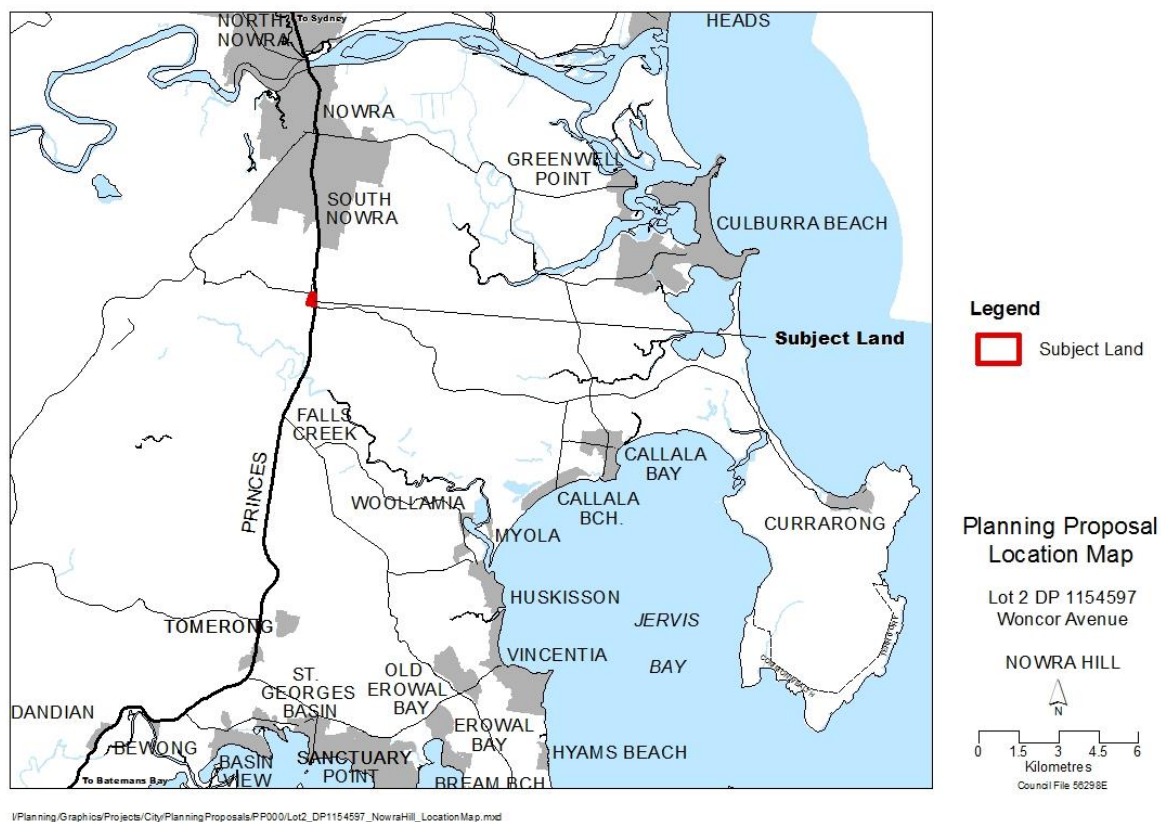
The Site

The subject land to which this proponent initiated PP relates is Lot 2 DP1154597 Woncor Avenue, Nowra Hill. The land is located adjacent to the Princes Highway between the intersections of BTU Road and Forest Road with the Princes Highway. The subject land has an overall area of 7.2 hectares, is largely cleared and maintained as pasture. There are no improvements on the site.

Woncor Avenue is essentially part of a large lot rural residential/lifestyle subdivision that contains existing dwellings and some limited other uses (e.g. vet clinic, boarding kennels etc.).

Maps showing the subject land and its location are provided below:

Subject Land – Location



I:\Planning\Graphics\Projects\City\Planning Proposals\PP000\Lot2_DP1154597_NowraHill_LocationMap.mxd

Subject Land – Lot 2 DP1154597



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The Proponent's PP

The proponent's PP was submitted by SET Consultants Pty Ltd (on behalf of owner Recep Haliloglu) and seeks to apply an additional permitted uses provision to the subject land. The effect of this provision would mean that a 'highway service centre' could potentially be approved on the subject land without the need for a change in the land use zone.

The proponent's submission includes a draft PP, economic assessment report, traffic assessment report and a conceptual development plan for a highway service centre on the subject land.

The proponent's justification for the PP relates to the needs of heavy vehicle drivers travelling along the Princes Highway. The documentation suggests that permitting a highway service centre on this site would allow the establishment of private infrastructure that would provide rest facilities for road users in accordance with NSW Roads & Maritime Service (RMS) requirement. It has been suggested that an additional permitted use provision is the only way of enabling the requested use given that 'highway service centres' are a prohibited use in all zones in Shoalhaven LEP 2014

The proponent's PP is available for viewing on Council's website at:

<https://shoalhaven.nsw.gov.au/Planning-and-Building/Strategic-planning/Planning-Proposals>

Hard copies of the proponent's documentation will be available for review in the Councillors Room prior to the meeting and the preliminary concept plan from the proponent's PP is provided as **Attachment 1**.

Strategic Planning Overview

The following is an overview of relevant strategic planning documents that are relevant to the proposal.

- *Shoalhaven LEP 2014*

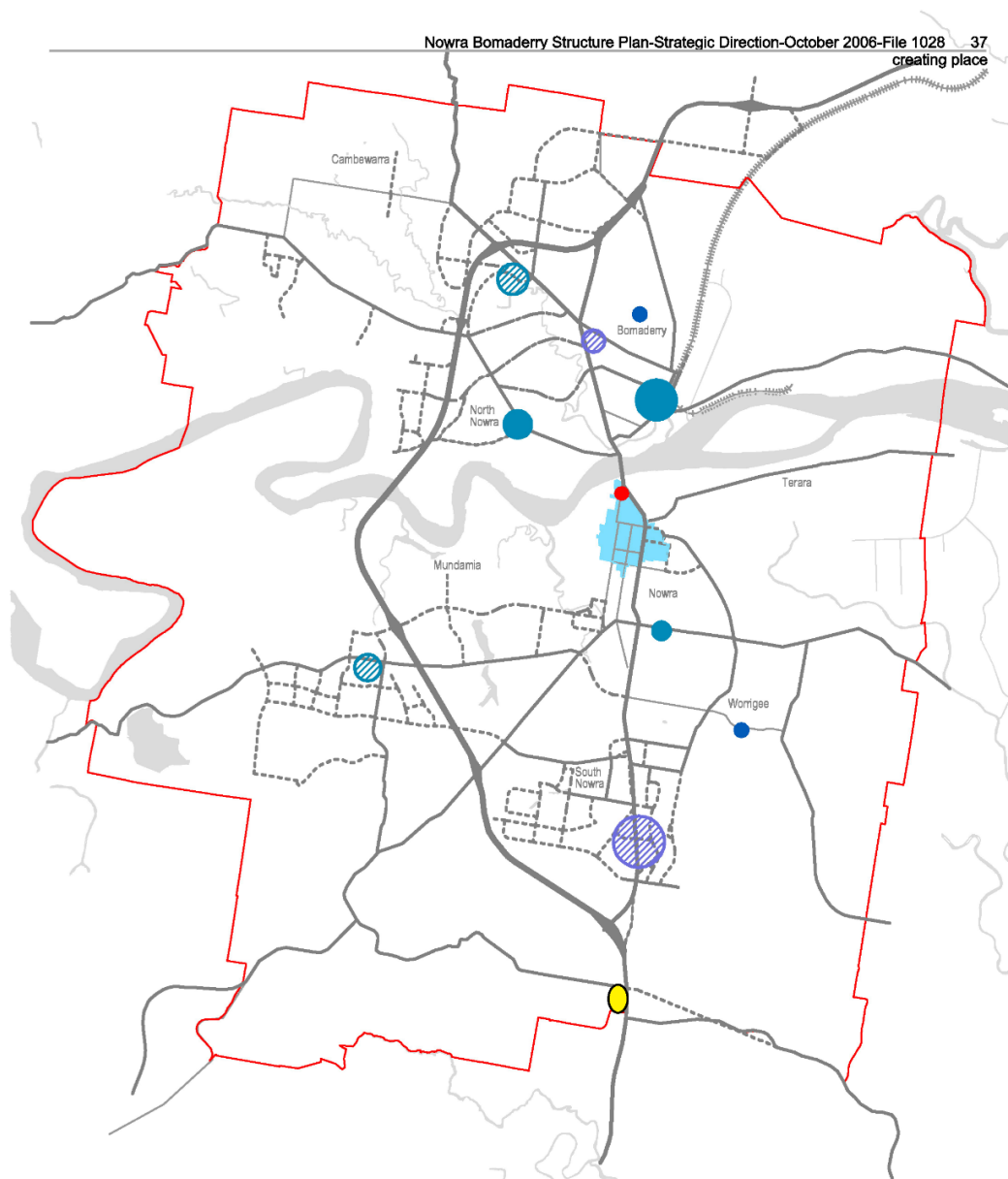
The subject land is currently zoned RU2 Rural Landscape under Shoalhaven LEP2014. The objectives of this zone relate to encouraging primary industry production, maintaining the rural landscape character of the land and providing for compatible land uses, including extensive agriculture.

Under the RU2 zone, 'highway service centres' are a prohibited land use. It is noted that during the construction of the Shoalhaven LEP 2014 that Council consciously did not make this use permissible in any zone. It was noted at the time that if a use of this nature could be justified in a particular area or location then it would be considered on its merits.

- *Nowra-Bomaderry Structure Plan (NBSP)*

The NBSP was prepared by Council and endorsed by the NSW Government in 2008. The subject land is located within the NBSP area.

The NBSP aims to facilitate sustainable living, economic vitality and community wellbeing. It identifies areas for commercial and industrial expansion as shown in Maps 4.1 and 4.2 below.



Proposed Commercial Areas



Nowra Bomaderry Structure Plan

Legend

- Structure Plan Boundary
- Nowra CBD
- Neighbourhood Centre
- Proposed Neighbourhood Centre
- Local Centre
- Proposed Bulky Goods Centre
- Proposed Convention Centre

SUBJECT LAND

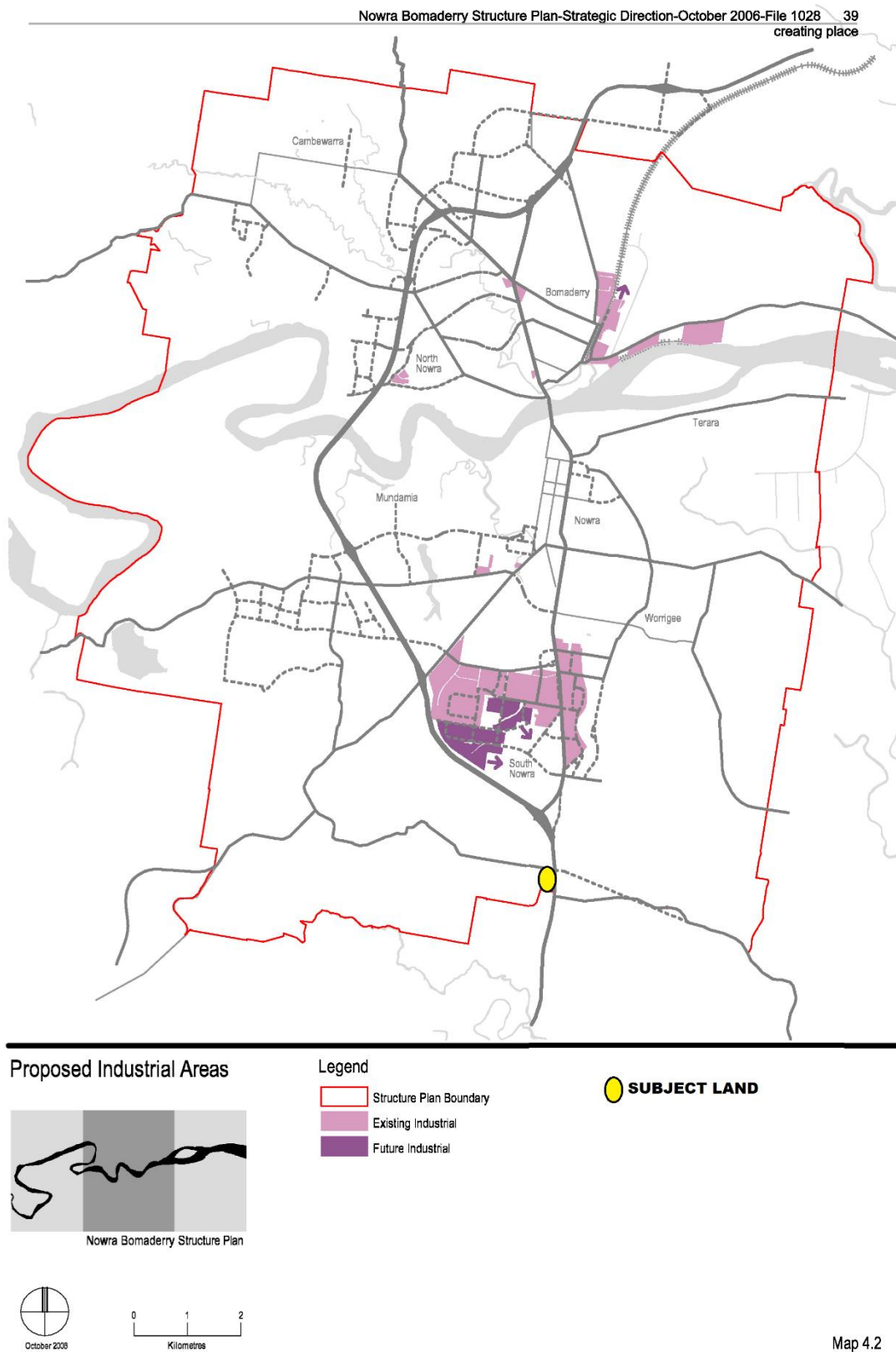


October 2006



Map 4.1

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The Shoalhaven Growth Management Strategy (GMS) prepared by Council and finalised in 2014 reflects the NBSP in relation to the subject land. Both the GMS and NBSP did not identify any need for additional commercial uses in this location.

The former Roads & Traffic Authority (RTA) completed a strategic study of vehicle rest areas in 2010. This study considered the Princes Highway from Bulli to the Victorian border. It found a deficiency in rest areas southbound between Nowra and Batemans Bay and a northbound between Batemans Bay and Wollongong. It proposed an upgrade of the Jerrawangla and Bewong rest areas to address these deficiencies.

Since the publication of that study, upgrade work has also been undertaken for the service station on the Princes Highway, Tomerong (The Log Cabin). These works provide additional truck parking and north and south bound access to the site from the Princes Highway.

It is also noted that the RMS has recently commenced work on a Network Strategy for Nowra-Bomaderry which will consider amongst other things key road networks in the area.

- *Planning Proposal (Rezoning) Guidelines*

These guidelines detail the circumstances when a PP is likely to be supported by Council and provide a range of detail on the PP process. The guidelines were adopted by Council in January 2016 and note that Council is likely to support a PP in the following circumstances:

- Proposed amendment is supported by a Council or State Government strategy of plan.
- Clear zoning anomaly exists on site
- Proposed amendment is considered to be minor in nature and has been sufficiently justified to Council.

The guidelines also note that proponents should have pre-lodgement dialogue with Council staff before formally lodging a PP.

The guidelines make it clear that PP's that are not supported by a strategy or plan and are considered speculative will generally not be supported by Council.

Pre-lodgement engagement with the proponent in regard to this matter took place during 2016 and Council staff advised of a range of concerns including inconsistency with strategy.

NSW Roads & Maritime Services (RMS) Comments

Given the nature of the PP, the location adjacent to the Princes Highway, potential impact on the highway, comment was sought from RMS on the proposal.

It is also noted in the proponents PP documentation that they also discussed the proposal with the RMS and they advised that: "notwithstanding the provision of rest areas at Bewong and Mount Ousley, they would generally support the provision of heavy vehicle facilities at a new highway service centre".

The advice from the RMS dated 18 October 2017 is provided as **Attachment 2**. The advice raises a number of concerns, as summarised below.

- The footprint of the required grade-separated interchange (for the Shaolin Temple tourist development) at Forest Road could have significant impacts on the subject property, beyond affecting the proposed direct off ramp.
- RMS is concerned with the suitability of the junction of the Princes Highway and BTU Road to cater for the increased demands associated with this development. RMS is concerned the traffic volumes would result in significant delays, particularly for the right turn out of the BTU Road and that these delays could lead to road safety issues.
- Concerns about a number of assumptions used in the proponent's traffic modelling.

- Concerns about the constructability of the required direct off ramp or left turn slip lane.

Assessment of Proponent's PP

The NSW Government's Guide to Preparing Planning Proposals provides an assessment framework for PPs. This framework requires the planning authority (Council) to consider a number of questions in determining the merit of a PP. These are considered below:

Q1. Is the Planning Proposal a result of any strategic study or report?

The proposal is not the result of a strategic study or report. Council's GMS and the NBSP do not support the provision of additional commercial or industrial floor space in this location. The strategic planning undertaken to date by RMS has not identified this site as having particular merit or need for providing a service centre/rest area for heavy vehicles. Thus there appears to be no basis for the proposal in any strategic plan or report.

Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The proponent's submission seeks to justify the PP and the overall proposed use by arguing that it meets a broader need for improved amenities for heavy vehicle drivers passing through the City.

However, given the number of existing facilities located on the Highway in close proximity to this site, this objective can be achieved through existing service station sites and rest areas without drawing commercial activity away from existing centres.

Q3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The Illawarra-Shoalhaven Regional Plan (ISRP) is the relevant regional strategy. The ISRP does not identify the Princes Highway as a key freight route, nor does it recommend a focus on this type of development. Rather, it envisages the focusing of development around existing centres, which is not the case for this proposal. There is no relevant sub-regional or district plan for this area.

Q4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

Council's GMS and the NBSP do not support the provision of commercial or industrial floor space in this location. As such the proposal is considered to be inconsistent with existing local strategies.

Q5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The provisions of a number of State Environmental Planning Policies would need to be investigated in detail as a part of the specialist studies stage of the proposal if supported. However given that the proposal is inconsistent with the GMS and the NBSP, it will be difficult to justify/support.

Q6. Is the Planning Proposal consistent with applicable Ministerial Directions?

The PP is considered to be inconsistent with Ministerial Direction 1.1 Business and Industrial Zones. This direction requires that “proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the NSW Department of Planning”. The proposed additional permitted use will create an employment area that is not identified in any strategy approved by Council or the NSW Department of Planning & Environment.

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

This would need to be investigated in detail as a part of the specialist studies stage of the proposal if supported. However given that the proposal is inconsistent with the GMS and the NBSP, it will be difficult to justify/support.

Q8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

This would need to be investigated as a part of the specialist studies stage of the proposal. It is considered however, that the proposal should not proceed to this stage because it is fundamentally inconsistent with the GMS and the NBSP.

Q9. Has the Planning Proposal adequately addressed any social and economic effects?

The proponent has provided an Economic Impact Assessment (EIA) as part of their submission. This assessment concluded that there is a need for the proposal for four reasons, which are discussed and commented on in the table below.

Proponent's EIA Conclusion	Comment
There are no similar high service centres meeting RMS guidelines along the Princes Highway South of Sydney to Eastern Melbourne.	There is no plan or strategy that identifies a need for this type of facility to combat driver fatigue. The Princes Highway is not the principle freight route from Sydney to Melbourne. The 2010 RMS review of the Princes Highway did not find a need for this type of service centre for this route. If this type of facility is required for the Princes Highway, it should follow a strategic study of the whole length of the Highway to determine the optimum locations along its total length. In the absence of such a study, there is no basis to conclude that there is a broader need for this type of facility on this route.
All of South Nowra's Princes Highway service stations are located on the southbound side of the highway and the proposed highway service centre will be safely accessible by northbound and southbound travellers.	There is a service station located at Tomerong which is on the western (northbound) side of the Highway. This service station is safely accessible by northbound and southbound travellers and has bowsters and parking for B-doubles. It also has provision for a food and drink premises and convenience store.
The development will generate net community benefits through its contribution	There is no plan or strategy that identifies a need for this type of facility to combat driver

<p>to road safety for the motoring public and especially heavy vehicle drivers.</p>	<p>fatigue. The Princes Highway is not the principle freight route from Sydney to Melbourne. The 2010 RMS review of the Princes Highway did not find a need for this type of service centre for this route. The supposed community benefit will only result if there is a need and this request does not demonstrate that such a need exists.</p> <p>The RMS in their comments have also noted concerns regarding potential impact on functioning of the Prince Highway/BTU Road intersection.</p>
<p>Its potential economic impacts will not threaten the viability or level of service presently enjoyed by residents and visitors but it will enhance that level of service by providing a facility not available in the region. Any potential impacts are likely to be short term and would be made good through the provision of a new and multifunctional facility.</p>	<p>It is unclear how the development of a multifunction facility will “make good” on the potential for the development to pull economic activity and investment from established commercial centres. The proponent needs to demonstrate that there is a regional need for this type of facility on the Highway that cannot be met by existing centres. Such a need has not been identified by RMS or the DP&E in any strategic study or plan.</p> <p>If there is not a regional need for through traffic then the patrons of this facility will be drawn from existing commercial centres, which is contrary to the ISRP, NBSP and GMS.</p>

In conclusion, in terms of economic impacts, the proposal is likely to result in the diversion of commercial activity and investment to this site from existing centres, and is unjustified. There is no established need for this proposal in any current strategic planning document from Council, DP&E or the RMS.

Q10. Is there adequate public infrastructure for the planning proposal?

This would need to be investigated as a part of the specialist studies stage of the proposal should it proceed. It is considered however, that the proposal should not proceed to this stage because it is inconsistent with the GMS and the NBSP. It has been noted that the site is awkwardly located at an intersection of the Princes Highway with BTU Road and Forest Road. These intersections are proposed to be grade-separated in the long term and it is considered that this outcome could be hindered or complicated by the proposal.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the gateway determination?

Council has undertaken preliminary engagement with RMS. Their advice is provided as **Attachment 2**. This advice raised a number of concerns and technical matters for consideration if the proposal were to progress to Gateway. No commentary was provided in support of the proponent’s claim that this development is needed to service the highway on a regional level.

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Conclusion

Consistent with the commentary provided in the report it recommended that Council not support or resolve to proceed with the PP to permit a highway service centre in this location given:

- It has not resulted from any local, regional or state strategic plan or study;
- Will draw commercial activity and investment away from existing employment lands precincts and is inconsistent with the NBSP;
- Is inconsistent with Council's Planning Proposal (Rezoning) Guidelines and would set an adverse precedent if supported;
- RMS has raised a number of significant concerns; and
- The proponent has not satisfactorily demonstrated the need for the facility in this location.

Community Engagement

Upon receipt of the proponent's PP the surrounding landowners and the Nowra Business Chamber were notified in writing. At the time of writing, Council was awaiting feedback from the Chamber. Should a submission be received prior to the Council meeting it will be provided to Councillors.

One submission was received from a local truck business operator supporting the proposal. It is considered however, that the increased flexibility that would be provided to local businesses does not warrant the impacts the proposal would have on existing commercial centres nor does it justify the proposal's inconsistencies with the GMS and NBSP.

Policy Implications

The PP is inconsistent with the adopted NBSP and the GMS. Council's adopted Planning Proposal (Rezoning) Guidelines provide that Council will generally not support significant proposals that are inconsistent with these plans. If Council were to support this PP it could further undermine Council's strategic direction for Nowra-Bomaderry, and create an adverse precedent that would change the expectations of other rural landowners in the City.

It is recommended that Council's current policy position expressed in these plans and guidelines be upheld and PP not be supported.

Financial Implications

If Council was to support the PP, it would be on a 100% cost recovery basis, to be funded by the proponent. Infrastructure requirements for the proposal could result in an increased future cost for Council and/or the RMS depending on the implications of the proposal for nearby roads.

PRELIMINARY



<p>VERVE PROFESSIONAL SERVICES</p> <p>1700 80 00 00 • 07 43 64 10 00 • 08 00 10 00 00</p>	<p>Commercial / industrial / retail</p> <p>Fast food restaurant design</p> <p>Travel centre / service stations</p> <p>Project concept to completion</p>		<p>Proposed Highway Service Centre Lot 2 Wongor Avenue, South Nowra</p>		<p>Site Concept Plan Option 4</p>
	<p>1700 80 00 00</p>	<p>07 43 64 10 00</p>	<p>08 00 10 00 00</p>	<p>16090-SK07</p>	<p>P3</p>

Our Ref: STH15/00228
Your Ref: 56298E
Contact: Chris Millet 4221 2570



18 October 2017

Grant Rokobauer
Shoalhaven City Council
BY EMAIL: council@shoalhaven.nsw.gov.au

**PLANNING PROPOSAL – LOT 2 DP 1154597, WONCOR AVENUE, NOWRA HILL –
PROPOSED HIGHWAY SERVICE CENTRE**

Dear Grant

Roads and Maritime Services (RMS) refers to your email dated 4 September 2017 regarding the subject planning proposal.

RMS has reviewed the proposal and has a number of concerns. These are detailed below.

Shaolin Temple

RMS notes the Shaolin Tourist development proposal, which would access the Princes Highway via Forest Road, has been approved by the Department of Planning and Environment (DP&E). The DP&E reference is MP06_0135. The approval has been conditioned to construct a grade separated interchange at the junction of the Princes Highway and Forest Road (refer to Conditions 23, 24 and 26). As the subject property is located directly west of this junction, the required interchange is likely to impact on the subject property.

RMS believes the footprint of an interchange at Forest Road could have significant impacts on the subject property, beyond affecting the proposed direct off ramp. This issue needs to be considered and addressed.

Traffic Assessment

RMS is concerned with the suitability of the junction of the Princes Highway and BTU Road to cater for the increased demands associated with this development. RMS is concerned the traffic volumes would result in significant delays, particularly for the right turn out of the BTU Road and that these delays could lead to road safety issues.

RMS notes the SIDRA assessment relies on 2013 traffic volumes, a compound growth rate of 1% per annum as well as seasonality factors of 106.7% and 105.2%. These assumptions need to be justified. Furthermore, RMS believes the base SIDRA model needs to be calibrated against observed queues and delays during AM and PM peaks as well as the recreational peak.

Roads & Maritime Services

Level 4, Southern Regional Office, 90 Crown Street, Wollongong NSW 2500 | PO Box 477 Wollongong East NSW 2520
T 02 4221 2460 | F 02 4221 2777 | www.rmservices.nsw.gov.au |

RMS has concerns with the traffic generation rates used in the assessment. RMS is unclear how the 59 trips per 100m² for the service station and 162 trips per hour for the drive-thru have been derived from the RTA Guide to Traffic Generating Developments (2002). This needs to be clarified. RMS notes the rate used for the non drive-thru food and drink outlets is from the Institute of Transportation Engineers Trip Generation Rates 8th Edition (2008). RMS highlights this is a United States of America document and notes the rates used produce less than 20 trips from over 500m² of floor area compared to the 121.5 trips from 338.2m² floor area for the drive-thru facility. The appropriateness of these rates needs to be justified.

RMS notes the distributions to and from the site assume 90% northbound traffic and 10% southbound. RMS believes the distributions will depend on the attractiveness of the facilities at the site, particularly the food and drink outlets. These could be attractive to southbound traffic because they are different to the options for southbound traffic or drivers choose this site for other reasons (amenity, later decision etc). RMS does not believe it is appropriate to rely on such a high distribution for northbound.

Electronic copies of updated SIDRA modelling would need to be provided to RMS for verification.

Constructability

RMS notes the proposal identifies the need for either a direct off ramp or a left turn slip lane. While the nature of the arrangements would first need to consider the Shaolin Temple Interchange and the above traffic generation comments, to ensure the works are constructible, three dimensional strategic designs would need to be provided prior to any LEP amendment. These designs would need to show property boundaries.

Please note RMS has not yet considered the internal arrangements proposed for the site.

If you have any questions please contact myself on 4221 2570.

Yours faithfully



Chris Millet
Manager Land Use
Southern Region

Roads & Maritime Services

Level 4, Southern Regional Office, 90 Crown Street, Wollongong NSW 2500 | PO Box 477 Wollongong East NSW 2520
T 02 4221 2460 | F 02 4221 2777 | www.rmservices.nsw.gov.au |

DE17.83 Applications (multiple) to Modify Development Consents – Release of Easement for Carparking over Lot 1 DP 785956 & affecting Lot 4 DP785956 Island Point Road, St Georges Basin

DA. No: DS17/1147

HPERM Ref: D17/267465

Group: Planning Environment & Development Group
Section: Development Services

DA. No's: DS16/1375, DS16/1499, DS16/1500, DS16/1501, DS17/1147

Description of Development: Modifications to consents to enable release of an easement for car parking purposes associated with the Cooe Hotel.

Owner: Bovalu Pty Limited

Applicant: John Wilmott, "Your Urban Design"

Notification Dates: 20 September – 5 October 2017

No. of Submissions: Nil

Purpose / Reason for consideration by Council

The 32.2% variation to Shoalhaven Development Control Plan 2014 (SDCP14), Chapter G21 exceeds the delegated authority of Council staff.

Recommendation (Item to be determined under delegated authority)

That the Development Committee

1. Support the 32.2% variation to the car parking requirements; and
2. Refer the modification applications back to staff for determination.

Options

1. Recommended: approve the 32.2% variation to the car parking requirements for the hotel (characterised as *Pub & Registered Clubs* under the Shoalhaven Local Environmental Plan 2014 (SLEP14)). This is a variation to the requirements of section 5.1 *Car Parking Schedule* of SDCP14, Chapter G21 *Car Parking & Traffic* of Council's SDCP14.

Implications: Modifications to the affected development approvals could be determined, which will permit the release of the 'Easement for Car parking' on Lot 4 DP 785956. In doing so, the applications may be perceived as a precedent for significant variations to the car parking schedule in the SDCP14. Accordingly, for licensed premises, a case

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must be made having regard to the particular circumstances but also appreciating that over the passage of time, the way that customers patronise licenced premise has changed as a result of changes to liquor laws and drink driving campaigns.

2. Not approve the variation to the car parking requirements.

Implications: The development of Lot 4 could still proceed however, the easement would be retained on the land. This would mean that the proposed subdivision development that triggered the modification applications for the Cooee Hotel would require some adjustment.

Background

Subject Land



Figure 1: Location Map **Cooee Hotel** (RATU over adjoining land)

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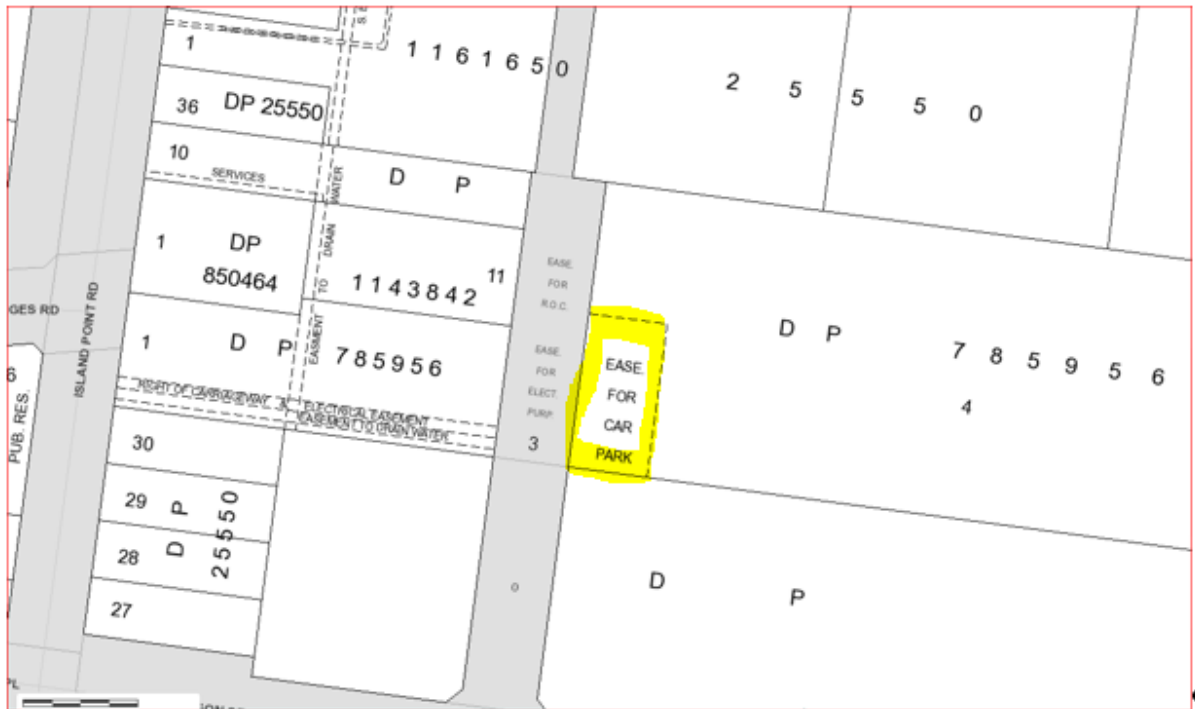


Figure 2: Subject land with location of easement

No. 124 Island Point Rd, St Georges Basin, Lot 1 DP 785956 and 'Easement for Car parking' on adjacent Lot 4 DP 785956

Proposed Development

The applicant is seeking to remove the 'Easement for Car parking' on Lot 4 DP 785956 that benefits the Cooeee Hotel, which is located on Lot 1 DP 785756 as shown in Figure 2 above. Chapter N23 *St Georges Basin Village Centre*, of the SDCP14 requires alternative arrangements to be made (see extract from the SDCP14 below). As there are a number of approvals that refer to car parking and / or the easement, these also require modification. The modifications must be resolved (i.e. approved) before the easement can be released by Council:

From the SDCP14:

"P6 Onsite car parking is to be provided to meet the needs of future development.

*A6.5 The easement for car parking over Lot 4 DP785956 shall remain in favour of the Hotel development on Lot 1 DP 785956 (124 Island Point Rd) **unless a satisfactory alternative is approved or the development consent condition for the Hotel is amended by Council.**"*

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The affected approvals and conditions are detailed in the following table 1 below.

Table 1 Affected Development Approvals for the Cooee Hotel

Current Application	Existing consents (BA or DA)	Development	Condition/s to be varied/deleted	Current proposal Modification sought
DS16/1375 (30/8/16)	DA85/0252	Single Storey Tavern with 1 st Floor Manager's Residence	<p>Condition no. 8 – <i>"In accordance with Council's recently adopted carparking code for taverns which requires 1 space per 3.5sqm of licenced floor area provision shall be made for 82 car parking spaces. The carpark and driveway areas shall be linemarked in accordance with Council's Car Parking code. Council will allow 29 spaces to be provided as a grass overflow on adjoin land to the north. Details as shown in the attached sketch to be included with the Building Application.</i></p> <p>The "attached sketch" denoted 29 spaces being provided on adjoining land – in the area of the RATU.</p>	Modify condition to reflect current car parking arrangements, i.e. 39 car parking spaces and 1 car parking space dedicated for use of Bottleshop customers
DS16/1500 (16/11/16)	BA89/2216	Brick/Fibro Dwelling	<p>Condition 15 – <i>"The applicant is to relocate five (5) spaces for carparking to the adjoining property and cause the necessary adjustments to be made to the s88B of the conveyancing Act particulars to allow such carparking spaces t be used by the tavern. Such amended subdivision is to be submitted prior to occupation of the tavern."</i></p>	Delete condition
DS16/1499 (16/11/16)	DA90/2031 amended 18/2/1991	Cool Room & Bottle Shop Extension	<p>Condition 5 – <i>"As the proposal will result in the loss of two (2) carparking spaces, provision shall be</i></p>	Delete condition

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			<i>made at the rear of the land for an additional two (2) spaces. The location of these spaces shall be shown on the plans submitted with the Building Application for the approval of the City Planner."</i>	
DS16/1501 (16/11/16)	BA91/0124	Commercial Extensions (Extend Bottleshop)	<p>Condition 4 "As the proposal will result in a loss of two (2) carparking spaces, provision shall be made at the rear of the land for an additional two (2) spaces.</p> <p>Condition 5 "an overflow carparking area shall be provided as indicated on the approved plan.</p>	Delete conditions
DS17/1147 (21/4/17)	DA04/1283 ((DS04/1341))	Extensions to Existing Tavern Verandah	<p>Condition 11 "In accordance with Council's Development Control Plan DCP18 Car Parking Code a total of seventy (70) car parking spaces shall be provided i.e. 41 onsite and a further 29 spaces on the grass overflow area at the rear. Two spaces shall be dedicated and appropriately marked for disabled parking."</p>	Modify condition to reflect current car parking arrangements, i.e. 39 car parking spaces and 1 car parking space dedicated for use of Bottleshop customers

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Car parking

Current car parking provisions for the Cooe Hotel, 124 Island Point Rd, St Georges Basin, Lot 1 DP 785956 consist of:

- 39 car parking spaces and 1 additional car parking space identified for use of bottleshop patrons located on the hotel site (lot 1); and
- an 'Easement for Car parking', 21m wide over Lot 4 DP 785956 - benefitting Lot 1 DP 785956 (hotel).

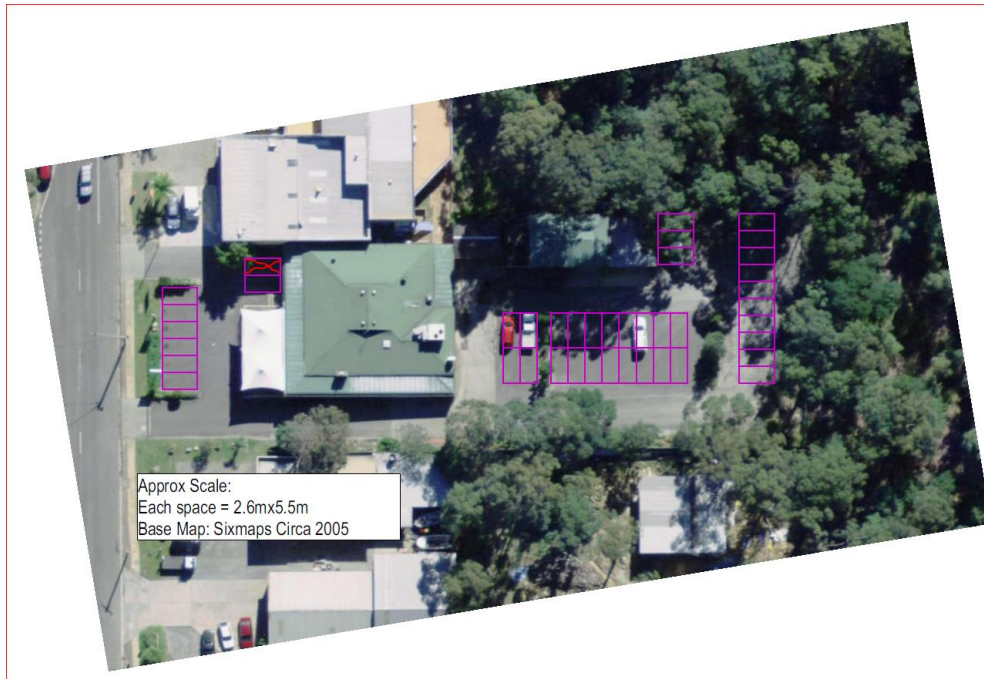


Figure 3: Existing car parking spaces at the Cooe Hotel (Lot 1)

The car parking space that has been 'crossed out' cannot be used for car parking (site inspection 3/3/17). The adjoining car parking space is for the use of bottleshop patrons.

History

The reason for the request to release the car parking restriction is that another development proposal is affected by the easement.

The applicant has also lodged an application (DS15/1515) to modify the development consent for a subdivision, referenced number - SF9847, which was originally approved on 14 August 2007, and has already been modified multiple times:

1. DS09/1478 – 29 October 2010;
2. DS08/1543 – 15 December 2008;
3. DS08/1438 – 25 September 2008;
4. DS08/1314 - 22 July 2008; and
5. DS07/1414 – 12 October 2007 & 12 November 2007.

SF9847 relates to Lots 68 & 29 The Old Wool Road and Lot 4 DP785956 Island Point Road St Georges Basin, which approved the subdivision of these 3 lots to create 11 lots.

DS09/1478, the currently approved plan (reference:4006V9) dated August 2010 is reproduced below.

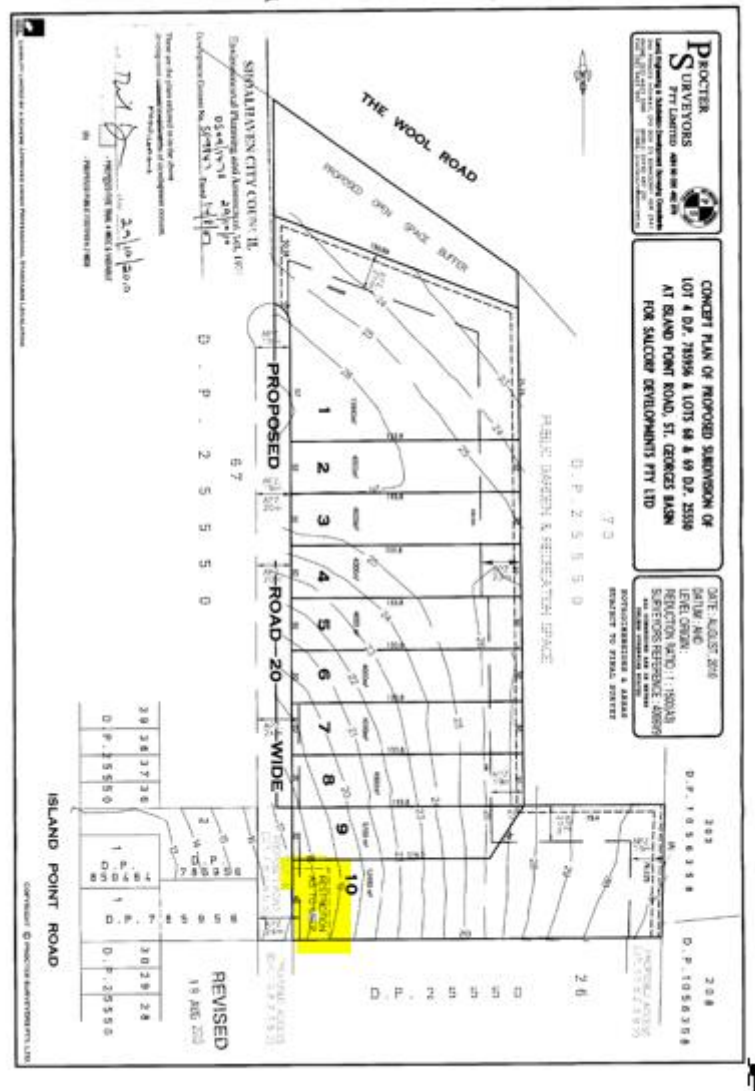


Figure 4 - Current approved plan of subdivision

DS15/1515 (which amends the subdivision shown above)

The modification DS15/1515 to SF9847 was lodged on 23 December 2015, with additional information submitted to Council on 24 August 2016 and the multiple s96 applications lodged over the adjoining Cooee Hotel land, to facilitate the removal of the ratu.

For the 11 lot subdivision to proceed (refer to Figure 5), the applicant has requested the removal of the restriction for parking over the 'Cooee land', and submitted the related modification applications to the Cooee Hotel consents.

Figure 5 overleaf, is the 'Concept plan of proposed subdivision modification of development consent' by ESG dated, 1 December 2016. The application for modification is changing the subdivision layout. However, the open space as originally nominated is retained and the residential lots are recast in an alternative design. The proposal remains a subdivision of land albeit it is now for 11 lots. Figures 4 and 5 respectively illustrate the current approved layout and the proposed layout.

This modification application is currently under assessment. If the car parking restriction is not removed from the land, in favour of the Cooee Hotel, the subdivision as submitted will not

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be able to be supported in its current design. Council is still to complete its assessment of the subdivision application however, this is contingent on the resolution of the other modification applications.



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Issues

Car Parking

Car parking for the hotel does not currently comply with existing approvals or the provisions of 5.1 *Car Parking Schedule, Pubs & Licensed Clubs* of SDCP14 Chapter G21 *Car Parking & Traffic*. The table below details what is required and what has been provided. A total of 40 spaces is proposed. Fifty nine (59) are required to achieve strict numerical compliance.

Table 2 - Car parking requirements in accordance with Shoalhaven development Control Plan 2014 (SDCP14) Chapter G21 Car Parking and Traffic
5.1 Car Parking Schedule

Land Use Type	Standard	Assessment for Cooeee Hotel
Pubs and Registered Clubs Lot 1 DP 785956 is within the area subject to Chapter N23 St Georges Basin, Village Centre of the SDCP14, as such, the car parking requirements for a CBD are applied.	<p><i>1 space per 5m² of licensed floor area, i.e. bar, lounge, beer garden and games room.</i></p> <p><i>1 space per 40m² gross floor area of office space.</i></p> <p><i>Function rooms/restaurant or cafe - 1 space per 24m² gross floor area within CBD areas or 1 space per 6.5m² gross dining area outside CBD area.</i></p> <p><i>Dance areas and other recreation areas will be considered separately.</i></p> <p>Note: Alternatively, car parking requirements may be determined by Council following the completion and submission of a parking impact and needs study by an independent suitably qualified professional. Comparisons must be drawn with other similar clubs/hotels in similar locations. Depending on individual circumstances, Council may accept some grassed overflow areas as overflow Parking. Provision should be made for emergency vehicles (doctors/ambulance) to gain ready access to the club.</p>	<p>The licensed floor area is 263m². Car parking space requirements are calculated at 1 space per 5m² of floor space this equates to 52 car parking spaces.</p> <p>The office space has an area of 17m². Car parking space requirements are calculated at 1 space per 40m². No additional spaces are required for this use.</p> <p>The restaurant and office area is 65m. Car parking space requirements are calculated at 1 space per 24m² of floor space this equates to 3 car parking spaces.</p>
Squash and tennis court Bowling Alley	<p><i>3 spaces per court.</i></p> <p><i>3 spaces per lane.</i></p>	<p>A single full sized billiard table occupies 22m² of floor area. The car parking requirement for this component on similar land uses. Therefore, 3 car parking spaces area required.</p>
Total car parking space requirement		59

DE17.83

Applicant's Submission

The applicant has made the observation that *"on not less than 12 occasions over the past twelve months and the hotel carpark has been 50% full."*

Discussion

The site

The 'overflow' car parking within the 'Easement for Car parking' on Lot 4 has not been formally constructed with the area used in an ad hoc manner. The applicant has provided aerial photographs dating to 2004 that show:

- ☐ Demand for parking was such (low) that the overflow car parking area was not constructed after this date;
- ☐ The occupation of the hotel car parking is consistent with the applicant's observations, that is, *"on not less than 12 occasions over the past twelve months and the hotel carpark has been 50% full"*.

Aerial photographs (D17/268837, D17/268849, D17/268852 & D17/268855) dating from May 2004 to March 2016 indicate that the 'overflow car parking' has not been constructed within the 'Easement for Car parking' on Lot 4.

Use of the site

The location of the hotel is within walking distance for many patrons. Several observations and inspections were made of the site over the duration of the assessment. Six patrons were observed arriving on foot during a site inspection carried out by the assessing officer on 3 March 2017.

Since issue of the development consents for the Cooee Hotel, as identified in Table 1 earlier, the supermarket and associated shops and car parking area (DA07/1059) have been constructed on adjacent lots to the west.

The supermarket/shopping centre car parking area now provides additional car parking for the St Georges Basin business area. Shoppers are able to park in the car park and frequent the shops in the IGA complex but also access other shops / facilities nearby.

A search of Council's Merit system has not revealed any complaints about car parking associated with the hotel. The Council Ranger responsible for this area for the past 18 months has advised that he has not dealt with any car parking related issues at or in within the public roads with frontage to the hotel site.

Since changes to liquor laws and drink driving campaigns, it is generally accepted that the car parking for licence premises no longer requires the same provision as that required historically. Many licenced premises also provide a curtesy bus to address to ensure that patrons have transport to and from the premises.

The Cooee Hotel has such a bus. Having regard to these matters and that this particular small local hotel serves the immediate community, it is not unreasonable to consider a reduction in the number of car parking spaces in this context. Council has similarly accepted reduced parking for other licenced premises observing changes to driving habits in light of drink driving campaigns and changes to social behaviour.

With regard to car parking provision and Chapter G21, the reduction in car parking does not frustrate the objectives of the SDCP14 in that there will be adequate provision for the hotel having regard to the context of the development and use of the hotel.

Policy Implications

There are no negative policy implications. The SDCP14 acknowledges that the car parking arrangement may be reconsidered by virtue of the provisions contained in Chapter 23

*“...The easement for car parking over Lot 4 DP785956 shall remain in favour of the Hotel development on Lot 1 DP 785956 (124 Island Point Rd) **unless a satisfactory alternative is approved or the development consent condition for the Hotel is amended by Council.**”*

However, in doing so the applicant has formally sought a variation to the car parking provisions contained in Chapter 18, which requires a certain number of car parking spaces.

Consultation and Community Engagement:

The application was notified from 20 September – 5 October 2017.

No submissions were made. Importantly, the notification made reference to all the affected consents and specifically, the car parking easement. Council also provided an information sheet and uploaded this onto DA Tracking.

Financial Implications:

No financial implications for Council unless the matter is the subject of an appeal before the Land and Environment Court of NSW.

Legal Implications

There are no legal implications for Council unless the decision is appealed.

Summary and Conclusion

The growth of the St Georges Basin CBD area has reduced the reliance on car parking within the Cooee Hotel site. The demand for on-site car parking by hotel patrons is further alleviated by the hotel curtesy bus serving the local residents in response to changes to drinking / patronage habits as a result of stronger enforcement of liquor laws and active drink driving campaigns.

The demand for on-site parking at the Cooee Hotel has not resulted in a car parking deficiency in the locality nor required the development of the ‘overflow’ car parking on Lot 4. Accordingly, the variation to 5.1 *Car Parking Schedule, Pubs & Licensed Clubs* of SDCP14 Chapter G21 *Car Parking & Traffic* is supported.

DE17.84 Development Application - 405 Princes Highway, Bomaderry – Lot 14 DP 20626

DA. No: DA17/1780/4

HPERM Ref: D17/335451

Group: Planning Environment & Development Group
Section: Building & Compliance Services

Attachments: 1. Plans - Amended Site Plan - Elevations - 405 Princes Highway Bomaderry - Lot 14 DP 20626 [↓](#)
2. 79C Assessment Checklist (under separate cover) [⇒](#)
3. Development Consent [↓](#)

Description of Development: Proposed detached shed and relocation of two shipping containers

Owner: A & V Lloyd
Applicant: A Lloyd

Notification Dates: 06 July 2017 to 21 July 2017

No. of Submissions: Nil in objection
Nil in support

Purpose / Reason for consideration by Council

The applicant and land owner is a staff member working in the Planning, Environment and Development Department. In accordance with Council's adopted policy for *Dealing with Development Applications Lodged by Council Staff or Councillors* (POL16/235), where the applicant or land owner in respect of a development application (DA) is a Council staff member and where the development application seeks a substantive variation to any performance-based Development Control Plan (DCP) or Council Policy, the DA is to be reported to Council for determination.

Recommendation

That the Development Committee approve the application subject to the conditions contained in this report.

Options

1. Approve the application as recommended.

Implications: Nil.

2. Resolve not to support the proposed variations.

Implications: This would result in the applicant needing to reconsider the design and location of the shed or possibly not proceeding with the development.

DE17.84

Location Map



Figure 1:- Aerial view of the subject site.

Background

Proposed Development

The application is for the construction a new detached shed and the relocation of two existing shipping containers on the site. The shed will be located approximately 40m from the front boundary and 1.5m from the northern boundary (refer site plan at attachment 1).

The shed is 12m wide x 8m deep and has a wall height of 3.5m. The shed consists of 3 parking bays and the applicant has advised it will be used for the storage of a caravan, boat and car. The shed is to be constructed from pre-coloured steel (colorbond) and it will be woodland grey in colour (walls and roof).

Subject Land

The subject land is identified as Lot 14, DP20626, No.405 Princes Highway, Bomaderry. The land is located west of the Anglican College (Refer Figure 1).

The land is irregular in shape with an eastern frontage of 44.275m to Princes Highway and northern and southern depths of 108.465m and 104.111m respectively. The western boundary to Bomaderry Creek is 46.045m. The land has an area of 4,357m².

Site & Context

The subject site is located within residential R2 zone under the provisions of Shoalhaven Local Environmental Plan 2014 (SLEP-2014) (Refer Figure 2).

Surrounding allotments on the northern and southern side of the subject site are also zoned R2. These neighbouring allotments are of varying sizes and all have been developed containing dwellings and ancillary structures.

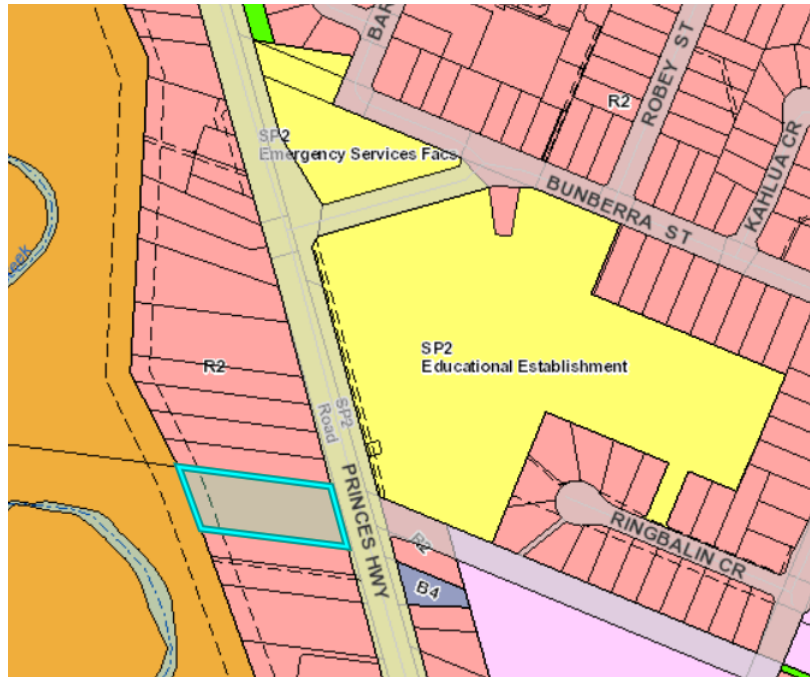


Figure 2:- Zoning map from SLEP2014

History

The site has an existing weatherboard cottage fronting the Princes Highway and two detached outbuildings. The cottage was built prior to 1973.

The most recent application was in 2012 for the erection of a garage, the relocation of an existing carport and the use of shipping containers. The approved garage is located 4m from the northern side boundary and it is further west of the proposed location of the new shed (refer site plan at attachment 1).

Issues

Section 5.2.3 Chapter G12 of SDCP-2014

The site is subject to side boundary setback of 7.5m which applies to all allotments with an area between 4,001m² and 10,000m². The application seeks to locate the shed 1.5m from the northern boundary and this represents an 80% variation to SDCP-2014.

Section 5.3.8 Chapter G12 of SDCP-2014

The maximum wall height for ancillary structures is set at 3.0m above natural ground level. The application seeks to have a wall height of 3.5m and this represents a 16% variation to SDCP-2014.

Planning Assessment

The Development Application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979. Matters for consideration in determining this development application includes land use, height of buildings, floor space, overshadowing, privacy and loss of views.

Apart from the variations highlighted in this report, the application satisfies the requirements of Section 79C of the Environmental Planning and Assessment Act 1979 (refer attachment 2).

DE17.84

Policy Implications

Environmental Planning Instrument - Shoalhaven Development Control Plan 2014

Issue: Chapter G12 – 5.2.3 and 5.3.8

The purpose of Chapter 12 of SDCP-2014 is to outline controls and guidelines of residential development in the Shoalhaven. The objectives of the DCP are to ensure the development is sympathetic to the constraints of the site and ensure appropriate levels of amenity.

Clause 5.2.3 - Side setback variation

Clause 5.2.3 deals with setbacks and building lines for development within R2 zones that are on allotments greater than 2,000m² in area. Having a site area of 4,357m², the acceptable solution for the side boundary setback for dwellings and ancillary development is 7.5m.

The applicant proposes a setback of 1.5m to the northern boundary and this represents an 80% variation. In support of this location, the applicant submits that *“The proposed setback is consistent with other lots within this residential area and is not out of character.”*

Comments

The reason larger allotments have increased side boundary setbacks is to preserve the amenity and privacy of the area. In new subdivisions this is applied consistently however, in older areas the lot sizes are not consistent and therefore the requirement loses its purpose.

The applicant's submission is supported as there is clear evidence of building encroachments for larger lots into the required side boundary setbacks. Properties on the eastern side of the Princes Highway and the adjoining property to the south are all less than 2,000m² and therefore have a 0.9m side boundary setback requirement. The properties to the north at No.403 and No.401 both have structures within 2.5m and 3.1m respectively.

Whilst there is room on the site to relocate the shed to comply with the 7.5m side boundary setback requirement, this would impact on the existing driveway and turning circles. The site is also constrained by a sewer main located centrally through the lot and any movement further south would necessitate concrete encasement of the sewer main.

Additionally, the shed constructed in 2012 is located 4.0m from the northern boundary and this set a precedent that is less than the 7.5m distance.

The variation to the side boundary setback is justified. This type of variation is sought throughout the Shoalhaven on a regular basis and they are approved under delegation.

Wall height variation

Clause 5.3.8 deals with the height for ancillary structures. The acceptable solution requires that the maximum height of the wall from the finished ground to the underside of the roof should not exceed 3.0m.

The applicant proposes a wall height of 3.5m and this represents a 16% variation. In support of this height, the applicant submits that *“The wall height is necessary to enable the storage of a large caravan and boat”*.

Comments

The wall height restriction is set to reduce the impact of overshadowing, bulk and scale on smaller allotments. On larger allotments where structures can be located clear of adjoining dwellings, the impact is much less.

The increase in wall height meets the performance requirement as it does not impact on the amenity or solar access on the adjoining property to the north. It is also considered acceptable and consistent with recent applications for caravan and boat storage in the city.

The variation to the wall height is justified and it will not set an undesirable precedent in the locality.

Consultation and Community Engagement:

The application was notified in accordance with Council's Community Consultation Policy with letters being sent within a 25m buffer of the site. No submissions were received in relation to Council's notification of the development.

Financial Implications:

Should the application be determined by way of refusal, the applicant is entitled to appeal to the Land and Environment Court. Council would incur costs in defending its decision in this event.

There are no other financial implications.

Legal Implications

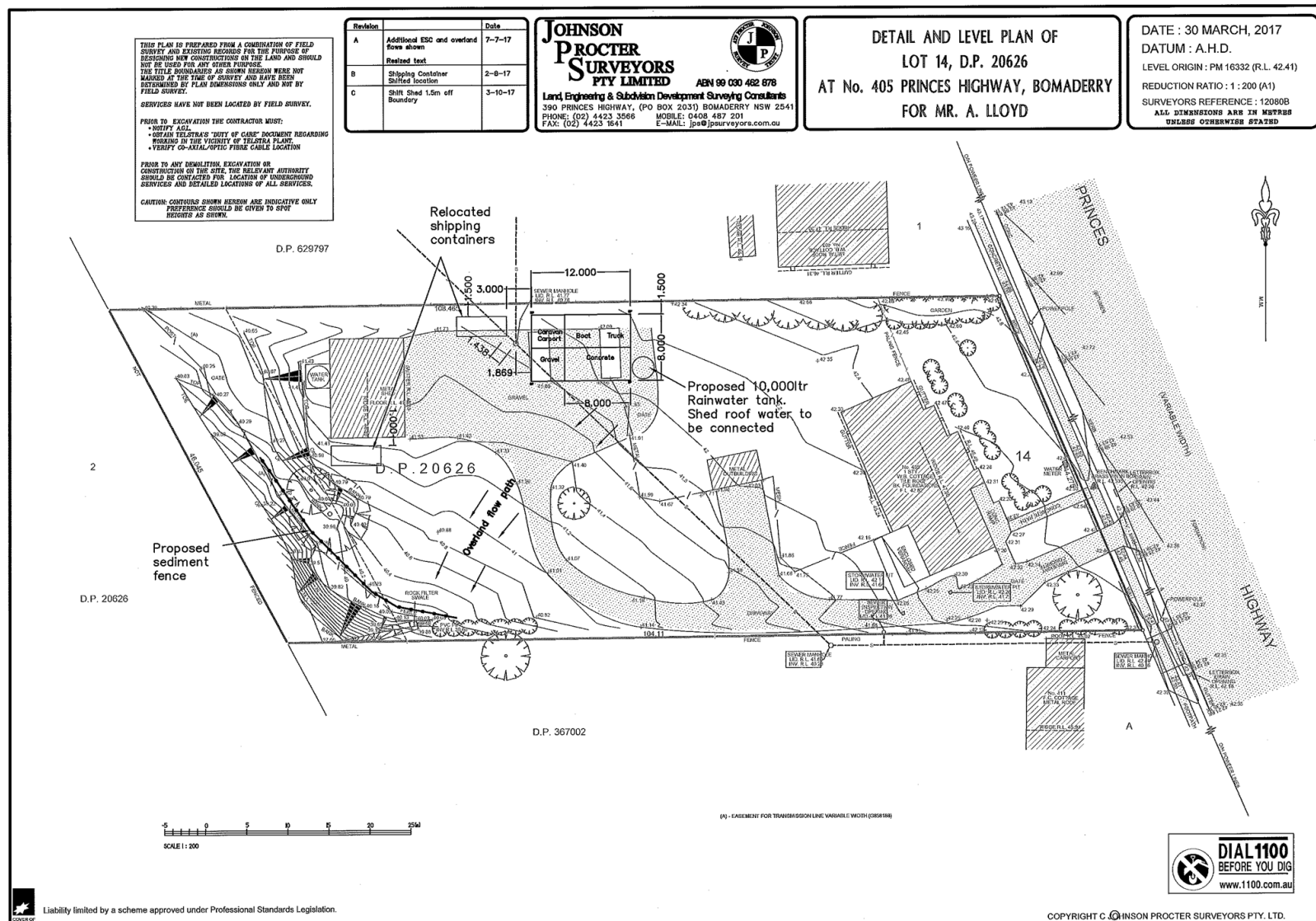
If the application is refused, or if the applicant is dissatisfied with Council's determination in the event of a deferred commencement consent, the applicant is entitled to appeal to the Land and Environment Court.

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

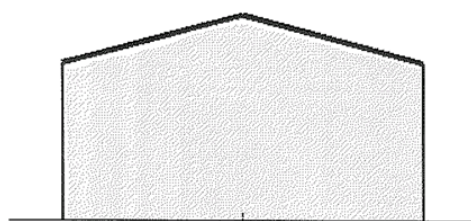
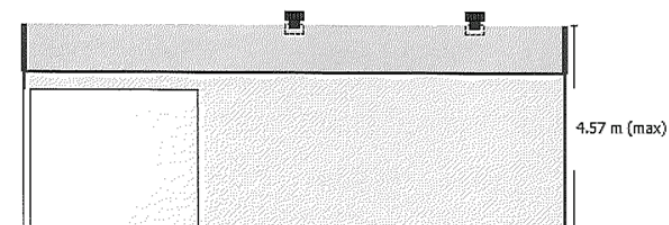
Summary and Conclusion

The nominated building line and wall height requirement have been thoroughly assessed against the objectives and performance criteria of SDCP-2014. The assessment has considered the applicants justification for the variations including the amenity of the adjoining properties. It is concluded that the proposal satisfies the performance criteria and the variation of the side setback from 7.5m to 1.5m and the wall height from 3.0m to 3.5m for the proposed shed are both supported. The variations will not set an undesirable precedent.

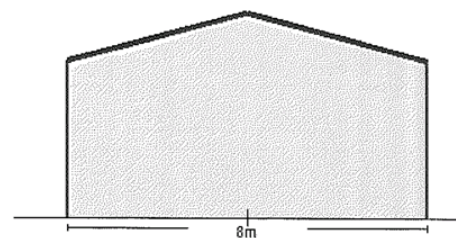
The shed meets the assessment requirements of Section 79C of the *Environmental Planning and Assessment Act 1979*. The shed is located in the rear yard, is not viewable from the Princes Highway and is located approximately 18m from the dwelling on the adjoining property. The development will not have a significant impact on the adjoining property owners by way of overshadowing, privacy view loss or the like.



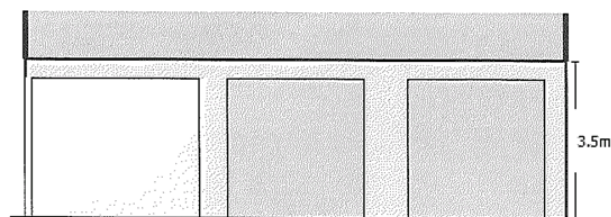
Building For:
Aaron Lloyd
405 Princes Highway Bomaderry
Job Number: 28032
Produced by:
Southern Cross Garages
Phone: 02 44230006



Left End



Right End



Side

The local distributor you are dealing with is an authorised independent distributor of Fair Dinkum Sheds' products and enters into agreements with its customers on its own behalf and not as an agent of Fair Dinkum Sheds.

**NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION
DEVELOPMENT CONSENT
Environmental Planning and Assessment Act, 1979
DA17/1780**

TO:

Aaron James Lloyd
405 PRINCES HWY
BOMADERRY 2541

being the applicant(s) for DA17/1780 relating to:

405 Princes Hwy, BOMADERRY - Lot 14 - DP 20626

APPROVED USE AND OR DEVELOPMENT:

Detached Shed & Relocate Two Shipping Containers

DETERMINATION DATE:

[#Determined#]

Pursuant to the Section 81 of the Act, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

CONSENT TO OPERATE FROM:

[#ConsentFrom#]

CONSENT TO LAPSE ON:

[#LapseDate#]

DETAILS OF CONDITIONS

The conditions of consent and reasons for such conditions are set out as follows:

Development Consent - Page 2 of 9 - DA17/1780

PART A

CONDITIONS OF A GENERAL NATURE, INCLUDING A DESCRIPTION OF THE PROPOSED DEVELOPMENT

General

1. This consent relates to **Detached Shed & Relocate Two Shipping Containers** as illustrated on the plans (referenced in the table below), specifications and supporting documentation stamped with reference to this consent, as modified by the following conditions. The development shall be carried out in accordance with this consent.

STAMPED DOCUMENTS/PLANS	REF/SHEET NO.	PREPARED BY	DATED
Site Plan	Rev. C	Johnson Procter Surveyors	3/10/2017
Elevations	28032	Southern Cross Garages	Received 26/06/2017
Floor Plan	28032	Southern Cross Garages	Received 26/06/2017
DOCUMENTS	REF/SHEET NO.	PREPARED BY	DATED
Waste Management Plan	Council Ref D17/203344	Aaron Lloyd	Received 26/06/2017

Notes:

- Any alteration to the plans and/or documentation shall be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under s96 of the Act, or a fresh development application. No works, **other than those approved under this consent**, shall be carried out without the prior approval of Council.
 - Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions shall prevail to the extent of that inconsistency.
2. The **Detached Shed & Relocate Two Shipping Containers** shall not be occupied or the use shall not commence until all relevant conditions of development consent have been met or unless other satisfactory arrangements have been made with council (i.e. a security).

Use

3. The Detached Shed & Relocate Two Shipping Containers shall not be used for any industrial, commercial or habitable purposes.

Development Consent - Page 3 of 9 - DA17/1780

Limited Consent

4. This consent has been limited for two years and will cease to operate on [insert date here]

PART B

CONDITIONS THAT MUST BE COMPLIED WITH BEFORE WORK CAN COMMENCE

Construction Certificate

5. A Construction Certificate must be obtained from either Council or an accredited certifier before any building work can commence.

Notice of Commencement

6. Notice must be given to Council **at least two (2) days prior to the commencement of building work.** (The attached form 'Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority' is to be completed and returned to Council.)

Residential Building Work

7. Any licensed contractor(s) **performing residential building work valued at \$20,000 or more** must obtain indemnity insurance as required by the Home Building Act 1989. Evidence of such insurance must be provided to the Principal Certifying Authority (PCA) before building works commence.

Notes:

This condition is prescribed under the Environmental Planning and Assessment Regulation 2000.

*If appointed as PCA, Shoalhaven City Council **WILL NOT INSPECT** any building work unless evidence of indemnity insurance has been provided. A copy of the Certificate of Insurance will suffice.*

Damage to Public Assets

8. The developer or his agent must undertake a site inspection of the adjacent kerbs, gutters, footpaths, walkways, carriageway, reserves and the like, prior to commencement of work and document evidence of any damage to existing assets. Failure to identify existing damage will result in all damage detected after completion of the building work being

PART C

CONDITIONS RELATING TO THE APPROVED WORK AND SITE MANAGEMENT

Building Code of Australia

9. All building work must be carried out in accordance with the requirements of the Building Code of Australia.

Development Consent - Page 4 of 9 - DA17/1780

Note: This condition is prescribed under the Environmental Planning and Assessment Regulation 2000.

Erection of Signs

10. A sign must be erected in a prominent position on any site which building work or demolition work is being carried out:

- a) Showing the name, address and telephone number of the Principal Certifying Authority for the work.
- b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours.
- c) Stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

Road Reserve, Footpath & Gutters

11. The kerb, gutter and footpath adjoining the site shall be kept clear of soil and debris.

Soil and Water Management

12. All practical measures must be taken to ensure erosion and subsequent sediment movement off-site does not occur.

In particular, a silt fence or equivalent must be provided downhill from the cut and fill area (or any other disturbed area). The fence must be regularly inspected and cleaned out and/or repaired as necessary and all collected silt must be disposed of to the satisfaction of the Principal Certifying Authority (PCA).

Unnecessary disturbance of the site (eg excessive vehicular access) must not occur.

All cuts and fills must be stabilised or revegetated as soon as possible after the completion of site earthworks.

All the above requirements must be to the satisfaction of the PCA. Reference/Guidance Managing Urban Stormwater Soils and Construction (as amended and updated).

Construction Hours

13. To limit the impact of the development on adjoining owners, *all* construction work shall be restricted to the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 3.00pm Saturdays. No construction work shall take place on Sundays or Public Holidays.

Footpath Trees

14. Any existing trees along the footpath must be retained unless approval is obtained from Council, in writing, for their removal. The applicant is responsible for all costs involved in any lopping or removal. No excavation shall occur inside the drip line of the tree, without the prior consent of Council.

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Waste Minimisation and Management

15. All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Minimisation and Management Plan (WMMP) or removed to an authorised waste disposal facility. No waste shall be placed in any location or in any manner that would allow it to fall, descend, blow, wash, percolate or otherwise escape from the site.

Compliance with the WMMP shall be demonstrated by the retention of relevant receipts. These must be submitted to Council, upon request.

Exterior Materials

16. Exterior materials (excluding windows and other glazing) are to be non-reflective and of a texture and colour which blend with the existing surroundings. White or bright colours are not acceptable. Metal roofing, wall cladding and rainwater tanks shall be pre-coloured at the manufacturing stage.

Roof Dark Grey

Walls Dark Grey

Excavations, Retaining Walls and Drainage

17. All excavations and backfilling must be executed safely and in accordance with appropriate professional standards. All excavations must be properly guarded and protected to prevent a danger to life or property.

As such owing to the grade of the site, soil conditions will require that suitable retaining walls with appropriate agricultural and stormwater drainage be provided to prevent the movement of soil and subsequent nuisance to adjoining properties. All roof and surface stormwater from the site must be conveyed to a legal point of discharge.

Overland Stormwater Flow

18. Stormwater runoff occurs when water flows along a natural gradient over properties on its way to a watercourse.

All excavation, backfilling and landscaping works must not result in any change to the overland stormwater flow path on your property and or a neighbouring property. If any change to the overland flow path occurs on a property, the stormwater runoff shall be collected and directed to a legal point of discharge.

Redirecting and/or Concentrating Stormwater

19. All excavation, backfilling and landscaping works must not result in the redirection and/or concentration of stormwater flows onto neighbouring properties.

Note: A property owner cannot be held liable when surface or seepage water flows naturally onto an adjoining property. However, a property owner may be held liable if the actions undertaken cause or are likely to cause damage to property.

Development Consent - Page 6 of 9 - DA17/1780

Bushfire**Fencing**

20. All new fencing shall be non-combustible.

Water and Utilities

21. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Landscaping

22. New landscaping to the site and maintenance of landscaping is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006' and the Rural Fire Service 'Standards for Asset Protection Zones'

Asset Protection Zone (Urban)

23. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Garage Door

24. Garage doors are to be:
- a) Tight fitting to door frames and jambs with gaps no greater than 5mm when closed; and
 - b) Where a roller shutter door is installed it shall be provided with an ember protection device at the top of the shutter that captures any embers where a gap 2.0mm on the external surface exists.

Stormwater

25. Stormwater from the detached shed is to be conveyed to an absorption/distribution trench via drainage designed and constructed in accordance with AS/NZS 3500.3.2 Stormwater drainage and the Building Code of Australia. Note: The absorption trench is to be located not less than 3.0m from any building or boundary and must not be above any effluent disposal area.

PART D**REASONS FOR CONDITIONS****Conditions of consent have been imposed to:**

1. Ensure the proposed development:
 - a) achieves the objects of the Environmental Planning and Assessment Act, 1979;
 - b) complies with the provisions of all relevant environmental planning instruments;

Development Consent - Page 7 of 9 - DA17/1780

- c) is consistent
Codes and Policies.
- 2. Ensure that the relevant public authorities and the water supply authority have been consulted and their requirements met or arrangements made for the provision of services to the satisfaction of those authorities.
- 3. Meet the increased demand for public amenities and services attributable to the development in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979.
- 4. Ensure the protection of the amenity and character of land adjoining and in the locality of the proposed development.
- 5. Minimise any potential adverse environmental, social or economic impacts of the proposed development.
- 6. Ensure that all traffic, carparking and access requirements arising from the development are addressed.
- 7. Ensure the development does not conflict with the public interest.

PART E

ADVICE ABOUT RIGHTS OF REVIEW AND APPEAL

Development Determination under Environmental Planning and Assessment Act, 1979

*Under section 82A of the Environmental Planning and Assessment Act, 1979 an applicant may request the council to review its determination except where it relates to a Complying Development Certificate, Designated Development or Integrated Development. The request must be made **within six (6) months** of the date of the receipt of the determination, with a prescribed fee of 50% of the original DA fee.*

*Section 97 of the Environmental Planning and Assessment Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised **within six (6) months** after receipt of this notice.*

Approvals under Local Government Act, 1993

Section 100 of the Local Government Act, 1993 provides that an applicant may request Council to review its determination of an application.

*Section 176 of the Local Government Act, 1993 provides that an applicant who is dissatisfied with the determination of the Council may appeal to the Land and Environment Court. The appeal must be made **within twelve (12) months** of the date of determination.*

Development Consent - Page 8 of 9 - DA17/1780

PART F**ADVICE ABOUT WHEN THIS CONSENT LAPSES**

This consent is valid for five years from the date hereon.

In accordance with Section 95 of the Act, development consent for the use of the land or the erection of a building does not lapse if building, engineering or construction work relating to the building or work or the use is physically commenced on the land to which the consent applies before the lapse date.

PART G**GENERAL ADVICE TO APPLICANT****Privacy Notification**

Personal information contained on this Development Consent and any associated
Government
Information (Public Access) (GIPA) Act 2009.

Trees Located on Public Land

Please note that any works carried out on the subject property or within the road reserve, such as construction of a driveway, that damages or otherwise detrimentally impacts on the health or safety of any tree located on public land may result in the applicant incurring the costs of any remedial action or removal of the tree(s). If you are proposing to carry out any works that may impact on any tree on public land, it is recommended that you contact Council for advice before carrying out those works.

Commonwealth Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 provides that a person must not take an action which has, will have, or is likely to have a significant impact on

- a) A matter of national environmental significance (NES) matter; or
- b) Commonwealth land

without an approval from the Commonwealth Environment Minister.

This application has been assessed in accordance with the New South Wales Environmental Planning & Assessment Act, 1979. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation.

otherwise for Commonwealth approval and you should not construe this grant of consent as notification to you that the Commonwealth Act does not have application.

The Commonwealth Act may have application and you should obtain advice about this matter.

There are severe penalties for non-compliance with the Commonwealth legislation.

Development Consent - Page 9 of 9 - DA17/1780

Disclaimer – s88B Restrictions on the Use of Land

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Under Clause 1.9A of Shoalhaven Local Environmental Plan 2014 agreements, covenants or instruments that restrict the carrying out of the proposed development do not apply to the extent necessary to enable the carrying out of that development, other than where the interests of a public authority is involved.

Occupation Certificate

An **Occupation Certificate** must be obtained from the Principal Certifying Authority (PCA i.e. Council or an accredited private certifier) before any of the approved (e.g. tourist cabin) development can be used or occupied.

must be given to Council to make an inspection of the work.

Principal Certifying Authority

A Principal Certifying Authority (PCA) must be appointed before any building work can commence.

DBYD Enquiry - 'Dial Before You Dig'

www.dialbeforeyoudig.com.au prior to any excavation works taking place to ascertain the location of underground services. You must also contact your Local Authority for locations of Water and Sewer Mains.

Inspections

If Council is the appointed PCA for this project, a minimum twenty-four (24) hours notice must be given to Council to make an inspection of the work.

SIGNED on behalf of Shoalhaven City Council:

Signature

Name [SenderName]
 [SenderPosition]
 Planning Environment & Development Group

DE17.85 DS17/1233 – 12 Currambene Street, Huskisson – Lot 2 DP 662583**DA. No:** DS17/1233/4**HPERM Ref:** D17/345909**Group:** Planning Environment & Development Group
Section: Development Services**Attachments:** 1. Planning Report [↓](#)
2. Urban Design Statement [↓](#)**Description of Development:** S96(2) – Addition of Rooftop Communal BBQ Area, Covered and Enclosed Seating Area and Ancillary Facilities**Owner:** Michael Hanna**Applicant:** Allen Price & Scarratts**Notification Dates:** 27 June 2017 to 12 July 2017**No. of Submissions:** Two (2) in objection
Nil in support**Purpose / Reason for consideration by Council**

Councillors called in the application for public interest reasons on 25 July 2017.

Recommendation (Item to be determined under delegated authority)

That Council resolve to refuse Application DS17/1233 to modify Development Consent DA15/2561 to include a rooftop communal BBQ area with covered and enclosed seating area and ancillary facilities at Lot 2 DP 662583, 12 Currambene Street, Huskisson for reasons relating to:

1. Insufficient information submitted with the application to satisfactorily demonstrate that the development (as modified) conforms to the provisions of section 96(3) of Environmental Planning and Assessment Act, 1979 in relation to consideration of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. (Section 79C(1)(a)(i) of Environmental Planning and Assessment Act, 1979)
2. An inadequate statement by a qualified designer has been submitted with the application to satisfy that required by clause 115(3A) of Environmental Planning and Assessment Regulation, 2000. (Section 79C(1)(a)(iv) of Environmental Planning and Assessment Act, 1979)
3. The development (as modified) is considered unsuitable having regard to potential adverse amenity impacts including visual impact and residential amenity, including noise, privacy and solar access. (Section 79C(1)(b) and (c) of Environmental Planning and Assessment Act, 1979)
4. Having regard to insufficient information being submitted with the application to satisfy the relevant provisions of Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000, along with amenity impacts, the granting of modification to Development Consent DA15/2561 is not considered to be

in the public interest. (Section 79C(1)(e) of Environmental Planning and Assessment Act, 1979)

Options

1. Refuse the application in accordance with the recommendation of this report.

Implications: A section 96AB review or an appeal with the Land and Environment Court are possible in the event of a refusal of the application.

2. Approve the application.

Implications: Council could choose to approve the application if it considers that the provisions of section 79C(1) have been satisfactorily addressed. Any such approval would be conditional and require a further report to Council detailing draft conditions.

3. Alternative recommendation.

Implications: Council could specify an alternative recommendation and advise staff accordingly.

Figure 1 – Location Map



Background

Proposed Development

The application seeks approval to include a rooftop communal BBQ area with covered and enclosed seating area and ancillary facilities (being a toilet cubicle) to the mixed use development approved by Development Consent DA15/2561. The approved development comprises two (2) ground floor retail units and eight (8) x 2 bedroom residential units.

DE17.85

Figure 2 – Site/Ground Floor Plan

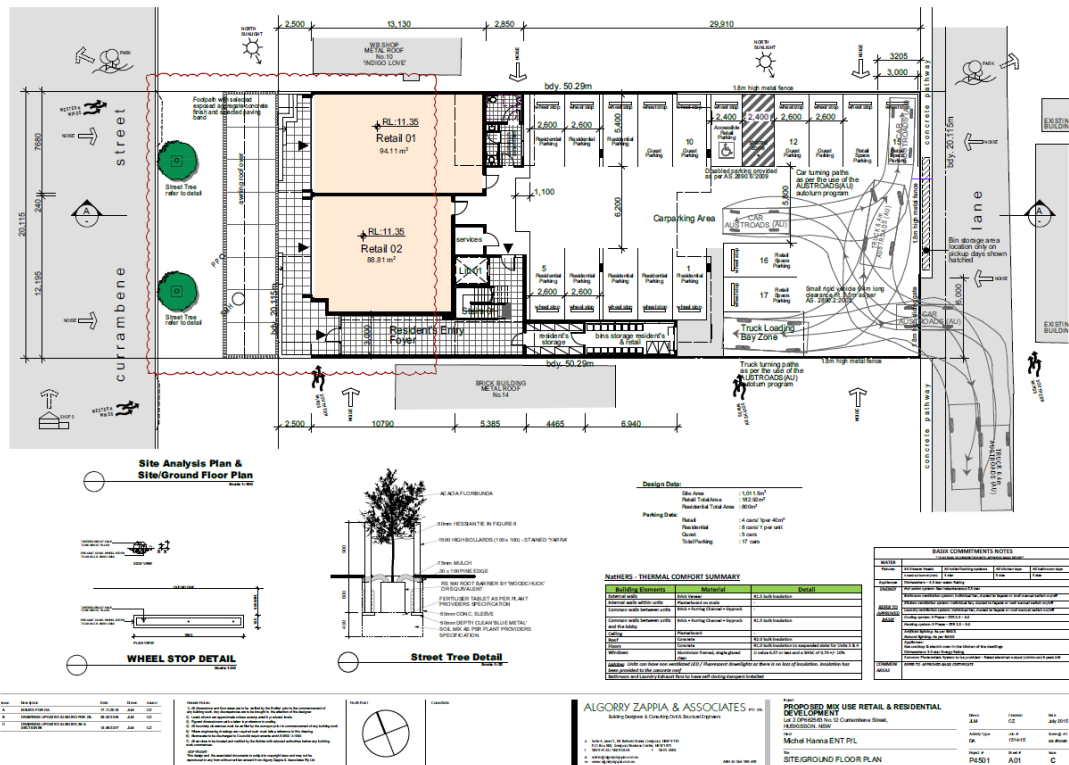
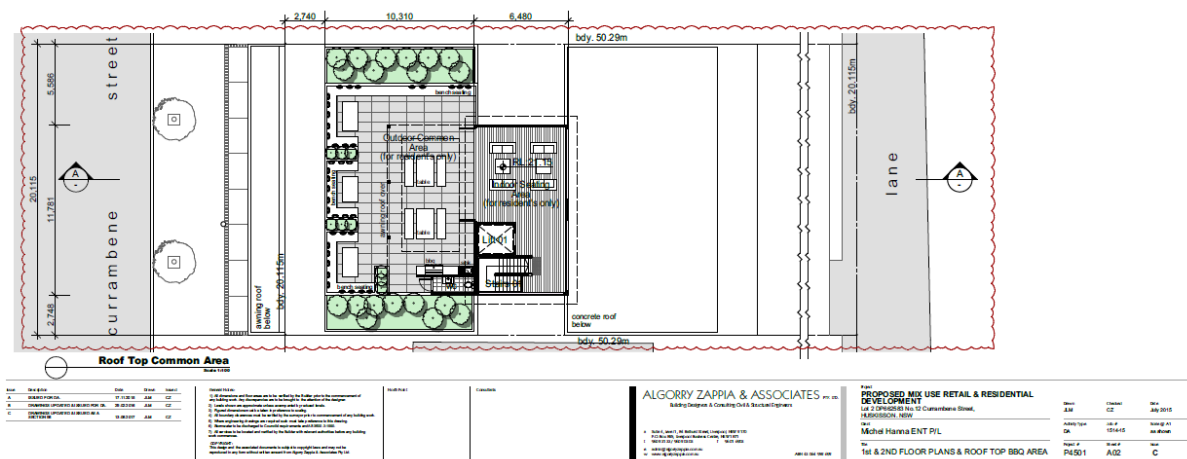


Figure 3 – Roof Top Common Area Plan (also see Figure 7 later in this report)



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Figure 5 – External Colours Schedule



Subject Land

The development site comprises Lot 2 DP 662583 (12 Currumbene Street, Huskisson). Refer to Figure 1.

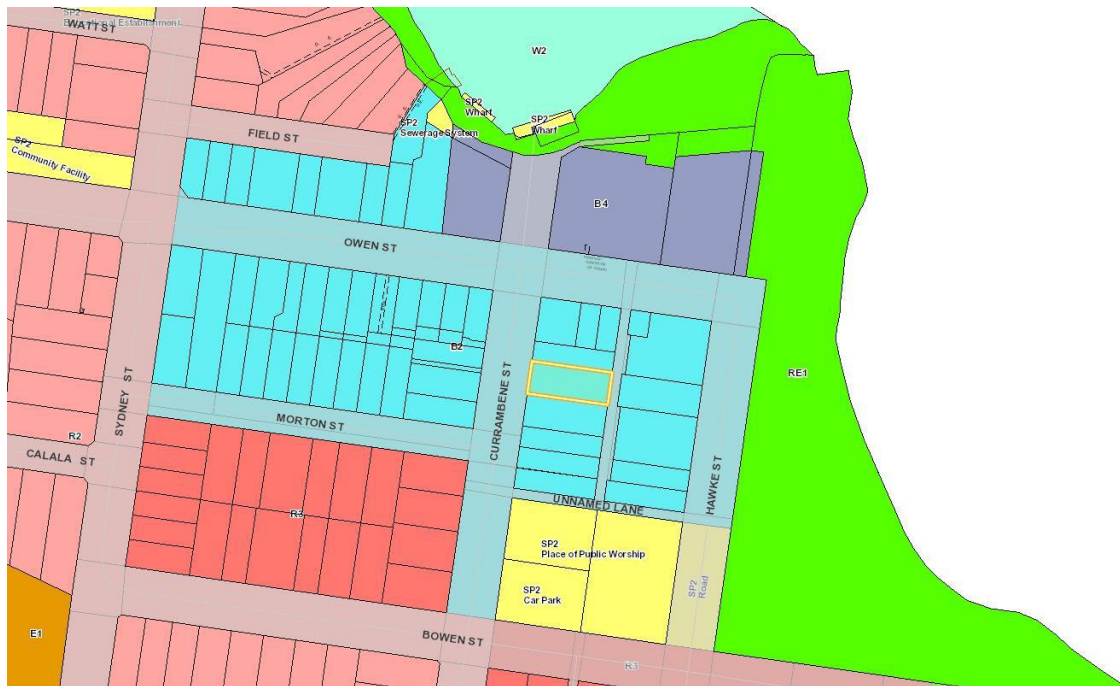
Site & Context

The development site:

- Previously contained a single dwelling house with ancillary shed, which were removed as part of Development Consent DA15/1561, which approved a three (3) storey building comprising retail units on the ground floor and two (2) levels of residential units. Construction is underway.
- Is zoned B2 Local Centre and has an area of 1,012sqm;
- Has two (2) existing frontages, a primary frontage to Currumbene Street and secondary frontage to an unnamed laneway. Vehicular access is proposed from the laneway; and
- Adjoins land zoned B2 Local Centre, under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014) as illustrated in Figure 6.

DE17.85

Figure 6 – Zoning Extract



History

The following provides details on post-lodgement actions and general site history for context:

- The application was lodged on 19 June 2017.
- As a result of detailed assessment of the application, additional information was requested from the applicant on two (2) occasions – 14 July 2017 and 11 August 2017.
- On 19 July 2017, the applicant submitted additional information, being a statement by a qualified designer in accordance with the relevant provisions of the Environmental Planning and Assessment Regulation 2000.
- On 11 August 2017, following review of this statement and internal referrals, additional information was requested to include an evaluation of the design quality of the development (as modified), demonstrating how it achieves compliance with the design quality principles and Apartment Design Guidelines (ADGs), in accordance with State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65). An acoustic report assessing the potential noise nuisance from the development (as modified) and addressing noise controls as required, was also requested.
- On 28 September 2017, the applicant submitted an amended statement (refer to Attachment 2) and acoustic report.
- On 10 October 2017, the acoustic report was referred to Council's Environmental Health Officer for technical comment.

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Issues

1. State Government Design Guidelines:

State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65) and Apartment Design Guide (ADG)

As this application is for the modification of a development consent under section 96(2) of the Environmental Planning and Assessment Act 1979 relating to residential apartment development and a development application which was accompanied by a design verification from a qualified designer under clause 50(1A), it was required to be accompanied by a statement by a qualified designer in accordance with clause 115(3) of the Environmental Planning and Assessment Regulation 2000.

The provisions of clause 115(3A) of the Regulation also require that:

“The statement by the qualified designer must:

(a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and

(b) provide an explanation of how:

(i) the design quality principles are addressed in the development, and

(ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and

(c) verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.”

Whilst a statement has been submitted by a qualified designer, being Eduardo Villa of Villa & Villa, it is considered that the statement has not adequately addressed subclauses (b) and (c).

The written statement is substantially the same submitted for the original development application, with very minor amendments referencing the proposed modifications to the approved development. It does not provide detailed explanation of how the design quality principles are addressed or in particular, the objectives of the ADG have been achieved in the development (as modified). Further to this, no verification is included that the proposed modifications do not diminish or detract from the design quality, or compromise the design intent, of the approved development.

2. Council's LEP Controls:

Clause 4.3 (Height of buildings)

The maximum building height is 10m.

The development site is also identified as being land in the Huskisson Town Centre and an increased building height of 13m is available in certain circumstances under clause 7.26 of SLEP 2014. However, this clause is not applicable to this development site as it does not satisfy the provisions of subclause (3) with respect to lot size and building height.

The communal BBQ area with covered and enclosed seating area and ancillary facilities proposed as part of this application exceeds the 10m maximum building height by up to

3.65m, being 36.5%. It also exceeds the 13m height allowable for development on certain sites in this locality, being a 5% contravention.

Although it is acknowledged that the requirement of the development standard is ‘bypassed’ under section 96 of the Environmental Planning and Assessment Act 1979 and an ‘exception’ pursuant to clause 4.6 of SLEP 2014 is not required; the provisions of section 79C(1) are still a consideration in accordance with section 96(3) of the Environmental Planning and Assessment Act 1979.

A statement by a qualified designer was submitted with the application. However, the statement is not analytical, detailed and explanatory having regard to the provisions of SEPP 65 and the ADG. The statement does not provide sufficient support/explanation in regard to the impacts of the proposal and how the overarching Objectives of SEPP65 have been met particularly in regard to the suitability of the site for the development (as modified).

It is also evident that the development (as modified) is not compatible with the height, bulk and scale of the existing character of the Huskisson Town Centre and as it is proposed to exceed the maximum height (along with the incentive height) it is considered that it will neither be compatible with existing nor the desired future character, having regard to the strategic controls (zone, DCP) for the locality.

Further to this, the proposed rooftop communal BBQ area with covered and enclosed seating area and ancillary facilities will detract from the aesthetics of the approved building, affect the amenity of the streetscape when viewed from Currumbene Street in particular, and increase loss of privacy (i.e. particularly with regard to acoustic impacts) and solar access to neighbouring sites. In addition to this, public submissions were also made objecting to the development.

3. Noise Impacts

Acoustic Report by Harwood Acoustics (Reference No. 1708007E-R)

The following issues have been identified with the acoustic report submitted with this application:

- The report only considers the “*main source of noise associated with the proposal will be human voice noise*” for ten (10) human voices. There are no practical controls on residents inviting others to the rooftop terrace and estimations of predicted noise exceeding acceptable noise limits. The number of people on the rooftop is only constrained by the size of the terrace area.
- There is no consideration for other noise sources such as music (amplified/speakers or ambient), instruments, etc. The report concedes through the following statement “*main source of noise associated with the proposal will be human voice noise*” that there may be other noise sources on the rooftop terrace which have not been considered.
- A full background noise assessment was not carried out due to the property currently being under construction. Short-term background noise measurement were taken for one (1) hour (8:30pm to 9:30pm).
- Noise from the lift and stairs extended to the proposed rooftop terrace was not taken into consideration and any mechanical plant that may be installed or modifications to the existing mechanical plant that may occur due to the redesign of the rooftop.

- No other sensitive receptors were identified in the assessment (e.g. apartments on the corner of Owen Street, residences at the corner of Morton Street, apartments at the rear along Hawke Street).
- The restriction of use to the rooftop area and how this will be achieved so that *“the rooftop area will be for residents only and will not be open to the public”* has not been specified through a plan of management or impact statement. It is a likely scenario that residents will have invited guests and expect full ability to utilise the rooftop entertaining area. No hours of operation were specified for the use of the rooftop terrace either. The plan of management for the rooftop terrace should ideally be developed so that time restrictions are placed on the use of the area as well as restrictions to music and general behaviour of residents using the area. However, enforcement and compliance issues then arise with such a plan.

Plans of management however rely on human behaviour and intervention to ensure impacts are controlled. To this end, if a building or development can be designed in a manner which controls use, activity and noise, this is a better outcome. By way of example, a substantially reduced area could possibly reduce the number of people on the terrace and its use.

Figure 7 – Detail of Proposed Terrace



Planning Assessment

The application has been assessed under s96 of the Environmental Planning and Assessment Act 1979. Refer to Attachment 1. It is important to note, that Council cannot reconsider the whole application. The assessment can only relate to the application put before Council.

Consultation and Community Engagement:

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 60m buffer of the site, including the Huskisson Woollamia Community Voice and Huskisson Chamber of Commerce and Tourism Inc. during the period 27 June 2017 to 12 July 2017.

Two (2) submissions were received in relation to Council's notification of the development. They were objections to the development.

Key issues raised as a result of the notification include, but were not limited to, matters listed below. A more detailed analysis can be found in the attached section 96 assessment report.

- Scale of the development, particularly height and density;
- Solar access;
- Privacy; and
- Noise.

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

A section 96AB review or an appeal with the Land and Environment Court are possible in the event of a refusal of the application.

Summary and Conclusion

SEPP 65 sets out the NSW Government's policy direction for certain mixed use developments with a residential accommodation component (such as this) in NSW and is underpinned by the ADG, which provides guidance on how these proposals can meet the design principles embedded in the SEPP. In this regard, insufficient information has been submitted with this application to satisfactorily demonstrate that the development (as modified) conforms to these provisions.

Other issues raised in this report and attachments, relating to the excessive scale of the development, further loss of solar access and privacy, and increased noise impacts are not demonstrated to be acceptable and for this reason the development is not considered to be in the public interest. Accordingly, refusal is recommended.

	ASSESSMENT REPORT S96 Environmental Planning & Assessment Act 1979
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Application No.	DS17/1233 (to DA15/2561)
Property	Lot 2 DP 662583 – 12 Currumbene Street, Huskisson
Applicant(s)	Allen Price & Scarratts
Owner(s)	M Hanna

Description of Development: Addition of Rooftop Communal BBQ Area, Covered and Enclosed Seating Area and Ancillary Facilities

DA15/2561 – Mixed use development comprising two (2) ground floor retail units and eight (8) two bedroom residential units

Zone: B2 Local Centre

HISTORY

Date of Original Consent: 17 October 2016
Date of Application for Modification: 19 June 2017
Other history (if relevant): DS17/1136 approved 1 May 2017 to delete Condition 9 in relation to relocation of solar photo voltaic panels.

S96(2) APPLICATION DETAILS

Details of Modification Sought:

The application seeks approval to include a rooftop communal BBQ area with covered and enclosed seating area and ancillary facilities (being a toilet cubicle) to the mixed use development approved by Development Consent DA15/2561. The approved development comprises two (2) ground floor retail units and eight (8) x 2 bedroom residential units.

Reasons why modification sought:

The applicant has given the following reasons:

"Our client wishes to modify the design of the approved development to include a communal barbeque area on the roof together with a small covered seating area. It is proposed that this area will only be accessible by residents in the completed development and will be suitable for communal activities. It is intended to extend the lift and stairs to provide convenient access and egress to and from the rooftop amenity area. As can be seen on the updated plans accompanying this application – other facilities that will be provided include bench seating and tables, an outdoor cooking area and a w.c. cubicle.

We are of the view that the addition of this rooftop communal barbeque area will provide a significant enhancement of the amenity value of this property in terms of access to high quality private open space and opportunity for social interaction and that it has merit."

ASSESSMENT

Section 96(2) Modification

The application seeks to modify the development consent as described above and amend Conditions 1 and 36.

State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65) and Apartment Design Guide (ADG)

As this application is for the modification of a development consent under section 96(2) of the Environmental Planning and Assessment Act 1979 relating to residential apartment development and a development application which was accompanied by a design verification from a qualified designer under clause 50(1A), it was required to be accompanied by a statement by a qualified designer in accordance with clause 115(3) of the Environmental Planning and Assessment Regulation 2000.

The provisions of clause 115(3A) of the Regulation also require that:

“The statement by the qualified designer must:

(a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and

(b) provide an explanation of how:

(i) the design quality principles are addressed in the development, and

(ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and

(c) verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.”

Whilst a statement has been submitted by a qualified designer, being Eduardo Villa of Villa & Villa, it is considered that the statement has not adequately addressed subclauses (b) and (c).

The written statement is substantially the same submitted for the original development application, with very minor amendments referencing the proposed modifications to the approved development. It does not provide detailed explanation of how the design quality principles are addressed or in particular, the objectives of the ADG have been achieved in the development (as modified). Further to this, no verification is included that the proposed modifications do not diminish or detract from the design quality, or compromise the design intent, of the approved development.

Shoalhaven Local Environmental Plan 2014 (SLEP 2014) – Clause 4.3 (Height of buildings)

The maximum building height is 10m.

It is noted that the development site is also identified as land in the Huskisson Town Centre and an increased building height of 13m is available in certain circumstances under clause 7.26 of SLEP 2014. However, this clause is not applicable to this development site, as it does not satisfy the provisions of subclause (3) with respect to lot size and building height.

The communal BBQ area with covered and enclosed seating area and ancillary facilities proposed as part of this application exceeds the 10m maximum building height by up to 3.65m, being 36.5%. It also exceeds the 13m height allowable for development on certain sites in this locality, being a 5% contravention.

Although it is acknowledged that the requirement of the development standard is 'bypassed' (see below) under section 96 of the Environmental Planning and Assessment Act 1979 and an 'exception' pursuant to clause 4.6 of SLEP 2014 is not required; the provisions of section 79C(1) are still a consideration in accordance with section 96(3) of the Environmental Planning and Assessment Act 1979.

Question: Previously a SEPP 1 was not required for a breach to a development standard for a S96 application. Now that we are dealing with the Standard LEP, SEPP 1 has been replaced with Clause 4.6. Would the same logic apply to the use of Clause 4.6 in a S96, so that a formal clause 4.6 variation will not be required? If so, why are some councils insisting on them?

Answer: In our view, the position has not changed, whether you are dealing with a new standardised-LEP or one of the older LEPs. In either scenario, a section 96 modification application can be approved even though it would contravene a development standard, and no SEPP 1 objection or clause 4.6 variation is required.

The relevant judgments (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) say that section 96 is a 'free-standing provision', meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". What this means is that it is section 96 itself which authorises the development to be approved notwithstanding any breach of development standards. Section 96 is a broad power to approve, subject to its own stand-alone tests (such as the "substantially the same" test, and a requirement to consider all relevant s.79C matters). Section 96 does not rely upon having any SEPP 1 objection or clause 4.6 variation on order to enliven that power to approve.

In *Gann v Sutherland Shire Council* (2008), the Council argued that it would be illogical if a developer could obtain a development consent for a compliant development, and then avoid the need for any SEPP 1 objections by lodging a s.96 modification to increase the building's bulk to breach the applicable development standards. The Court however cautioned that:

"This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply."

Turning to the specifics of your question, section 96 itself has not been amended (in any relevant sense) since these decisions were given. It still authorises modification-approval to be given even where there is a breach of development standards. As such, neither clause 4.6 nor SEPP 1 are applicable to a section 96 modification – they only arise at DA stage.

Indeed, the Courts have stated that SEPP 1 cannot ever be used at section 96 stage, as SEPP 1 expressly only applies 'where a development application is made', not when a modification application is made. The same would apply to clause 4.6 variations, which expressly only regulates whether 'development consent' may be granted, not whether an existing consent may be modified.

As such, in our view councils should not be requesting clause 4.6 variations or SEPP 1 objections to accompany section 96 applications. They have no application to section 96 modifications.

Note: This information is provided to you for your information on a complimentary basis. The information provided is a general guide only and Gadens Lawyers accept no responsibility for any person relying on this publication without obtaining our express permission. Generally the particular facts and circumstances of any case will materially impact upon our opinions and will therefore be necessary before formal advice can be provided.

Source: <https://www.planning.org.au/documents/item/4803>

"Ask Gadens, February 2013"

As an adequate statement by a qualified designer has not been submitted demonstrating how the development (as modified) satisfies the provisions of clause 115(3A) of the Regulation, it is difficult to ascertain all likely impacts and the suitability of the site for the development.

It is also evident that the development (as modified) is not compatible with the height, bulk and scale of the existing character of the Huskisson Town Centre and as it is proposed to exceed the maximum height (along with the incentive height) it is considered that it will neither be compatible with the desired future character, having regard to the strategic controls (zone, DCP) for the locality.

Further to this, the proposed rooftop communal BBQ area with covered and enclosed seating area and ancillary facilities will detract from the aesthetics of the approved building, affect the amenity of the streetscape when viewed from Currumbene Street in particular, and increase loss of privacy and solar access to neighbouring sites. In addition to this, public submissions were also made objecting to the development.

Acoustic Report by Harwood Acoustics (Reference No. 1708007E-R)

The following issues have been identified with the acoustic report submitted with this application:

- The report only considers the “*main source of noise associated with the proposal will be human voice noise*” for ten (10) human voices. There are no practical controls on residents inviting others to the rooftop terrace and estimations of predicted noise exceeding acceptable noise limits.
- There is no consideration for other noise sources such as music (amplified/speakers or ambient), instruments, etc. The report concedes through the following statement “*main source of noise associated with the proposal will be human voice noise*” that there may be other noise sources on the rooftop terrace which have not been considered.
- A full background noise assessment was not carried out due to the property currently being under construction. Short-term background noise measurement were taken for one (1) hour (8:30pm to 9:30pm).
- Noise from the lift and stairs extended to the proposed rooftop terrace was not taken into consideration and any mechanical plant that may be installed or modifications to the existing mechanical plant that may occur due to the redesign of the rooftop.
- No other sensitive receptors were identified in the assessment (e.g. apartments on the corner of Owen Street, residences at the corner of Morton Street, apartments at the rear along Hawke Street).
- The restriction of use to the rooftop area and how this will be achieved so that “*the rooftop area will be for residents only and will not be open to the public*” has not been specified through a plan of management or impact statement. It is a likely scenario that residents will have invited guests and expect full ability to utilise the rooftop entertaining area. No hours of operation were specified for the use of the rooftop terrace. The plan of management for the rooftop terrace should be developed so that time restrictions are placed on the use of the area as well as restrictions to music and general behaviour of residents using the area.

Plans of management however rely on human behaviour and intervention to ensure impacts are controlled. To this end, if a building or development can be designed in a manner which controls use, activity and noise, this is a better outcome. By way of example, a substantially reduced area could reduce the number of people on the terrace.

REFERRALS

External

Not required.

Internal

Referral	Comment
Building Surveyor	No objections, subject to recommendations (dated 20/07/2017).
Environmental Health Officer	Concerns raised with submitted acoustic report. Amended assessment required, subject to recommendations (dated 18/10/2017).
Shoalhaven Water	Updated Notice provided (dated 10/07/2017) and subject to recommended conditions of consent.

NOTIFICATION

Notification required? Yes

Neighbour Notified within buffer of 60m radius, as per the original DA – 27/06/2017 until 12/07/2017

Number of submissions: Two (2)

Public Submission	
Objection Raised	Comment
<p><u>Height of Building (SLEP 2014)</u></p> <p>The proposal will impact on all properties along the street and is 35% higher than allowed for the area.</p> <p>If this is approved, it sets a precedent for the entire area. Council spent a great deal of effort to create an LEP with limits that address concerns of the community. What was the point of developing the LEP if the first development in the area exceeds the limits by 35% (13.65m v 10m).</p> <p>The application seeks not only to increase the height of the building substantially by adding another storey, close inspection shows the level of all floors are also proposed to be 200mm higher.</p> <p>Query whether a variation of this extent from the height of building requirements is lawful as a section 96 application and whether appropriate regard has been paid to clause 4.3 of SLEP 2014.</p>	<p>Although it is acknowledged that the requirement of the development standard is 'bypassed' under section 96 of the Environmental Planning and Assessment Act 1979 and an 'exception' pursuant to clause 4.6 of SLEP 2014 not required; the provisions of section 79C(1) are still a consideration in accordance with section 96(3) of the Environmental Planning and Assessment Act 1979.</p> <p>There appears to be discrepancies with the nominated levels shown on the submitted plans and amendments to the ground floor design adjacent to Currumbene Street, which have not been referred to in the Statement of Environmental Effects accompanying the application. However, the issue of the overall height of the building remains.</p>
<p><u>Noise Impacts and Loss of Privacy</u></p> <p>Whilst noise from entertainment in itself is an issue across the entire community, the likelihood is that these apartments will be used for short-term leases, if not formally, most probably through opportunities such as AirBNB. With no long-term residents to consider long-term neighbours, the reality is that users of the area will have little consideration of those around them. Both increased noise and a loss of privacy will be the consequences if approved.</p> <p>The proposed entertainment area for eight (8) units and their guests with no restrictions on closing times and noise levels will only add to the noise pollution.</p> <p>The loss of privacy is exacerbated by the additional height request of 3.65m.</p>	<p>Council's Environmental Health Officer has raised concerns with the submitted acoustic report (above). An amended assessment would be required.</p> <p>There is potential for further reduction in privacy.</p>

<p><u>Overshadowing and Loss of Solar Access</u></p> <p>Previous concerns about overshadowing and the apparent lack of transparency in regard to solar access have been exacerbated not only by the added storey but the overall increase in height and bulk of the development. Clause 4.3(1)(b) of SLEP 2014 states the objective of this clause is to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</p> <p>The overshadowing impact at this height will be devastating as there has been no effort made to retain any sunlight for adjacent residential development. This makes for overshadowing by poor design.</p>	<p>The statement from Eduardo Villa of Villa & Villa has not adequately addressed subclauses (b) and (c) of clause 115(3A) of the Regulation. It does not provide detailed explanation of how the design quality principles are addressed or in particular, the objectives of the ADG have been achieved in the development (as modified).</p> <p>The development will detract from the aesthetics of the approved building and affect views from Currumbene Street in particular. There is potential for further reduction in privacy and solar access to neighbouring site/s.</p>
<p><u>Notification of the application</u></p> <p>Concerns given the significant change being requested (both in size and impact) that surrounding residents were not advised of the application.</p>	<p>The application was notified in accordance with Council's Community Consultation Policy.</p>
<p><u>Request for Independent Review</u></p> <p>Request for independent review due to lack of transparency and lack of diligence in Council applying the SLEP 2014 and a lack of process where decisions that significantly impact the community are being dealt with by staff without community consultation or referral to the Councillors as the community representatives.</p>	<p>Councillors called in the application because of the public interest on 25 July 2017.</p>

OTHER MATTERS

Is the consent current? Yes

Is the proposal substantially the same development? Yes. The rooftop communal BBQ area with covered and enclosed seating area and ancillary facilities is proposed to be used in conjunction with the approved residential units. It is however noted that a rooftop terrace was not proposed with the original application and this introduces a new building component. Having regard to the extent of modifications accepted by the Court, this modification is considered to be within the scope of section 96.

Does the modification require consultation with the relevant Minister or another public authority or approval body? No

Has the application been notified in accordance with the regulations? Yes

Consideration of submissions: See above

Consideration of relevant Section 79C matters:

The Likely Impacts of That Development

Head of Consideration	Comment
Natural Environment	<p>The rooftop communal BBQ area with covered and enclosed seating area and ancillary facilities is unlikely to have an impact on natural ecosystems etc. noting that the approved development is within an existing urban area, identified for higher density development.</p> <p>With regard to SEPP 71 Coastal Protection, the provisions of clause 8 have been considered, particularly the cumulative impacts of the proposal on the environment. The development (as modified) will not result in any loss of coastal amenity, however, will impact on the unique attributes of the NSW coastline. As mentioned above, the site is in an urban location intended for this type of development.</p>
Built Environment	<p>The rooftop communal BBQ area with covered and enclosed seating area and ancillary facilities adds to an approved development which is under construction. It will add to the height and change the appearance of the development.</p>
Social Impacts	<p>The development (as modified) will provide an additional level of amenity for occupants. However, the adjoining neighbours and potential occupants of the development may be adversely impacted by noise and antisocial behavior if the space is not 'managed'.</p>
Economic Impacts	<p>It is unlikely that there will be any broad detrimental economic impacts on the community.</p>

The Suitability of The Site For The Development

As insufficient information has been provided by the applicant, it is unclear whether the site will be suitable for the development (as modified).

The Public Interest

The development (as modified) generally complies with the provisions of SLEP 2014 (albeit for clause 4.3) and SDCP 2014. However, the impacts of the development are likely to be such that future occupants are affected as well as adjoining neighbours. Further to this, the design of the development has not been resolved or supported by a suitable report.

Consideration of access for people with a disability and the Disability Access to Premises – Buildings) Standards 2010 (applies to all applications lodged on or after 11 May 2011.)

Considered.

RECOMMENDATION

It is recommended that Application No. DS17/1233 be refused due to the amenity impacts and as insufficient information has been provided by the applicant for complete assessment of the proposal.

U R B A N D E S I G N S T A T E M E N T
Villa and Villa Architects

12 CURRAMBENE STREET HUSKISSON

Lot 2 – DP 662583



MIX USE RETAIL & RESIDENTIAL DEVELOPMENT
2 SHOPS / 8 Residential Apartments

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Level 4, 24 Hickson Road, Millers Point NSW 2000 • telephone: 92477667 • fax: 92477665

DE17.85 - Attachment 2

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Introduction

This report provides a design verification of a proposed mixed use two retail shops/eight shop top residential units at No. 12 Currumbene Street Huskisson being land which comprises of one existing house lot situated on the eastern side of Currumbene Street.

The author of this report is a qualified designer and I confirm that I have directed the design of the proposed development.

The remainder of this report sets out the manner in which the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65-Design Quality of Residential Flat Development (SEPP 65) have been achieved by the subject design.

The design quality principles are set out in Part 2 of SEPP 65 as follows and this report is structured to address each of the Design Quality Principals in the same order

- Principle 1: Context and Neighborhood Character;
- Principle 2: Built Form and Scale;
- Principle 3: Density;
- Principle 4: Sustainability;
- Principle 5: Landscape;
- Principle 6: Amenity;
- Principle 7: Safety;
- Principle 8: Housing Diversity and Social Interaction;
- Principle 9: Aesthetics;

Principle 1: Context & Neighborhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character.

Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighborhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Proposal

The proposed development is in line with the emerging nature of its receiving environment. The construction of Eight shop – top Residential units at the first and second floor levels will provide a counterbalance to the more developed western side of Currumbene Street, Huskisson.

The building controls together with consolidation patterns have tended to promote “horizontal or slab block” type apartment typologies.

Figure 1 below provides an oblique aerial photograph showing the height and siting of buildings within the vicinity of the site.

Figure 1: Site Context



With this type of development in the CBD of Huskisson, the character of this locality will have a strongly defined Street edge, which reinforces the surrounding pattern of hard edges. The locality has developed subsequent to the introduction of SEPP 65 principles and it's clear that the design quality principles have informed the design of this development.

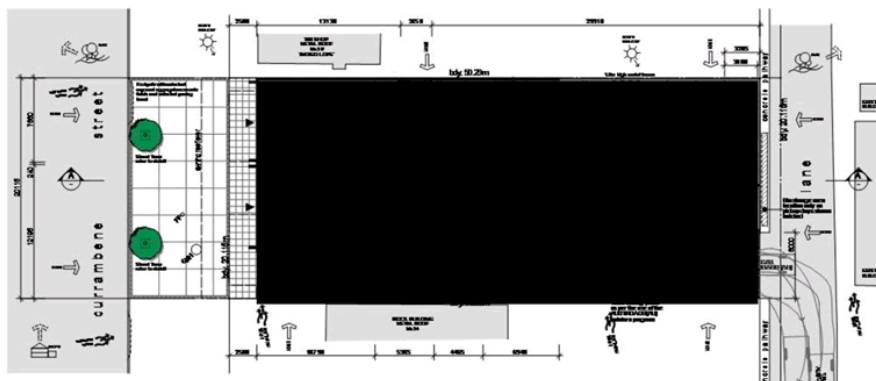
Principle 2: Built Form & Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Proposal

The proposed development is in line with principle 2 of Shoal haven Councils DCP is that its bulk, scale and design are in keeping with other buildings in the area and appropriate for its setting. Its height in particular will contribute to streetscape of Currumbene Street without impeding views to the waterfront and Jervis Bay beyond, please refer to the location map on the cover sheet of the architectural plans provided showing other buildings around to subject site.

Figure 2 – Site analysis extract showing consistency of site coverage, building separation, height and setback with adjoining development.



Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Proposal

The proposed density of the development is in keeping with its receiving environment and will assist in boosting residential and business densities in this area which is a popular tourist destination.

The density of the proposal when assessed as a FSR is 0.97:1, which is in keeping with other similar types of developments in the area.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and livability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Proposal

A minimum of 2 hours solar access is achieved to all of units and 100% of units are naturally cross ventilated. The north western building fronting Currumbene Street is provided with 1 single aspect, east facing unit at each level, such that 4 single aspect east facing units are proposed. Same for the back, with only 4 single aspect east facing units.

Building materials from the demolition will be salvaged and recycled offsite as stated within the proposed construction waste management plan. Lastly, I note that the application is submitted with a BASIX Certificate which sets out, among other things, the required energy rating of proposed appliances.

Principle 5: Landscape

Good design recognizes that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighborhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimizes usability, privacy and opportunities for social interaction, equitable access, respect for neighbors' amenity, provides for practical establishment and long term management.

Proposal

There are only a couple of isolated trees and selected concrete and paving to the front of the property so preservation of existing landscaping is not a major issue. Also small planter boxes have been added to the Roof Top Common Outdoor BBQ and Seating Area.

Landscaping as per the architectural drawings on Sheet A01 provided which will help to integrate the proposed development into its receiving environment.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Proposal

The proposed eight unit shop Top Residential Unit and Rood Top Common Outdoor BBQ/Seating development is of a high standard and is in line with the direction provided by the NSW Apartment Design Guide. The layout of the proposed shop – top residential units provides practical living areas, access to all necessary facilities and whilst retaining private areas. Access to outside living Areas is provided by way of partially screened balconies which are accessible both from the living area and the main bedroom. Also private internal storage space are provided in each unit and in the ground floor residents store room. Also other facilities for the residents of this development is a roof top common area for use by the residents only, that has a indoor seating area or lounge zone with Bi-Fold Doors to the outside. The Outdoor Area has BBQ Facilities and Toilet, there is also seating area to the common outdoor zone. To keep the bulk and scale down we have setback the walls to the West and East, also to the North and South sides. To keep this area private we have provided planter boxes with Landscaping to the North and South sides of the Roof Top Common Area.

Principle 7: Safety

Good design optimizes safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximize passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Proposal

The design of the proposal addresses the listed safety concerns. The eight shop-top residential units provide passive surveillance over the car parking to the rear and the street to the front. Access to the units from the street is visible to passing pedestrians and motorists via the resident's entry foyer.

The car parking area to the rear at ground level will be secure and separated from the rear lane by an automatic gate.

Security key system will be provided for each unit and the rear gate to the entry parking door.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Proposal

The addition of eight shop top residential units to the mix of houses available in Huskisson will contribute to the goal of achieving a mix of dwelling sizes, providing housing choice for different demographics, living needs and household budgets.

The subject site is well serviced in terms of access to social facilities and the proposal will add to the supply and choice of housing opportunities with the Huskisson CBD.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Proposal

The aesthetic treatment of the development has sought to emphasis horizontal expression as well as provide elegant yet simple street façade with an overhanging roof.

The palate of finishes have been selected on the basis of proven durability. The selected mix of painted and stone tile finishes complemented by powder coated fenestrations and pre finished cladding.

Conclusion

In accordance with the requirements of Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000, I confirm that I have directed the design of the proposed development and that I am a registered architect.

I also confirm that the proposed development has been designed in accordance with the 9 design quality principles set out within SEPP 65-Design Quality Of Residential Flat Development.

Signed,



Eduardo Villa
(NSW Architects Registration Board)
Registration No. 6813

DE17.86 Development Application – Parson St Ulladulla – Proposed Lot 15 in Subdivision of Lot 3 DP746228 and Lots 5 & 6 DP805221

DA. No: DA16/2412/4

HPERM Ref: D17/349640

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

Attachments: 1. Report to Development Committee 14 March 2017 [↓](#)
2. DA Plans [↓](#)
3. Site Context Photos [↓](#)

Description of Development: Construction of a three storey office building, car parking, landscaping and associated infrastructure

Owner: ET & ME Oberg

Applicant: Triple A Developments

Notification Dates: 12 December 2016 to 9 January 2017

No. of Submissions: 4 in objection
Nil in support

Purpose / Reason for consideration by Council

The purpose of this report is to seek Council direction with respect to a request for a variation of a development standard (building height) applicable to the site under Clause 4.6 of the Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

Council has previously considered the application (MIN17.183 & MIN17.218) and the plans for consideration remain unchanged from the plans previously considered in the Council report (DE17.23) to the Development Committee on the 14 March 2017. The Ulladulla CBD Heights Review is being considered by Council in a separate report to this committee and it is appropriate to reconsider this application in conjunction with the height review.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Confirm that it supports the proposed variation to the maximum building height of 7.5m to a maximum of 11m for the main building;
2. Refer the application back to staff for determination by delegation.

Options

1. Resolve to support the proposed variation to the development standard for height from 7.5m to 11m and refer the application back to staff to determine the application under delegated authority.

DE17.86

Implications: This would enable the application to be finalised and conditions prepared to enable consent to be issued.

2. Resolve not to support the proposed variation to the development standard and refer the application back to staff to negotiate with the applicant to redesign the proposal to meet the 7.5m height standard.

Implications: This would mean that the application could not be supported in its current form. This would require modifications to be made to specifically adjust the height which could have implications on the development and its commercial viability for the owners of the site. This option could also potentially result in litigation by the applicant.

3. Adopt an alternative recommendation and provide direction to staff.

Location Map



DE17.86

Background

On 14 March 2017, Council's Development Committee considered a development application (DA16/2412) for a three (3) storey office building at proposed Lot 15 Parson Street, Ulladulla.

The proposal sought a 46% (3.5 metre) variation to the 7.5 metre height prescribed in the Shoalhaven LEP 2014 for the land. Although the Committee originally resolved to support the variation (MIN17.183), a rescission motion was considered at the 28 March 2017 Ordinary Meeting (MIN17.217) and it was resolved to not support the proposed variation (MIN17.218). As part of this resolution Council also resolved (part 2) to:

Undertake a review of the 7.5 metre 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.

Building Height Review

Consultants, City Plan Services and Atlas Urban were engaged in June 2017 to undertake a Building Height Review. The Review considered a detailed analysis of the Study Area and context, as well as community consultation with the Ulladulla & Districts Community Forum, community and Council representatives.

The outcome of the review recommends an increase in height across the Study Area from 7.5 metres to generally 11 metres with a small area of 14 metres. The report recommends that in the location of the subject site that the maximum building height be increased from 7.5 metres to 11 metres.

Height consideration at 11m

The height of the building would be consistent with an 11 metre building height standard as recommended by the review. The extent of encroachments above the 11 metre building height standard would be limited to the flag pole.

Planning Assessment

The application will be fully assessed under s79C of the Environmental Planning and Assessment Act 1979 following determination of the application for variation to development standards.

Policy Implications

The application identified a need to review the appropriateness of the height controls in the precinct and the recommendations from the Building Height Review will assist in facilitating development and providing direction in the development of the surrounding area.

Should the recommendations of the Building Height Review be adopted, then amendments will also be required to the Shoalhaven LEP & DCP 2014 to reflect new heights and to resolve any inconsistencies resulting from the modifications.

Consultation and Community Engagement:

The notification was made in accordance with Council's Community Consultation Policy to properties within a 60 metres of the site and a newspaper advertisement. The notification was for a 4 week period to account for the Christmas/New Year's holidays and 4 submissions were received.

Key issues raised as a result of the notification were discussed in detail in the previous report included in Attachment 1.

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

It is considered that the variation is reasonable and acceptable and in this instance strict compliance with the height development standard is considered to be unnecessary as the development is appropriate in the location and can achieve relevant planning objectives.

It is considered that there are sufficient planning grounds to justify the departure from the height development standard prescribed in the Shoalhaven LEP 2014 which is supported by the recommendations of the Building Heights Review.

**DE17.23 Development Application – Parson St Ulladulla
– Proposed Lot 15 in Subdivision of Lot 3 DP
746228 and Lots 5 & 6 DP 805221**

DA. No: DA16/2412/4

HPERM Ref: D17/50496

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

Attachments: 1. Site Context Photos
2. DA Plans

Description of Development: Construction of a three storey office building, car parking, landscaping and associated infrastructure

Owner: ET & ME Oberg

Applicant: Triple A Developments

Notification Dates: 12 December 2016 to 9 January 2017

No. of Submissions: 4 in objection
Nil in support

Purpose / Reason for consideration by Council

The purpose of this report is to seek Council direction with respect to a request for a variation of a development standard (building height) applicable to the site under Clause 4.6 of the Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

Recommendation (Item to be determined under delegated authority)

That Council:

1. Confirm that it supports the proposed height variation to the 7.5m height limit and allow the increase sought;
2. Refer the application back to staff for determination by delegation;
3. That a review of the 7.5m building heights in this part of the town centre be included in any future review of DCP2014 Chapter S8 – Ulladulla Town Centre

Options

1. Resolve to support the propose variation to the development standard for height from 7.5m to 11m and refer the application back to staff to determine the application under delegated authority.

Implications: This would enable the application to be finalised and conditions prepared to enable consent to be issued. The objectors could choose to pursue the matter through the land and environment court. It would however be necessary to demonstrate that due process was not observed with respect to the processing of the DA.

2. Resolve not to support the proposed variation to the development standard and refer the application back to staff to negotiate with the applicant to redesign the proposal to meet the 7.5m height standard.

Implications: This would mean that the application could not be supported in its current form. This would require modifications to be made to specifically adjust the height which could have implications on the development and its commercial viability for the owners of the site. This option could also potentially result in litigation by the applicant.

3. Adopt an alternative recommendation and provide direction to staff.

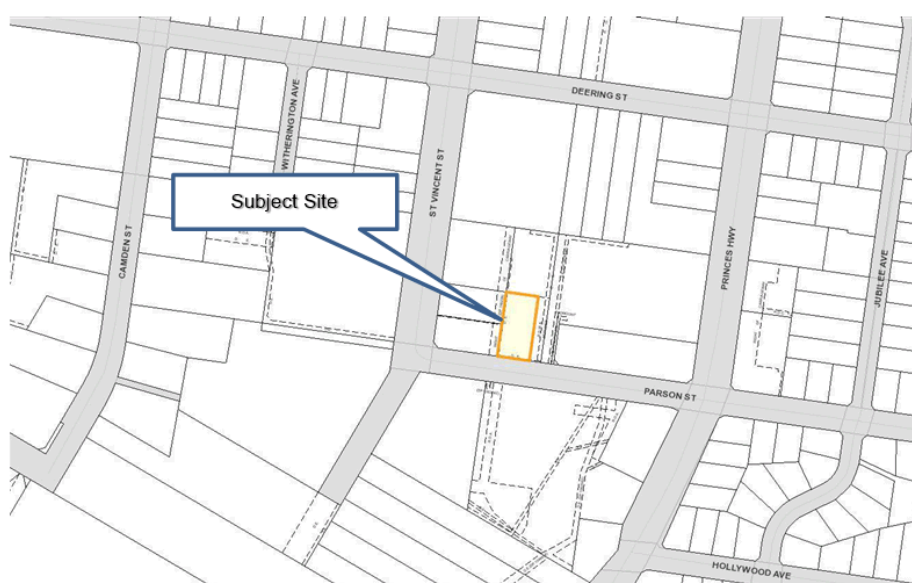


Figure 1 Location Map

Background

Proposed Development

The application proposes construction of a three (3) storey office building comprising ground floor car parking and two levels of office space (refer to **Attachment 1 – Plans**). More specifically the application can be summarised as follows:

- Overall maximum building height is 11 metres.
- The predominant height expressed to Parson Street is 10.5 metres at the south-western corner to 11 metres at the south-eastern corner. The building reduces in height in a south to north direction with lowest part of the building being to the rear of the structure at 6.48 metres in the north-west corner.
- Building design is contemporary with a mix of materials including concrete, render, metal/aluminium cladding, perforated metal screening and glazing.
- A total of 25 (including 1 accessible space) car spaces are proposed on the ground level.

- Two office levels comprising floor areas of 504m² (first floor) and 492m² (second floor).
- Vehicle entry and egress to and from the site is proposed via Parson Street.

Subject Land

The site is located on the northern side of Parson Street approximately 124 metres west of the Princes Highway and will be created by a separate approval for the consolidation and boundary adjustment of Lots 5 & 6 DP805221 and Lot 3 DP 746228.

The land upon finalisation of a consolidation plan will have a frontage to Parson Street of 33.84 metres and a slightly variable depth averaging 38.5 metres with a total site area of 1303m². The land has a fall of approximately 4.5 metres from the northwest to southeast. The site is currently vacant.

The lot will be encumbered by a 1m wide drainage easement along the western and southern boundaries and a 3m wide drainage easement along the eastern boundary.

Site & Context

The site is surrounded by a range of commercial premises which are characteristic of the B5 Business Development zone.

To the immediate north is a storage facility whilst to the western boundary abuts two lots which comprise a storage facility and car wash with frontages to St Vincent Street. A Right of way adjoins the eastern boundary and beyond this is a car dealership and commercial building with multiple occupancies along the Highway.

On the southern side of Parson Street is the Home Maker Centre with multiple commercial and retail occupancies whilst the Dunn & Lewis Centre and Bunnings are located further west and south-west of the site.

Strategic Context

The development site is located within an existing commercial precinct identified as Precinct 5: Business Development under chapter S8 Ulladulla Town Centre of the Development Control Plan (DCP 2014). The site is characterised by predominantly commercial uses. Buildings are typically single storey however there are more recent larger developments in the immediate surrounds including the Dunn & Lewis Centre, Bunnings and Project Lighting.

The area bounded by Deering Street, St Vincent Street, Parson Street and the Princes Highway is an area of mixed built form and character, with a mix of large format retail buildings with either multiple occupancies or single buildings purposely built such as the car wash and storage facilities, Bunnings and McDonalds restaurant. The area is essentially a mix of business and warehouse and bulky goods premises which are consistent with the objectives of the zone. (refer to **Attachment 2 – Site Context Photos**)

The site is located approximately 400 metres from the Commercial Core of Ulladulla.



Figure 2 Aerial view of subject site and surrounding area

The 7.5 metre height control was originally set in DCP 56.4 in 2008 as an acceptable solution and then incorporated into SLEP 2014 as a development standard. Figure 3 shows the various maximum heights in the locality of the proposal.



Figure 3 Height Limit Map

History

The site was previously approved for expansion of the storage units, however, the owners have decided to limit the extent of the storage units and develop this proposed residual vacant lot more in keeping with the type of development to the south and west of the site.

The building height controls on this site were originally established as 8m and 2 storeys under DCP 56 in 1995, as it applied to most of the town centre area other than some specified locations where 11m or 14m was permitted. DCP 56.4 was adopted in 2008 which included significant changes to building heights, particularly in the business core, of up to 14m with key development precincts of up to 25m, however, in the location of this development the height control was reduced to 7.5m with the intent of insuring that development along the ridge of Deering Street did not impact visually on the appearance of the town centre as viewed from the harbour end of town. This site is well south of this ridge and at least 6m lower than Deering Street.

The adoption of DCP 56.4 caused considerable concern within the Ulladulla community, which stimulated the establishment of the Ulladulla and Districts Community Forum and a sustained campaign to review the heights that were adopted in the plan. Following considerable consultation with the community the heights were revised down and adopted in DCP 56.5 in 2011. The building heights south of the town centre were not highlighted in this review nor was the 7.5m building height reviewed in the preparation of SLEP 2014, which rezoned the low density area to R3 Medium Density in the southeast of the town centre DCP area.

Issues

Clause 4.3 Height of Buildings

The site is situated within an area where Height Building Maps under cl.4.3 of SLEP 2014 provides for a maximum building height of 7.5m. This application seeks to vary this building height development standard.

A variation of 46% (3.5m) is sought along the southern elevation and to a lesser degree to the remaining elevations.

Clause 4.6 Exceptions to Development Standards

The NSW planning system provides flexibility in planning controls by providing the ability for Council to vary development standards in certain circumstances. In this regard, the concurrence of the Secretary of the Department of Planning and Environment (DP&E) can be assumed as provided in DP&E publication – Varying development standards: A Guide – August 2011 (the Guide). Clause 4.6 enables a development standard to be “contravened”, provided the applicant has submitted a written request that adequately justifies the exception (variation) from the development standard by demonstrating that:

- 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 a development standard.*

Further, the consent authority must be 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 objective for development within the zone in which the development is proposed to be carried out.*

Applicant's Submission

The applicant provided Council with a justification to variation of the development standards as follows:

There are no nearby buildings apart from the adjoining rear storage sheds, the corner Car wash is 8.0 M away to the west and the Car dealership is 28.0 M to the east.

The proposed development will be a landmark Office Building just off the Princes Highway and because the site elevation and location of surrounding buildings, the proposed development will have a stand alone appearance.

The proposed building will be three levels, a Car Park and two Office floors above, the Car Park will be excavated into the rear of the site so that the rear of the building appears two levels and is under the 7.50 M height requirement while the building appearance from Parson Street will be 3 levels with open Car parking across the frontage and the top storey roof facade will be 10.00 M high above natural ground.

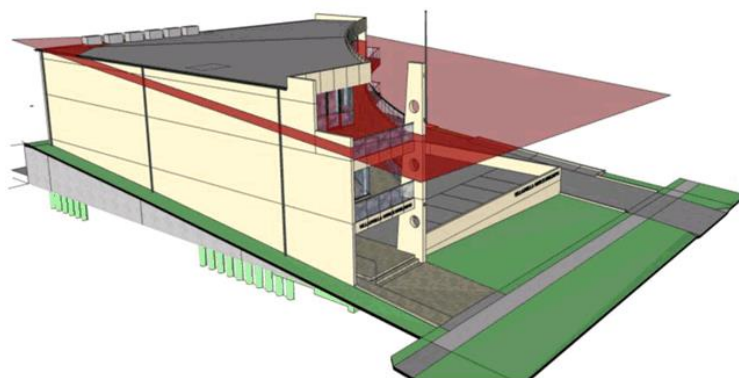
The proposed building frontage has been design to go diagonally across the site following the existing contours of the land with the building frontage set back at the Entry at 5.50 M to the furthest point set back 28.50 M off the front boundary, by following the contour of the land the building design maintains a constant height across the site above natural ground and the bulk of the building height recedes to the rear of the site so there is not a lot of building bulk at the street There is also a precast concrete blade with flag pole which reflects the masthead on a ship which is 11.0 M above ground and ties in with the front Office Terraces, this is a significant feature of the building design as it stands out from the building as the Office terraces recede to the back of the site.

Apart from the Entry frontage and feature concrete blade which are position towards the front of road the building frontage consist mainly of an open Car Parking area with side driveway access, the top floor Offices continues to recede back to the rear of the site, this design reduces the height and bulk appearance of the building from the street frontage.

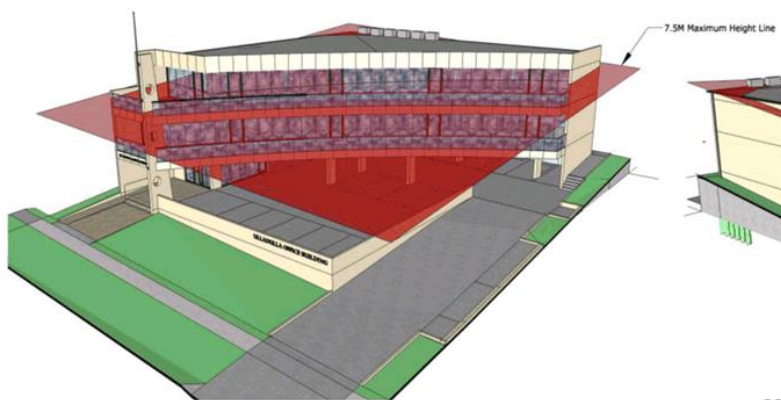
The fall in the land has made it difficult to keep the building height under the 7.50m limitation the diagonal frontage will reduce the impact of the building height on the streetscape and the sweeping curved front terraces will provide an attractive appearance, due to the unique site location there will not be any adjoining buildings next to the building proposal, the building will not compete or detract from the adjoining sites, the request for building height variation in this instance will have no impact on the adjoining and surrounding sites.

The proposed development will have minimal impact on adjoining buildings as the height variation requested will not cause any loss of views, privacy and solar access.

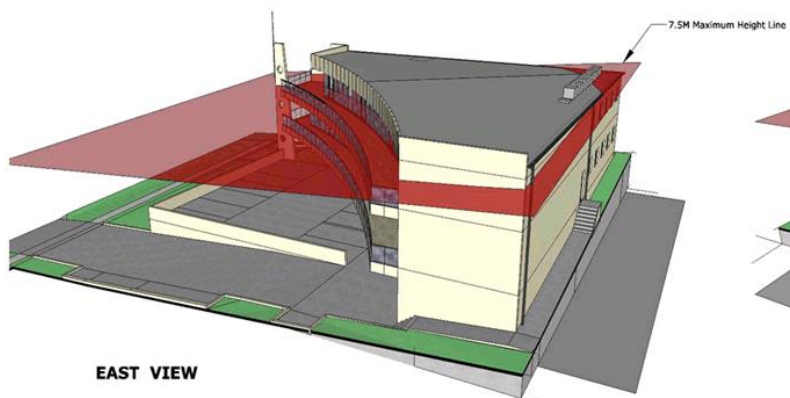
The applicant has also submitted plans which illustrate the extent of the intrusion of the building above the 7.5m height plane.



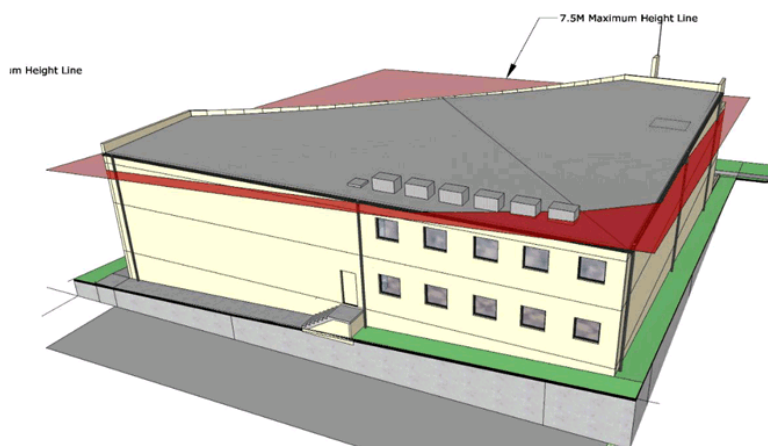
SOUTH WEST VIEW



SOUTH EAST VIEW



EAST VIEW



NORTH VIEW

Discussion

In accordance with 4.(a)(i) of Clause 4.6 of the SLEP 2014, the applicant's written request is considered to have adequately addressed the matters required to be demonstrated by subclause (3) that is,

- a) *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and*
- b) *There are sufficient environmental grounds to justify contravening the development standard.*

After reviewing the applicant's submission, it is considered that the variation is reasonable and acceptable for the following reasons:

- The building height varies with the slope of the block and is contextually appropriate.
- The building height variation does not generate overshadowing impacts on the surrounding properties.
- The proposal is consistent with the desired future character of the area. The area is identified in the Ulladulla Town Centre DCP as a Business Development Precinct located on the fringe of the central business area which will become increasingly important as an area for support activities to the Commercial Core Precinct and provides a buffer to the industrial areas to the south.
- The proposal is considered to be consistent with the objectives of the height standard, to ensure that the height of development is appropriate to the condition of the site and its context.
- Where the variation is the greatest in the southern elevation it incorporates large expanses of glass and balconies to the first and second floors which provide articulation and reduces the perceived height from the street level. The curved shape of the front elevation also provides relief and softens the appearance of the building from Parson Street.
- Height controls can be appropriate so long as they appropriately designed to facilitate good planning outcomes. In this instance it is considered that this might not be the case and a review of the current height controls in the precinct would be beneficial to identify the desired outcomes and the appropriateness of the controls. There is considerable

variation in the building height controls in the immediate surrounds of this proposal. An 11m height control applies to the west side of St Vincent Street, a 10m height limit applies to the south side of Parson Street (opposite the site) which is the same B5 zoning. Low density residential land surrounding this precinct has an 8.5m height control but medium density R3 within the precinct has a 7.5m height control (Refer Figure 3).

Consistency with the underlying objectives of the standard:

The objective of the Height Standard is listed at Clause 4.3 (1) of SLEP 2014.

- a) *to ensure that buildings are compatible with the height, bulk and scale of existing and desired future character of the 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 building on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

The proposal is consistent with bulk and scale of the existing development and the desired future character of the locality. The proposed height of the development is appropriate to the context and is compatible with the prevailing pattern of buildings in the locality. The extension of the building beyond the 7.5m height control is predominant at the front of the building (southern elevation) and gradually reduces towards the rear of the building.

The proposal positively responds and satisfactorily addresses the particular characteristics of the site and its broader context. The proposal is of a height and scale that is sympathetic to its immediate context.

The proposed development, when viewed from the street, will not dominate the streetscape and will be compatible with newer developments in the vicinity including Project Lighting, the Dunn & Lewis Centre and Bunnings that are of a similar bulk and scale within close proximity of the site. The proposal is contemporary commercial design which is consistent with the surrounding environs and the objectives of the B5 zone.

Planning Assessment

The application will be fully assessed under s79C of the Environmental Planning and Assessment Act 1979 following determination of the application for variation to development standards...

Policy Implications

The application identifies a need to review the appropriateness of the height controls in the precinct and it is recommended that this be included in the next review of DCP 2014 Chapter S8 Ulladulla Town Centre.

Consultation and Community Engagement:

The notification was made in accordance with Council's Community Consultation Policy to properties within a 60 metres of the site and a newspaper advertisement. The notification was for a 4 week period to account for the Christmas/New Year's holidays and 4 submissions were received.

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

Issue

Development should comply with the existing height controls/Development will set undesirable precedent if approved at proposed height.

Comment

It is considered that this issue has been addressed in the preceding assessment.

Issue

Not enough time given for public evaluation.

Comment

Whilst the application was notified over the Christmas/New Year period, it was advertised for four (4) weeks rather than the regular two (2) week period timeframe to account for the holiday period. It is considered that notification of the application was undertaken in a fair and reasonable process.

Issue

Increased traffic demand and pressure on existing infrastructure.

Comment

The proposed use is of a size and intensity which would be anticipated in the zone and is unlikely to cause significant traffic impacts. Whilst there is congestion in peak holiday periods at the roundabout at the intersection of The Princes Highway and Parson Street this is not directly related to the proposal and it is unlikely to contribute significantly as traffic can enter and exit away from the roundabout on local roads.

Issue

Appearance of building out of character and not 'coastal' in appearance. Large blank walls

Comment

The proposed building is consistent with surrounding built form character and consistent with the objectives of the Business Development precinct (S8 Ulladulla Town Centre DCP) by providing an attractive and active street frontage. The DCP does not require a coastal design in this precinct.

In relation to the comments on the blank wall on the western boundary and its visibility from adjoining properties, these walls will be in part obscured by the car wash and storage facility on the western boundary. Also the design of the wall incorporates delineation of the different levels of the building which will provide some relief.

Financial Implications:

Not applicable

Legal Implications

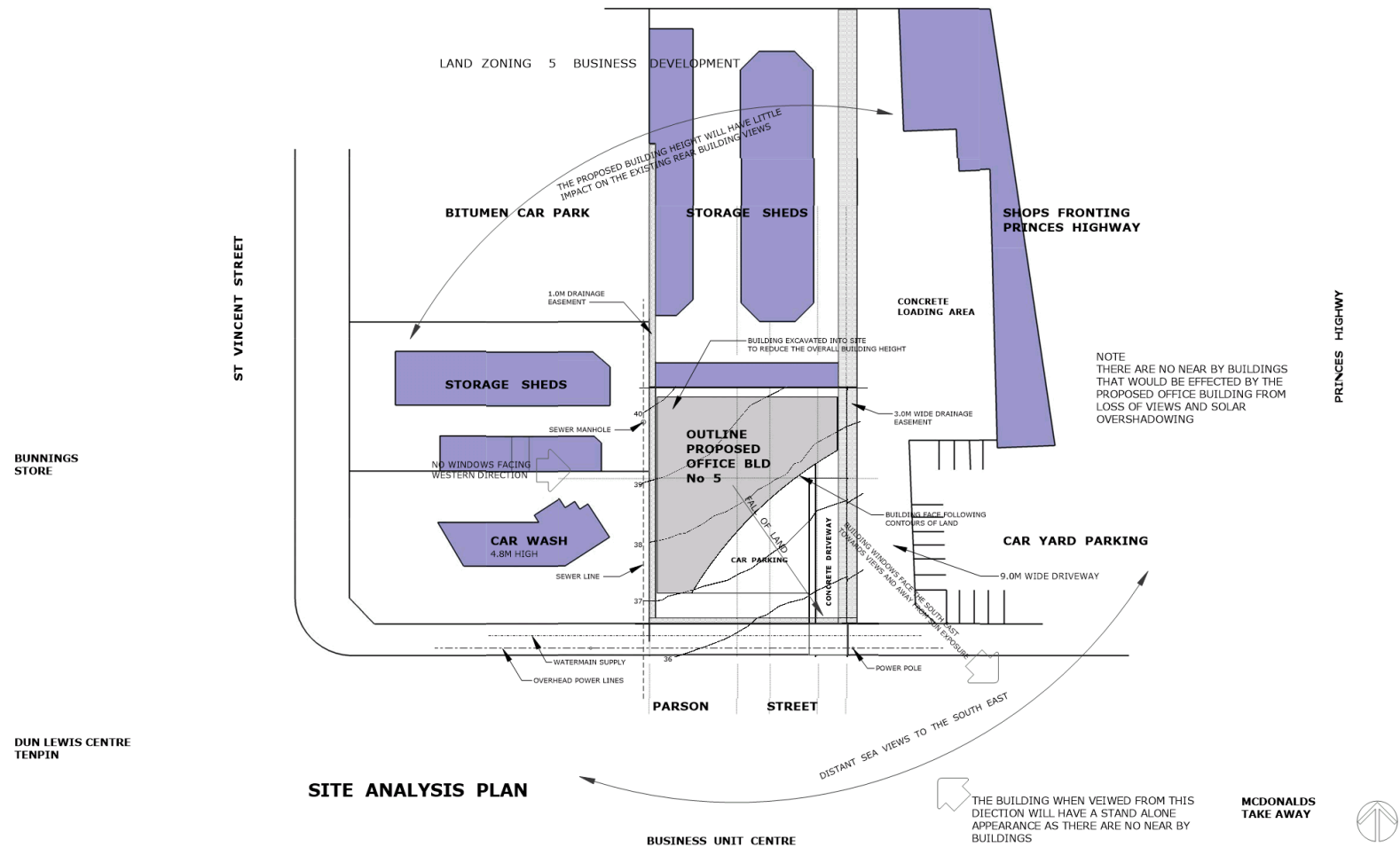
If the application is refused, or if the applicant is dissatisfied with Council's determination, the applicant is entitled to appeal to the Land and Environment Court.

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

Summary and Conclusion

It is recommended that the variation is reasonable and acceptable and in this instance, strict compliance with the height development standard is considered to be unnecessary as the development is appropriate in the location and can achieve relevant planning objectives.

It is considered that there are sufficient planning grounds to justify the departure from the height development standard prescribed in the Shoalhaven LEP 2014. Therefore, the proposed variation to the building height development standard is considered to be well founded in this instance.



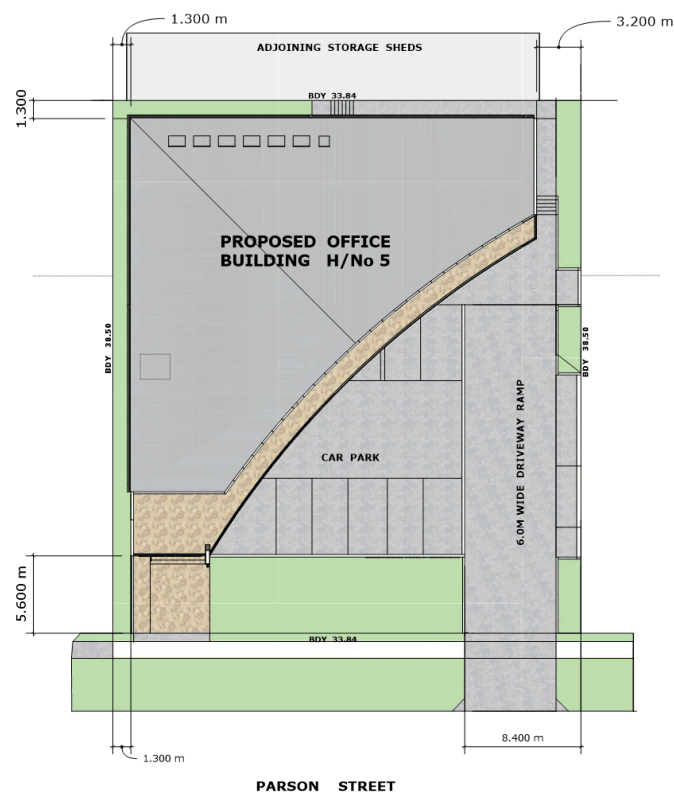
PROPOSED ULLADULLA OFFICE BUILDING No 5 PARSON STREET, ULLADULLA NSW
FOR **ET & ME OBERG**

DRAWN BY TRIPLE A DEVELOPMENTS PTY LTD
PO BOX 419 PADSTOW NSW 2211 MOB 0414 604 362
SCALE 1:400 DATE 24 NOV 2016

AMENDMENTS _____ REVISED PLANS 24 JAN 2017

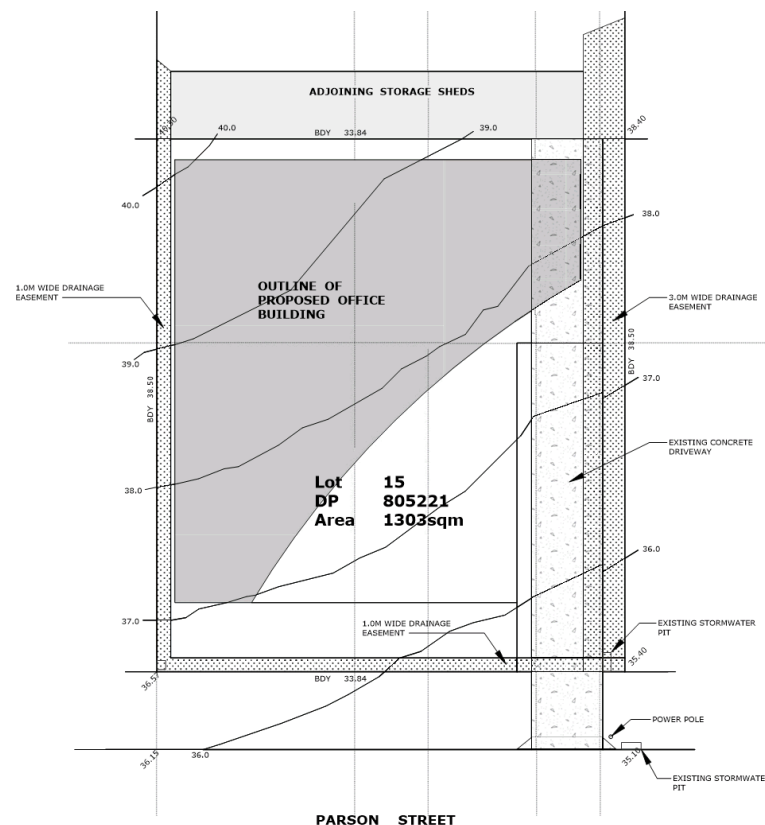
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DWG No
17-20



SITE PLAN

SCALE 1:200



CONTOUR PLAN

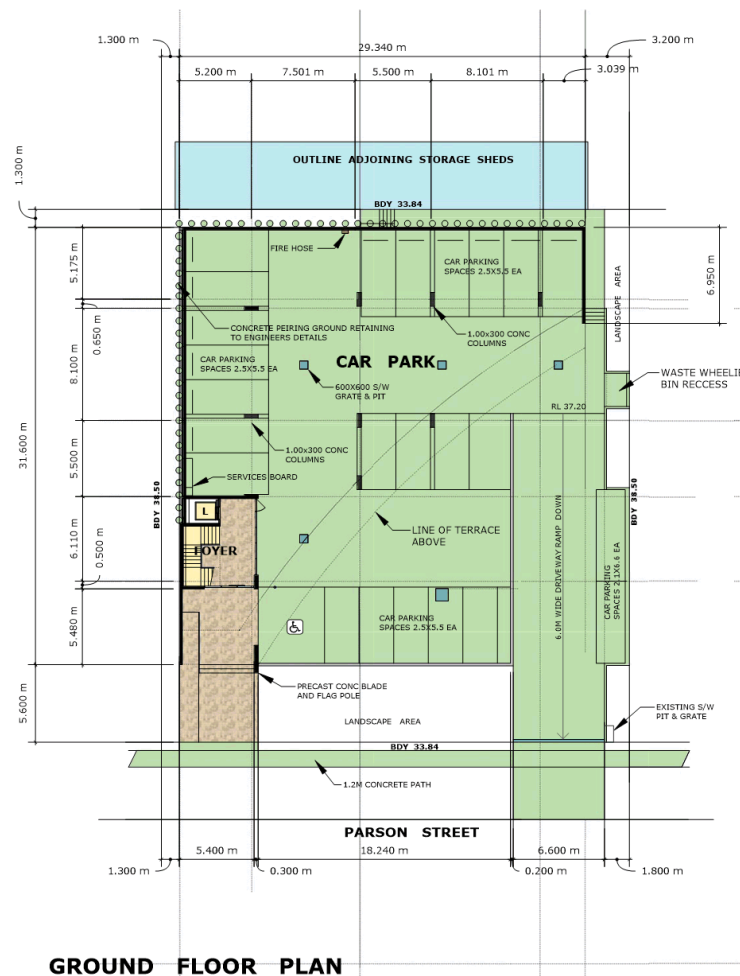


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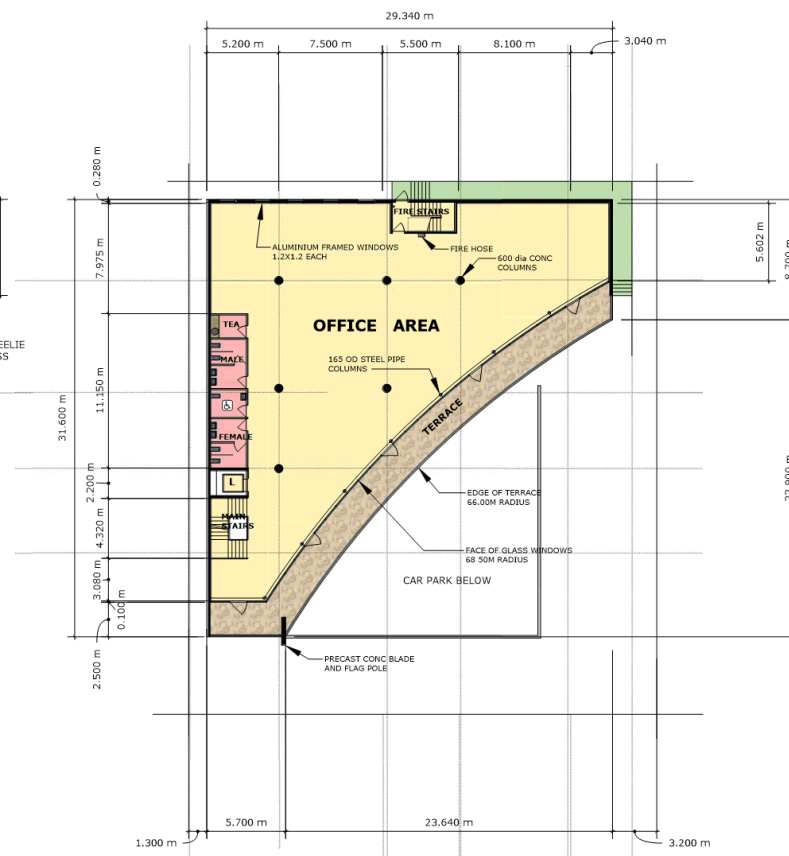
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2-20



GROUND FLOOR PLAN

FURTHER DETAILS SEE DWG 12-16



FIRST FLOOR PLAN

FURTHER DETAILS SEE DWG 13-16

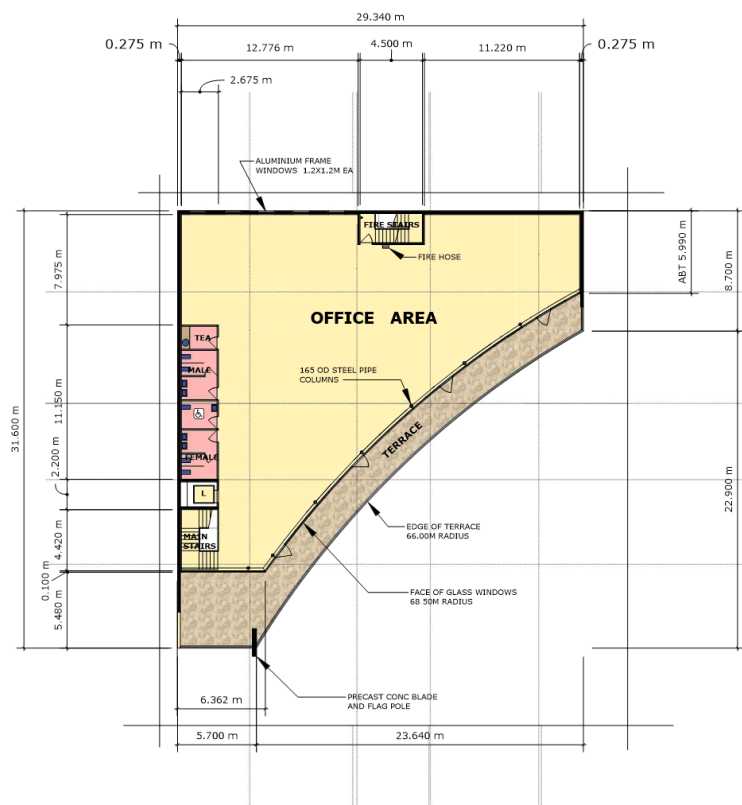


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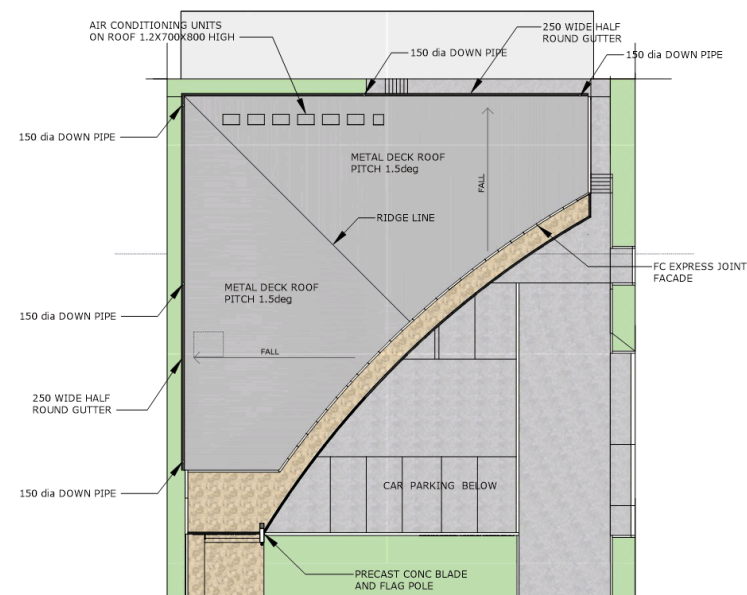
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SECOND FLOOR PLAN

FURTHER DETAILS SEE DWG 14-16



ROOF PLAN

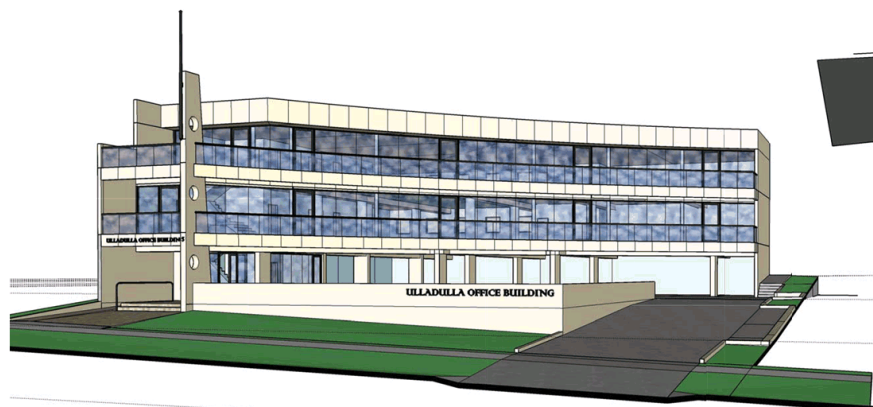


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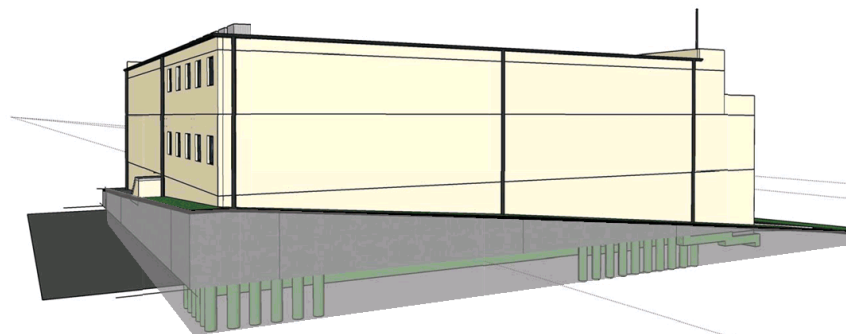
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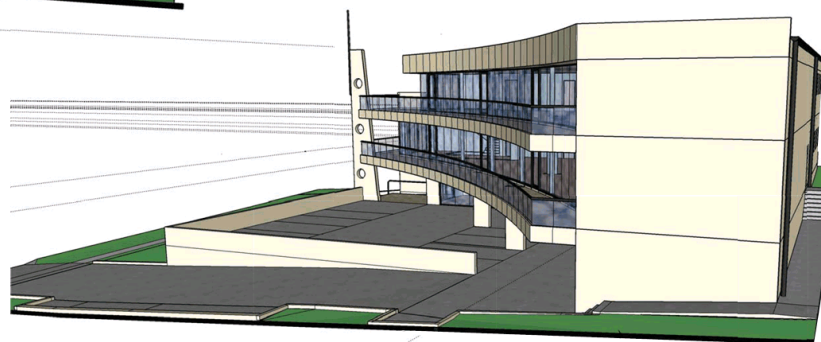
SOUTH EAST VIEW

EXTERNAL COLOURS

PRECAST WALL PANEL & COLUMNS	DULUX HOG BRISTLE
EXPRESS JOINT FC FASCARD	DULUX HOG BRISTLE
WINDOW FRAMES AND BALUSTRADE RAILING	POWDER COATED CHARCOAL
WINDOW GLAZING & BALUSTADE	12.3 LOW E BLUE
GUTTERS AND DOWNPIPES	CHARCOAL
METAL DECK ROOF	SILVER ZINCALUME METAL
TERACES AND PATHS	BLOND TRAVERTINE
DRIVEWAY AND PARKING	GREY NATURAL CONCRETE



WEST VIEW



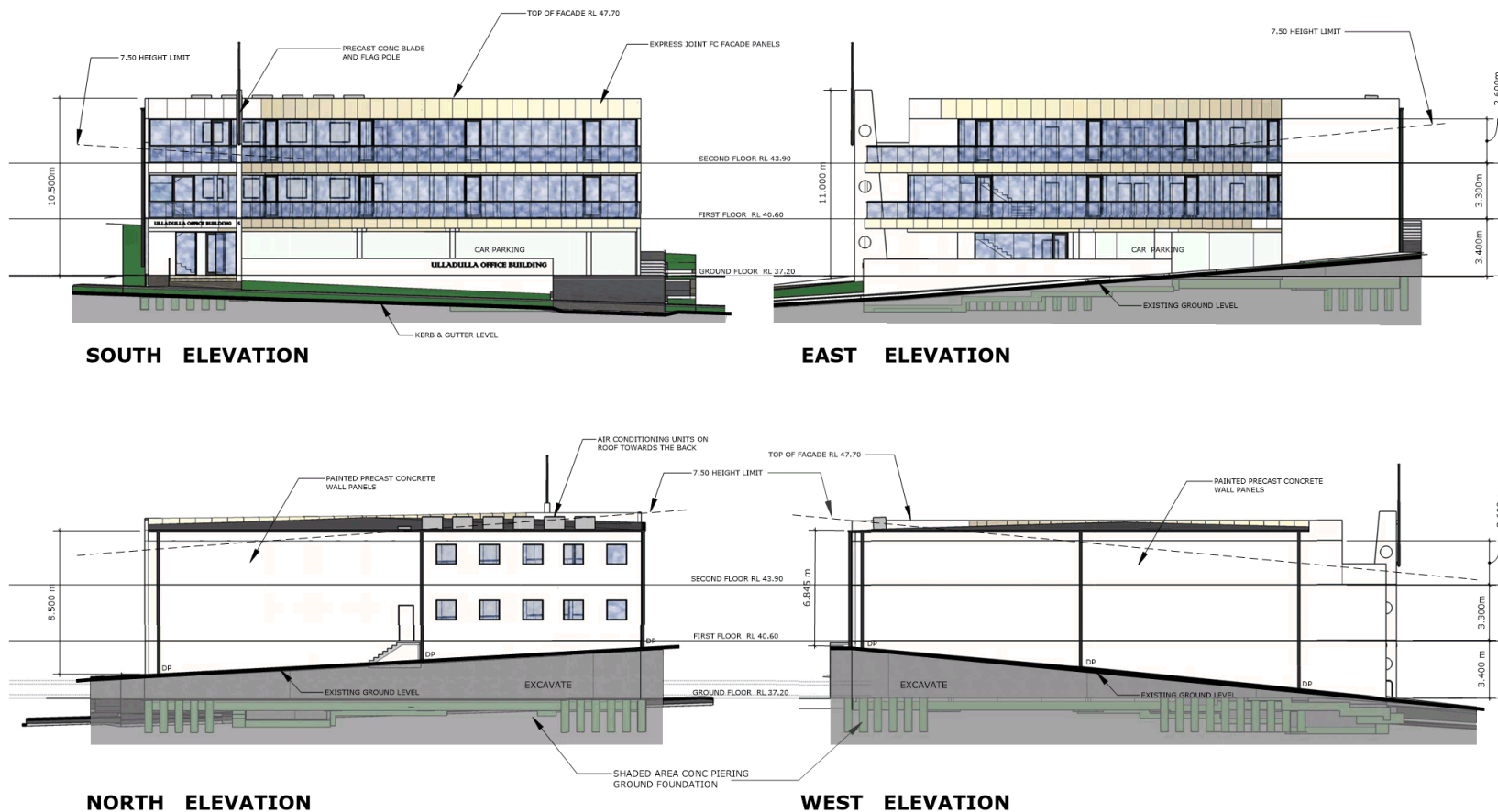
EAST VIEW

PROPOSED ULLADULLA OFFICE BUILDING No 5 PARSON STREET, ULLADULLA NSW
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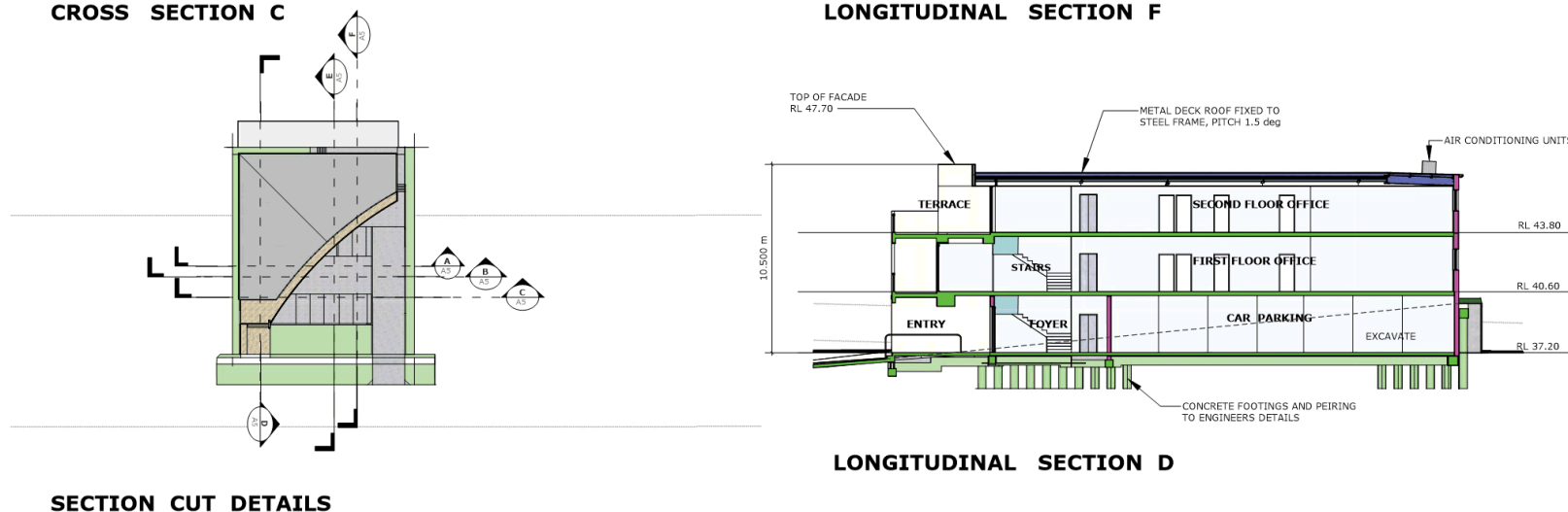


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DWG No
6-20



PROPOSED ULLADULLA OFFICE BUILDING No 5 PARSON STREET, ULLADULLA NSW
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AMENDMENTS
REVISED PLANS 24 JAN 2017
PAPER SIZE A2

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7-20

Attachment 1 – Site Context Photos

**Lot 5 Parson Street ULLADULLA,
DA16/2412**



Photo 1 Looking North from Parson Street to subject site (Storage unit walls about the shared boundary as seen in the background)



Photo 2 Looking north to property that abuts the eastern boundary of the subject site

Attachment 1 – Site Context Photos

**Lot 5 Parson Street ULLADULLA,
DA16/2412**



Photo 3 Looking north-west to western boundary of subject site



Photo 4 Looking north-west from adjacent eastern property across subject site to north-western boundary

Attachment 1 – Site Context Photos

**Lot 5 Parson Street ULLADULLA,
DA16/2412**



Photo 5 South side of Parson Street opposite subject site



Photo 6 Looking west along Parson Street with subject site in the background (where vehicles are parked on grass).

Attachment 1 – Site Context Photos

**Lot 5 Parson Street ULLADULLA,
DA16/2412**



Photo 7 Bunnings building (St Vincent Street
)



Photo 8 Bunnings building from corner of Parson Street and St Vincent Street

Attachment 1 – Site Context Photos

**Lot 5 Parson Street ULLADULLA,
DA16/2412**



Photo 9 Dunn & Lewis Centre



Photo 10 Dunn & Lewis Centre

DE17.87 Development Application SF10591 – 18 Calder Close, Vincentia – Lot 34 in DP 713629

DA. No: SF10591/4

HPERM Ref: D17/350005

Group: Planning Environment & Development Group
Section: Development Services

Attachments: 1. Plan - Survey - Lot 34 DP 713629 - 18 Calder CI Vincentia [↓](#)

Description of Development: Two (2) Lot Residential Subdivision

Owner: Wolfgang Witz & Kathryn Ross
Applicant: Wolfgang Witz

Notification Dates: 20th July to 4th August 2017

No. of Submissions: No submissions received

Purpose / Reason for consideration by Council

The applicant proposes a Clause 4.6 exception to the minimum lot size, as specified by Shoalhaven Local Environmental Plan 2014 (SLEP 2014). The extent of the exception, or variation exceeds the delegated authority level (greater than 10%) of staff, and is therefore required to be considered by Council.

Recommendation (Item to be determined under delegated authority)

That the Committee:

1. Pursuant to Clause 4.6 (Exceptions to development standards) of SLEP 2014, support the applicant's request to vary the minimum subdivision allotment size in respect of proposed Lot 2 from 500m² to 433.9m²; and
2. Refer the development application (SF10591) back to staff for determination.

Options

1. Support the application, and the exception to Clause 4.1 of SLEP 2014, under Clause 4.6 of SLEP 2014, as submitted.

Implications: Subject to the completion of a satisfactory 79C assessment the application be determined under delegated authority.

2. Decline to support the exception to Clause 4.1 of SLEP 2014, under Clause 4.6 of SLEP 2014.

Implications: The application would not be able to be supported, and would therefore be determined by way of refusal, under delegated authority. The applicant would be entitled to appeal against Council's refusal in the Land and Environment Court.

3. Adopt an alternative recommendation and provide direction to staff.

Location Map

Figure 1 – Location Map



DE17.87

Background

Proposed Development

The applicant proposes a two (2) lot Torrens title subdivision of the subject site. Proposed Lot 1 will have an area of 500m² and will contain the existing dwelling house, and will have a frontage to Calder Close.

Proposed lot 2 will have an area of 433.9m², and will be vacant land and will have a frontage to Frederick Street.

The applicant is seeking an exception (or variation) with respect to proposed Lot 2, pursuant to clause 4.6 of the Shoalhaven Local Environmental Plan 2014 (SLEP 2014), to the minimum allotment size of 500m².

Subject Site

The subject site is identified as Lot 34 in DP 713629 No.18 Calder Close. The subject site consists of an irregular-shaped allotment of land, situated on the eastern side of Calder Close and extending through to Frederick Street (see Figure 1). The site has a frontage

of 13.405m to Calder Close and a frontage of 19m to Frederick Street, with side boundary lengths of 57.43m (southern boundary) and 52.97m (northern boundary). The site currently contains a two-storey dwelling house at its western end, with direct access from Calder Close. The rear of the site, sloping down to Frederick Street, consists of planted gardens.

Site Context

The subject site is located within an established residential area of Vincentia. The neighbouring property to the north is a Council-owned public reserve. The adjoining property to the south (No.17 Calder Close) is of similar size and configuration to the subject site, and contains a dwelling house at its Calder Close frontage.

As noted in the table below, the subject site (highlighted in bold) is one of five (5) residential allotments on the eastern side of Calder Close that have a dual street frontage with Frederick Street.

Property	Area	Existing Development
15 Calder Close (Lot 30 DP 713629)	1,014m ²	Dwelling house centrally-located within the allotment.
17 Calder Close (Lot 33 DP 713629)	978.5m ²	Dwelling house located towards Calder Close frontage.
18 Calder Close (Lot 34 DP 713629)	933.1m²	Dwelling house located towards Calder Close frontage.
20 Calder Close (Lot 35 DP 713629)	894.2m ²	Vacant Land
21 Calder Close (Lot 36 DP 713629)	890.5m ²	Dwelling house located towards Calder Close frontage.

DE17.87

Figure 2 – Site Context



Issues

Shoalhaven Local Environmental Plan 2014 – Clause 4.1 Minimum subdivision lot size

Clause 4.1 of SLEP 2014 is reproduced below.

4.1 Minimum subdivision lot size

(1) *The objectives of this clause are as follows:*

- (a) *to ensure that subdivision is compatible with, and reinforces the predominant or historic subdivision pattern and character of, an area,*
- (b) *to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

(2) *This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.*

(3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*

(4) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*

The subject land is identified on the SLEP 2014 Lot Size Map as having a minimum lot size of 500m². Proposed Lot 1 has an area of 500m² and achieves the minimum lot size. Proposed Lot 2 has an area of 433.9m² and is 13.22% less than the minimum lot size.

Clause 4.6 *Exceptions to development standards* enables development standards, such as the minimum lot size, to be varied and requires the applicant to provide a written request seeking to justify the contravention of the development standard by demonstrating that,

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

Applicant's Submission

The applicant has made a formal submission (attached) requesting a variation the minimum lot size under Clause 4.6. In accordance with sub-clause 4.6(3)(a) the applicant contends that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, for the following reasons,

Strict compliance with the standard is unreasonable and unnecessary in this particular case as the development achieves the objectives of both the zone and the development standard. It is not possible for the development standard of 500m² to be achieved and the additional 66.1m² required would not positively impact upon either the amenity of the adjoining residents to the south.

Any perceived potential adverse impact through overlooking or overshadowing is an internal impact within this development. The existing house is a known factor for a purchaser and a dwelling can be designed to protect their privacy and amenity. The existing dwelling however is designed to look over the property to vistas beyond rather than look down into this lot.

Council can be secure in the knowledge that the land is unlikely to be used for the purpose of a dual occupancy development as it is undersized for that purpose but that it is suitable for a single residential dwelling house similar to that illustrated in the accompanying plans.

Development of the lot for a dwelling house will not result in a development that has an overshadowing or overlooking impact upon adjoining lots, it will allow for the erection of a dwelling house that is of similar bulk and scale to those existing in the street and will therefore be compatible with the character of the surrounding residential zone.

In accordance with sub-clause 4.6(3)(b) the applicant contends that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons,

Our application demonstrates compliance with the zone objectives and the objectives of the development standard despite the 13% contravention in the lot size.

The environmental planning grounds include:

- *Compatibility with the character of the existing residential locality including bulk, scale and height of potential residential dwellings.*
- *Maintenance of the privacy and amenity of the adjoining and adjacent residents.*
- *No likely overlooking or overshadowing of existing development through the construction of new development.*
- *There will not be a significant increase in traffic in the locality as a result of the creation of a vacant lot for the purpose of a future dwelling house, an additional dwelling will generate approximately 6 - 9 additional traffic movements daily which is within the environmental capacity of the road network.*
- *The proposal will not pose a significant drain on Council supplied infrastructure such as water or sewer, kerb and gutter exists to both frontages and the land can be provided with electricity and telephone services for the benefit of residents.*
- *The land is not mapped as bushfire prone and the development will not increase the density of development in an area which may suffer from intermittent bushfire threat. This reduces the risk to both residents and fire fighters in the event of a bushfire emergency.*

Comments and Discussion

In accordance with sub-clause 4.6(4)(a)(i) of SLEP 2014, Council cannot grant consent to the development proposal unless it is satisfied the applicant has adequately addressed the matters in sub-clauses 4.6(3)(a) and (b); and, is satisfied that the proposal is 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. With this in mind, it is considered that the applicant's justification statement,

- Has demonstrated that the 500m² minimum allotment size development standard is unreasonable and unnecessary under the circumstances of the case. It is the applicant's submission that strict compliance with the development standard is unreasonable and unnecessary "as the development achieves the objectives of both the zone and the development standard". With regard to the objectives of the development standard insofar

as they relate to the compatibility with the character of the area and reinforce the predominant or historic subdivision pattern, the applicant considers:

“the subdivision character in this locality is generally recti-linear and this proposal provides two lots which comply with and reinforce that character.

The area however is not characterised by a regular grid pattern street layout due to the topography and the proposed lots respond positively to the site topography allowing the maintenance of privacy between lots while taking advantage of the outlook of the adjoining drainage reserve”.

To the extent that the objectives relate to the minimisation of the likely impact on the amenity of neighbouring properties, the applicant contends that the proposal *“will not have an adverse or significantly detrimental impact on the amenity of the adjacent and adjoining residential area. Privacy can be retained between dwellings and the lots, with the retention of vegetation”*. It is noted that proposed Lot 2 is adjoined on its northern side by a public reserve and on its southern side by the vegetated rear yard area of No.17 Calder Close. In addition, a 2.4m wide easement is proposed along the southern boundary of Lot 2, further increasing the setback to its southern neighbour. It is therefore likely that a future dwelling house erected upon Lot 2 will not detrimentally impact upon the amenity of the neighbouring properties. On this point, it is also noted that no objections to the proposal have been received.

The final objective relates to the adequacy of lot sizes and dimensions to accommodate development the applicant notes that,

“plans accompanying the application demonstrate that a dwelling is readily accommodated on the land with compliant car parking. The lot takes advantage of the adjacent public reserve allowing a wider expanse of open space to maintain the amenity of the proposed lot”.

A concept site layout plan, provided by the applicant, demonstrates that a dwelling house can be sited on proposed Lot 2 with a compliant 6m setback to Frederick Street (6m is applicable as the lot is less than 30.5m deep) and a 3m rear boundary setback. Having regard to these setbacks, the minimum 900mm setback to the northern side boundary and the 2.4m wide easement proposed inside the southern boundary, a building footprint of 194m² would be achievable. As any dwelling erected upon Lot 2 is likely to incorporate a second level on its downslope side (facing Frederick Street), it is quite possible to have a reasonably-sized (max. 216.95m²) dwelling house erected on Lot 2.

The subject site is not mapped as bushfire prone land or flood prone land, and does not contain vegetation, which is identified as being of particular ecological or biodiversity significance, which much of the vegetation on the site consisting of exotic species. There are no environmental constraints affecting the site, which would preclude its subdivision. The subject site has the benefit of dual road frontages (Lot 1 will front Calder Close and Lot 2 Frederick Street), which gives each lot a separate street address and access point. Utility services are currently connected to the existing allotment and can be extended to proposed Lot 2. Stormwater from Lot 1 is able to be drained through proposed Lot 2 directly to Frederick Street.

Having regard to the above, and the applicant’s submission, it is considered that there are sufficient environmental grounds to justify the variation to the development standard.

In accordance with sub-clause 4.6(4)(a)(ii) of SLEP 2014, Council must be satisfied that 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”.

The objectives of clause 4.1 of SLEP 2014 are,

- (a) to ensure that subdivision is compatible with, and reinforces the predominant or historic subdivision pattern and character of, an area,*
- (b) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

As outlined above (in consideration of the applicant’s submission) the development proposal is considered to achieve the objectives of standard.

The site is zoned R2 under SLEP 2014 and the objectives of the R2 zone are as follows,

- 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.*

The proposed subdivision will provide an allotment that can be developed for a dwelling house in accordance with the provisions of Chapter G12 of SDCP 2014, with the end result of that development being no greater in density than a detached dual occupancy (which is currently able to be constructed, and Torrens Title subdivided on the subject site). The development proposal is therefore consistent with the first zone objective.

The second zone objective is not applicable to the proposal.

The third zone objective is achieved as the proposed allotment will provide an allotment upon which a separate, detached dwelling house can be erected.

Have regard to the above comments and discussion, it is considered that the development proposal has adequately addressed the matters in sub-clause 4.6(3) and will achieve consistency with the objectives of the development standard and the R2 zone. Therefore, the clause 4.6 justification is considered to be well-founded and Council is able to grant consent to the development proposal.

Planning Assessment

The DA has been favourably assessed under s79C of the Environmental Planning and Assessment Act 1979.

Policy Implications

There are no specific policy implications that arise from this matter. Clause 4.6 of SLEP 2014 provides the legal ability for Council to grant the variation to development standards and

Council's adopted Internal Procedure PRD15/143 provides the framework to ensure the process is conducted in a manner which does not undermine the development standard.

Consultation and Community Engagement:

Notification was carried out in accordance with Council's Community Consultation Policy with letters sent to the owners of the adjoining and adjacent properties. The notification was for a 14 day period.

No submissions were received during the notification period.

Financial Implications:

There may be financial implications for Council if the matter is challenged via an appeal in the Land and Environment Court of NSW.

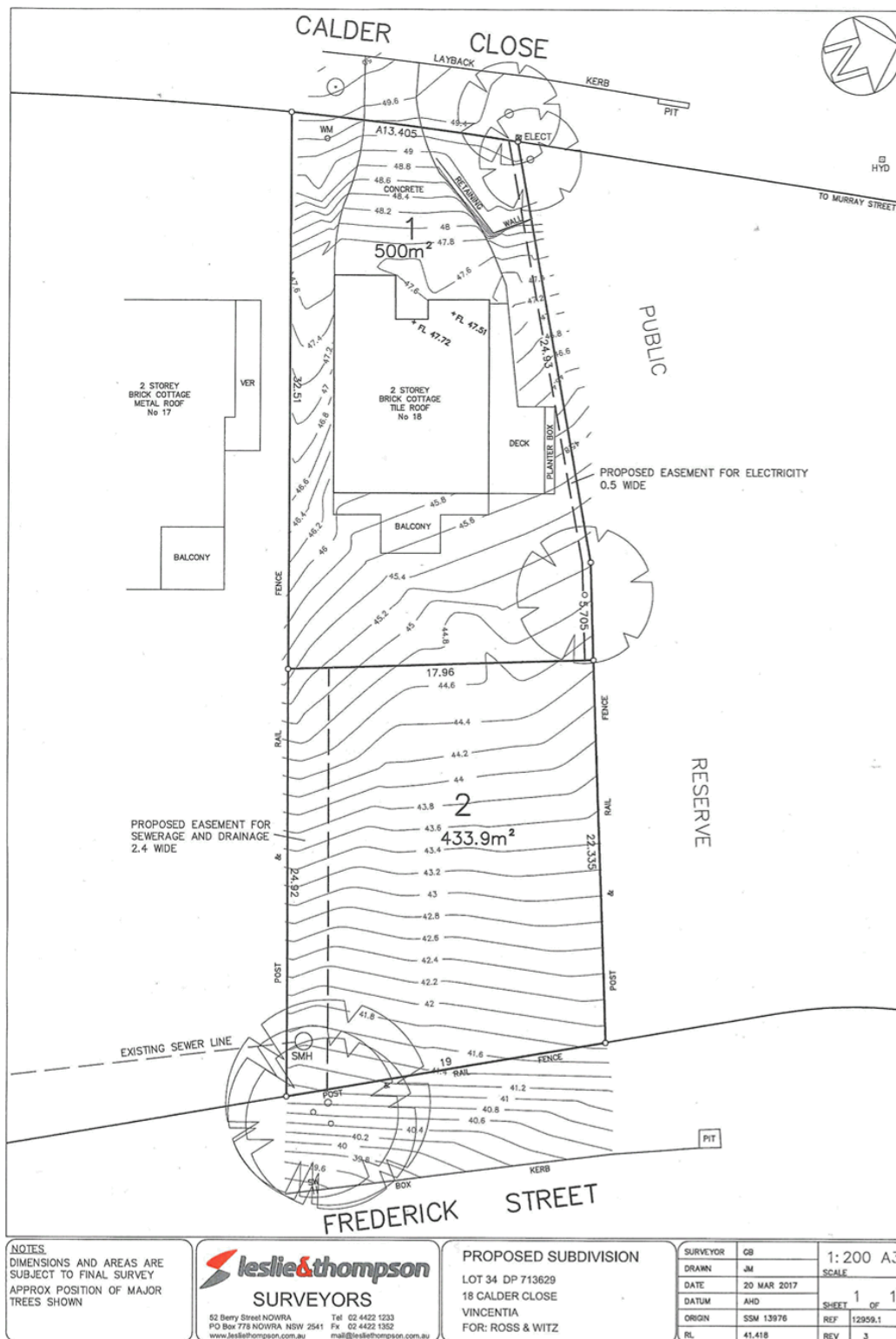
Legal Implications

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

Summary and Conclusion

The applicant's submission has provided sufficient justification to demonstrate that given the specific circumstances of this case, strict compliance with the 500m² minimum allotment size development standard is unreasonable or unnecessary, and that there are sufficient environmental planning grounds to justify a variation to this standard. Accordingly, support for the variation is recommended.



DE17.87 - Attachment 1

DE17.88 Serious and Irreversible Impact - Biodiversity Conservation Act - Yerriyong Moto Complex

HPERM Ref: D17/358665

Group: Planning Environment & Development Group
Section: Environmental Services

Attachments: 1. Guidance Notes - Office of Environment & Heritage [↓](#)

Purpose / Summary

As resolved by Council at its Ordinary Meeting on 17 October 2017, this report provides Council advice in relation to serious and irreversible impacts under the new Biodiversity Conservation Act in relation to the proposed Yerriyong Motor Sports Complex.

Recommendation (Item to be determined under delegated authority)

The report is provided to the Committee for its consideration.

Options

1. The Committee may choose to adopt an alternative recommendation.

Implications: Unknown

Background

At the Ordinary Meeting of Council on 17 October 2017, Council resolved that:

1. *In recognition of the strategic importance and economic value of developing a motor sports complex in our area, that Council, after reviewing the previous development application (DA) by Motorcycling NSW, prepares and submits a DA as proponent for this project.*
2. *Council establish a project working group to oversee the process, comprising relevant Council staff and representatives of the South Coast Motor Sports Club Inc.*
3. *Council continue to explore and where applicable apply to both Federal and State Government programs to facilitate funding for the project and private partnership.*
4. *That initial costs associated with the review and DA submission be funded through the economic development budget*
5. *Recoupment of all costs be factored into any future lease arrangements*
6. *The General Manager provide a detailed report on how “serious and irreversible impacts” have been addressed in similar situations, and what precedents have been established in that regard.*

This report addresses Part 6 of the resolution.

Previous studies of flora and fauna

The vegetation and associated fauna of Lot 3 DP1029731 Braidwood Road and Lot 7309 DP 1148878 Braidwood Rd Yerriyong, and Lot 7308 DP 1147573 Yerriyong Road Yerriyong have been the subject of ecological surveys and assessment for the former motor sports complex development application as listed below. The environmental constraints and biodiversity values of the site have been identified in these assessments as well as Council's flora and fauna assessment completed in 2011 and the South Coast Regional Conservation Plan (2010).

- Biosis - Motorcycling NSW Peak Motorcycle Facility, Yerriyong: Flora and Fauna Assessment. Final reports dated 29 January and 19 February 2016, and two Addendum reports dated 25 May and 6 June 2016.
- Orchid survey of Lot 7309 DP 1148878 by Alan Stephenson (NSW Office of Environment & Heritage (OEH) recognised local orchid expert), February 2017.
- Comments on reports and impact assessments by Biosis have been provided by OEH and expert Claire deLacey dated 15 March 2016 on behalf of the Parma Yerriyong Community Group.

The flora and fauna surveys (by Biosis) identified known habitat for 11 threatened fauna species and one flora species (confirmed by Alan Stephenson), and potential habitat for three threatened fauna species **east** of Braidwood Road. Additional species were identified **west** of Braidwood Road.

Based on these studies, the NSW Office of Environment & Heritage (OEH) recommended, amongst other things, that the proponent undertake a Species Impact Statement for the former Development Application. This requirement was imposed due to identified impacts on the Leafless Tongue Orchid *Cryptostylis hunteriana* and potentially other threatened fauna species, and was a result of the amount of high conservation value habitat proposed to be cleared. The Leafless Tongue Orchid is listed as Vulnerable under both State and Commonwealth legislation. The large number of hollow-bearing trees (HBTs) to be cleared and a lack of survey to discount utilisation of these HBTs by threatened species was also of particular concern.

Having regard to the acknowledged environmental significance of the site, there are potentially two pathways available to assess compliance with current *NSW Biodiversity Conservation Act* requirements.

NSW Threatened Species Act (TSC) 1995

The NSW TSC Act was repealed with effect on 25 August 2017 with transitional arrangements for applications already started.

For local developments in the Shoalhaven an application must be submitted within 3 months (before 25 November 2017) to be eligible for assessment under the previous legislation (TSC and EP&A Act).

Having regard to the fact that OEH have previously advised that a Species Impact Statement is required to accompany the application, the time frame to comply with the transitional requirements would not be able to be met.

NSW Biodiversity Conservation (BC) Act 2016

An application pursuant to the BC Act would require an assessment under the Biodiversity Offset Scheme, using the Biodiversity Assessment Methodology (BAM) and the preparation of a Biodiversity Development Assessment Report (BDAR).

In undertaking an assessment, an applicant must use the services of an “accredited person” to undertake field work and the collection of data, used to determine any “offset” (expressed as an Ecosystem Credit total for each Plant Community Type (PCT) impacted and a Species Credit total for each Species Credit species impacted).

The ‘accredited person’ must follow the Biodiversity Assessment Methodology (BAM) referred to in Section 6.7 of the BC Act. The BAM is structured around three primary stages with Stages 1 & 2 relevant to the proposal;

1. Stage 1 establishes a single consistent approach to assessing the biodiversity values on land.
2. Stage 2 provides for the impact assessment on biodiversity values. This stage includes the guidelines and requirements that apply to the hierarchy of avoid, minimise and offset, for assessing direct and indirect impacts.
3. Stage 3 provides for the assessment of the management requirements at a proposed biodiversity stewardship site and the likely improvement in biodiversity values that are predicted to occur over time.

In the hierarchy mentioned above, the applicant must demonstrate that a project is located to avoid biodiversity values. If an “accredited person” cannot adequately demonstrate avoidance of direct and indirect impacts, justification for the location must be provided. Actions to demonstrate avoidance would include a search for and analysis of alternate sites without significant biodiversity values.

This same rationale applies to the minimise requirement, in that a proposal should demonstrate that it is located in a position of least environmental impact. Justification, in either regard, must be documented in the Biodiversity Development Assessment Report (BDAR) produced by the “accredited person”.

Thus a proponent’s decision in regard to the location of a proposed development in an environmentally sensitive area, needs to be based upon informed study of the area and must show full consideration of the sites ecological values and the resulting location of the proposed development being in a location of least environmental impact.

Under the BC Act, a determination of whether an impact is serious and irreversible (a SAIL) must be made in accordance with the principles prescribed in section 6.7 of the BC Regulation. The reference to the meaning of serious and irreversible within the BC Act is at Cl6.5 and states;

“ serious and irreversible impacts on biodiversity values of proposed development or activity means serious and irreversible impacts on biodiversity values as determined under section 6.5 that would remain after the measures proposed to be taken to avoid or minimise the impact on biodiversity values of the proposed development or activity”

There is guidance to assist a decision-maker to determine a serious and irreversible impact (OEH, 25 August 2017) with the “decision maker” definition including consent authorities for development applications under Part 4 of the NSW EP&A Act. The consent authority would be guided by the “accredited person” undertaking the Biodiversity Assessment and its review of that assessment. The Act places responsibility on the consent authority to ensure the

assessment has been carried out in accordance with the Act and the BAM. A copy of the guidance notes issued by the Office of Environment and Heritage are attached.

The guidance notes include four principles for determining SAIL, with *C.hunteriana* likely to be included as a SAIL candidate species based on these principles. *C.hunteriana* is currently not listed as a SAIL candidate, but it is possible for the decision-maker to consider entities that are not currently specifically identified, where they meet the principles. Currently there are a number of species which have been listed as candidates i.e. species that need to be assessed for SAIL, along with guiding benchmarks that will assist to categorise impact. This however is not a definitive list and the principles mentioned above must be considered when assessing SAIL.

Of the threatened species or habitat for threatened species previously identified on the site and the locality, the following are listed as SAIL candidates, meaning the application would have to be refused should impact beyond an acceptable threshold be identified during the BAM process:

- ☐ *Pterostylis vernalis* orchid
- ☐ *Pterostylis ventricosa* orchid
- ☐ Large-eared Pied-bat (breeding habitat only)
- ☐ *Eucalyptus langleyi* Albatross Mallee
- ☐ *Genoplesium baueri* orchid
- ☐ Eastern Bent-wing Bat (breeding habitat only)
- ☐ Sooty Owl (cave breeding habitat only)

The BDAR, which must be produced by an “accredited person” will identify whether a SAIL candidate species is impacted beyond an acceptable threshold. Should this be the case, the decision-maker is required to refuse to grant development consent.

If it can be successfully demonstrated that impact on significant biodiversity values were avoided and or minimised, and SAIL entities are not to be impacted beyond an acceptable threshold, the “accredited person” upon application of the BAM will then calculate a credit total for the loss of native vegetation plant communities (expressed as an “ecosystem credit total”) and any species credit species (“species credits”) for the remaining impacts. Retiring “credits” must be completed prior to commencement of works should the application be approved. This is an upfront cost before works can commence.

Based on the list of threatened species currently identified on the site, and potential for other threatened species to be identified through the BAM process, it is likely there will be a significant (large) number of credits to be “retired” before any development can commence, not with-standing the potential for the application to be refused due to SAIL or because it is unable to meet the ‘avoid and minimise’ requirements of the BAM.

There is no guidance at this time in regard to similar situations or precedents that have been encountered under the newly adopted BC Act. Having regard to the existing body of information available in regard to the environmental constraints present on the site, and the guidelines associated with the BC Act, it is clear that there are potentially significant issues that may either prevent, or define the nature and extent of development on the site.

Having regard to the above, any proponent would be strongly advised to have an accredited person carry out a review of documentation currently available, in regard to the environmental constraints that have been identified as existing or potentially existing on the site, and determine what level of further quantitative/qualitative assessment is necessary to determine overall viability of development of the site and development for the purpose proposed. This approach is favoured with a view to identifying evident “red light” or

significantly limiting issues at an early stage, which will then guide ensuing actions including preparation of a Development Application.

Financial Implications

The methodology as mentioned above would ensure investigation work is done in a sequence to inform later stages of the process and expenditure made accordingly.

Risk Implications

Due to the significant environmental values of the Yerriyong site, a negative recommendation may result from the biodiversity assessment methodology (BAM) due to impacts not being able to be avoided, minimised or if serious and irreversible impacts on candidate species are determined.

Serious and irreversible impacts

The concept of serious and irreversible impacts is fundamentally about protecting threatened entities that are most at risk of extinction from potential development. The Biodiversity Offsets Scheme recognises that there are some types of serious and irreversible impacts that the community expects will not occur except where the consent authority considers that this type of impact is outweighed by the social and economic benefits that the development will deliver to the State.

The *Biodiversity Conservation Act 2016*:

- Requires a consent authority to reject a Part 4 development (that is not State Significant Development (SSD) or State Significant Infrastructure (SSI)) or clearing proposal that they determine is likely to have a serious and irreversible impact on biodiversity values.
- Permits the Minister for Planning to give consent to or approve SSD and SSI which is likely to have serious or irreversible impacts. The Minister must take those impacts into consideration, and determine whether there are any additional and appropriate measures that will minimise those impacts if consent or approval is to be granted.
- Requires serious and irreversible impacts to also be a consideration for biodiversity certification applications and Part 5 activities where the proponent has chosen to opt-in to the Biodiversity Offsets Scheme.

Information about serious and irreversible impacts will be included in the Biodiversity Development Assessment Report (BCAR) prepared by accredited assessors using the BAM. The approval authority must consider whether any impact is serious and irreversible having regard to principles (see below), as well as guidance, criteria to assist in the interpretation of the principles, and lists of potential serious and irreversible impacts prepared by the Chief Executive of OEH.

See [Guidance, criteria and lists of potential serious and irreversible impacts \(PDF 710 KB\)](#) as made by the Chief Executive of OEH.

The principles for determining serious and irreversible impacts are set out below.

Principles for determining serious and irreversible impacts in the Biodiversity Conservation Regulation 2017

Serious and irreversible impacts:

- will cause a further decline of a species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline, or
- will further reduce the population of a species or ecological community that is currently observed, estimated, inferred, or reasonably suspected to have a very small population size, or

- are impacts on the habitat of a species or area of ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution, or
- are impacts on a species or ecological community is unlikely to respond to measures to improve habitat and vegetation integrity and is therefore irreplaceable.

*From Office of Environment Web page,
Page last updated: 30 August 2017*

DE17.89 Works to restrict public access to Shoalhaven Water infrastructure at Kings Point and Burrill Lake

HPERM Ref: D17/329859

Group: Shoalhaven Water Group
Section: Water Asset Planning & Development

Attachments: 1. Aerial photograph showing locations of proposed access restrictions [↓](#)
2. Lands & Forestry Request - Shoalhaven Water Assets [↓](#)

Purpose / Summary

To seek Council approval for Shoalhaven Water to undertake works to restrict public access to its infrastructure on Crown land in the Kings Point/Burrill Lake area due to illegal dumping on the land.

Recommendation (Item to be determined under delegated authority)

That

1. Council approve the request from Crown Lands to install gates and rocks at the entrance to cleared pipeline and access corridors over Lot 7305 DP1166682 at Kings Point Road, Kings Point and Lot 201 DP75595 off Canberra Crescent and installation of rocks at pipeline corridors at the eastern and western sides of Lot 7305 DP1166682, as shown on the aerial photograph annexed to this report.
2. Council note that Crown Lands will be responsible for all notifications and enquiries relating to this activity.

Options

1. Approve as recommended.

Implications: Council will accede to the request from Crown Lands in order to deter any further illegal dumping in this area.

2. Not approve and provide direction to staff.

Implications: Alternative measures to be explored.

Background

The Department of Industry, Land & Forestry (DPI) has requested that Shoalhaven Water undertake work to restrict access following repeated episodes of illegal dumping, on Crown land between Kings Point Road at Kings Point and Canberra Crescent at Burrill Lake. A copy of their request is given in the attachment.

The sites of the illegal dumping are substantially associated with site access tracks for water mains and the Burrill Lake water reservoir. To implement the access restrictions two gates and large rocks will be required to close off four points of tracks used by 4WDs and other illegal dumping vehicles.

DE17.89

The restriction of access will reduce resources being expended on the area by Council Regional Illegal Dumping Rangers and other Council staff who have been required to deal with illegal dumping on the land on numerous occasions. It also potentially protects Council and DPI staff and the public from exposure to contaminated waste which will otherwise continue to be dumped along the tracks.

Community Engagement

As the land administrator, DPI has advised it will undertake the neighbour liaison process including neighbour notifications along Canberra Crescent and notification of other neighbours as required, as well as dealing with resultant enquiries.

Financial Implications

Shoalhaven Water is to meet the cost of installing the gates and rocks. DPI is to provide the required gates and undertake the community consultation.

Risk Implications

The work will reduce staff resources dealing with illegal dumping and potential exposure of contaminated material to staff and the public.

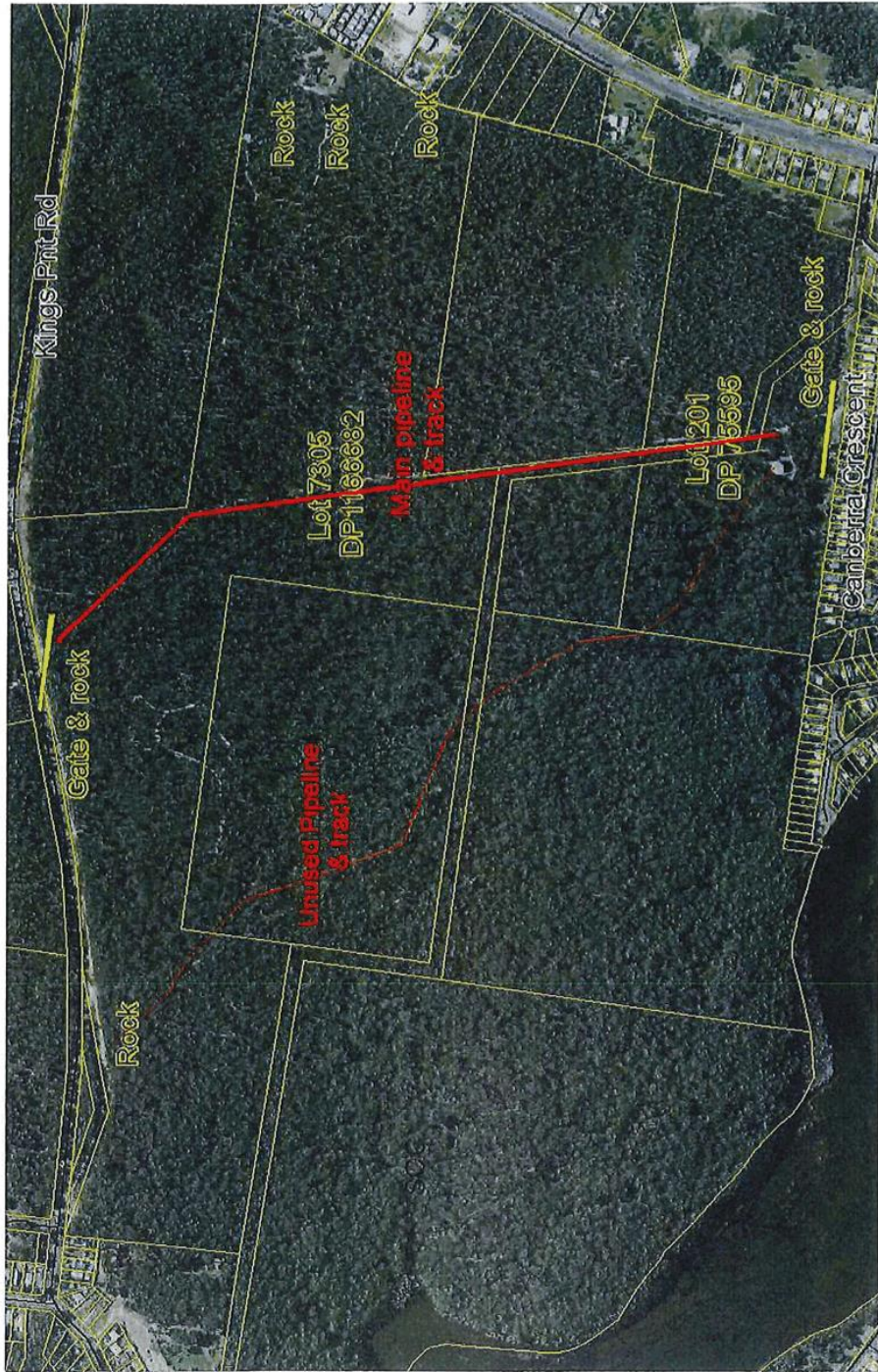


Figure 1: Crown Lot 201 & 7305 and unmade Crown road between Kings Point Road to Kings Point and Canberra Crescent at Burrill Lake, showing proposed locations of access restrictions required to treat illegal dumping while allowing access to Shoalhaven Water assets on that land.

Department of Industry, Lands & Forestry
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**Department
of Industry**

Lands & Forestry

The Manager
Shoalhaven Water
By email
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Doc No:17/183935

21 September 2017

PROPOSED DEVELOPMENT: Access restrictions to address illegal dumping over Shoalhaven Water assets on Crown land at Burrill Lake

PROPERTY: The Ulladulla to Lake Tabourie Trunk Main over Lot 7305 DP1166682 & Lot 201 DP755967, water reservoir on Lot 201, and associated unmade Crown road.

Request for works associated with Shoalhaven Water assets.

Dear Carmel

Following repeated episodes of illegal dumping, including contaminated waste, on Crown land between Kings Point Road to Kings Point and Canberra Crescent at Burrill Lake, the Department of Industry – Crown Lands and Water (CL&W) request that Shoalhaven Water (Shoalhaven Water) undertake works to reduce the impacts on its assets on the Crown land.

The sites of repeated dumping on the above Crown land are substantially associated with site access tracks over and to:

1. The Ulladulla to Lake Tabourie Trunk Water Main over Lot 7305 DP1166682 & Lot 201 DP755967 and a section of unmade road.
2. The 100mm water main (not currently in use) is also over the same land, plus Lot 6 DP1068174 privately owned.
3. The water reservoir on Lot 201 DP755967.

To implement access restrictions 2 gates and numerous large rocks will be required to close off 4 points of tracks made by 4WDs and other illegal dumping vehicles.

As the manager of these significant assets Shoalhaven Water is ideally placed to undertake installation of access restriction works that will allow continued access to its assets. It has access to the required plant and skilled technicians to undertake the works in a way that ensures protection of its infrastructure.

Restriction of access also reduces resources being expended in this area by the Shoalhaven City Council (SCC) Regional Illegal Dumping Rangers and other Council staff who have been required to attend/report/refer illegal dumping at the site on numerous occasions. It also potentially protects SCC, Shoalhaven Water, CL&W staff and the public from exposure to contaminated waste which will otherwise continue to be dumped along the tracks.

CL&W would like to contribute to the work by providing required gates in the form of low profile heavy duty gates that accommodate 2 locks via vandal-resistant lock boxes and which are suitable for placement of Shoalhaven Water and RFS accessible locks.

As the land is under the direct administrative management of CL&W, the DoI will also undertake the neighbour liaison process including neighbour notifications along Canberra Crescent and notification of other neighbours as required, as well as the resultant enquiries.

This notification will include education regarding:

- CL&W as the administrative land manager,
- the need for restriction of unauthorised 4-wheeled and larger vehicles,
- legal access to properties along Canberra Crescent,
- the purpose of the Asset Protection Zone at the rear of the properties, and
- the bushfire management status of the Crown land (Strategic Fire Advantage Zone) and the tracks through it (not bushfire assets).

CL&W looks forward to receiving Shoalhaven Water's correspondence regarding its ability to undertake the proposed access restriction works to reduce the impacts of the illegal activities on its assets on the Crown land, and to arrange contributions towards the works.

If you require any further information or clarification, please contact Helen Wheeler, NRM Project Officer via helen.wheeler@crownland.nsw.gov.au.

Yours sincerely



21 Sept 2017
For Grant Merinuk
Group Leader Sydney South Coast Area



Figure 1: Crown Lot 201 & 7305 and unmade Crown road between Kings Point Road to Kings Point and Canberra Crescent at Burrill Lake, showing proposed locations of access restrictions required to treat illegal dumping while allowing access to Shoalhaven Water assets on that land.

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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.